

SAMPLE FORMS - CONTRACTS
Access to the SoCalGas Pipeline System
Collectible System Upgrade Agreement (Form 6420, 11/05)

Sheet 1

(See Attached Form)

(TO BE INSERTED BY UTILITY)
ADVICE LETTER NO. 3413-B
DECISION NO. 04-09-022

ISSUED BY
Lee Schavrien
Vice President
Regulatory Affairs

(TO BE INSERTED BY CAL. PUC)
DATE FILED Oct 7, 2005
EFFECTIVE Nov 6, 2005
RESOLUTION NO. G-3376, G-3382

COLLECTIBLE SYSTEM UPGRADE AGREEMENT

This Collectible System Upgrade Agreement (“Agreement”) is entered into as of _____[date] by and among **Southern California Gas Company** (“SoCalGas”), and _____[company name] (“Project”). SoCalGas and Project may be referred to herein severally as a “Party,” or jointly as “Parties.”

WHEREAS, SoCalGas is a public utility regulated by the California Public Utilities Commission and as a natural gas utility receives and redelivers natural gas for the benefit of its customers; and

WHEREAS, Project is _____[project type] and would benefit from SoCalGas being capable of delivering gas from Project’s delivery point through the SoCalGas system for redelivery to customers;

WHEREAS, in order to achieve Project’s objectives, Project is willing to pay for the design and construction of additional facilities to the SoCalGas system and other associated activities, which facilities will be constructed, owned and operated by SoCalGas as part of its utility system.

NOW THEREFORE, in consideration of the promises and mutual undertakings set forth below, SoCalGas and Project agree as follows:

SECTION I

SCOPE OF AGREEMENT

A. Scope - This Agreement sets forth the terms and conditions under which SoCalGas agrees to design, provide permit preparation, engineer and construct the applicable Utility Facilities planned to be used for the redelivery of Gas from the outlet of SoCalGas’ facilities at the Interconnection Point, in order to provide Takeaway Capacity for the Project (the “Services”). Such point will be from pipeline facilities located at or near _____[location], California into SoCalGas’ existing utility system. Such Utility Facilities shall provide the capability for Gas to be delivered to SoCalGas from _____[company name], a _____[company type] (“Interconnecting Pipeline”). Such Utility Facilities do not include the actual physical interconnection with the Interconnecting Pipeline at the Interconnection Point that will be subject to an interconnection and operational balancing agreement between the Interconnecting Pipeline and SoCalGas. Project agrees to pay the actual costs for SoCalGas’ services herein including design, engineering, permit preparation, rights-of-way acquisition, and construction of the Utility Facilities by SoCalGas, its subcontractors, and/or agents, subject to the terms of this Agreement. Access rights to SoCalGas Receipt Points will be determined and governed by applicable CPUC decisions and rules and regulations implementing them.

B. Term - This Agreement shall become effective on the date provided at the beginning of this Agreement and, unless terminated earlier, continue until the earlier of the “In Service Date” or _____[date].

C. Definitions - For purposes of this Agreement between the Parties related hereto:

1. “Utility Facilities” shall mean the gas pipelines, appurtenant facilities, valves, compression, compressor upgrades, regulators, piping, valves, and other equipment, and related utility system upgrades, including all designs, engineering, drawings, permitting and plans, required for delivery of the Gas into SoCalGas’ system from the outlet of SoCalGas’ facilities at the Interconnection Point and redelivery within its service territory, or as authorized by the CPUC. Utility Facilities shall be solely owned and operated by, or on behalf of, SoCalGas.

2. “CPUC” shall mean the Public Utilities Commission of the State of California.

3. “Gas” shall mean any mixture of hydrocarbons or of hydrocarbons and non-combustible gases, in a gaseous state, consisting essentially of methane and meeting the quality specifications of SoCalGas’ tariffs, rules and regulations.

4. “In-Service Date” is that date when Utility Facilities defined herein in Exhibit B are operationally capable of being utilized on a continuous basis for Gas deliveries from the outlet of SoCalGas’ facilities at Interconnection Point. The physical capability of the Interconnecting Pipeline to deliver at the Interconnection Point including its capacity, construction and schedule is not the subject matter of this Agreement.

5. “Interconnection Point” shall mean that point where SoCalGas’ Facilities and the Interconnecting Pipeline’s Facilities physically interconnect for delivery of Gas by Interconnecting Pipeline to, and receipt thereof by, SoCalGas as described in Subsection IIIA and set forth on Exhibit A which is attached hereto and incorporated herein.

6. “Interconnecting Pipeline’s Facilities” shall mean those Gas pipeline facilities to be constructed and operated by Interconnecting Pipeline up to the Interconnection Point.

7. “Takeaway Capacity” shall mean the pipeline capacity to be made available by the design and construction of the Utility Facilities that will allow SoCalGas to receive and flow that volume of Gas from the outlet of SoCalGas’ facilities at the Interconnection Point into and through SoCalGas’ system. The Utility Facilities and Takeaway Capacity will be set forth in the scope of a mutually agreed upon and executed Exhibit B prior to commencement of any work hereunder.

D. Hinshaw Exemption - SoCalGas is exempt from jurisdiction of the Federal Energy Regulatory Commission (FERC) under the Hinshaw Exemption. SoCalGas shall not be required to take any action hereunder, including without limitation to enter into any contracts with third parties transporting Gas on Interconnecting Pipeline’s Facilities to the Interconnection Point, which for any reason jeopardizes or in SoCalGas’ sole opinion could reasonably raise a question regarding SoCalGas’ retention of its Hinshaw Exemption under the Natural Gas Act (15 U.S.C. §717(c)). While SoCalGas has the right and obligation to take action to protect its Hinshaw Exemption status, SoCalGas shall notify the Interconnecting Pipeline as soon as SoCalGas becomes aware that any action under the Agreement jeopardizes its Hinshaw

Exemption. SoCalGas shall make a good faith effort to allow the Interconnecting Pipeline an opportunity to take such actions as are necessary to assist SoCalGas in eliminating the concern.

SECTION II

WORK PHASES, CONDITIONS PRECEDENT AND TERMINATION

A. Work Phases: The Project will identify for SoCalGas the scope of Services to be undertaken. The Services may be done in separate and distinct phases upon request by the Project. After the Parties have mutually agreed upon the scope of Services for any individual phase, SoCalGas shall provide an estimated cost for it to complete the identified scope of Services in the form set forth herein as Exhibit B, which is attached hereto and incorporated herein. Project will review and if acceptable, shall indicate its acceptance of the Services and estimated cost by executing and returning the Exhibit B no later than ___[#] days after its receipt. SoCalGas shall not commence any Services until it has received the executed Exhibit B and the Condition Precedents set forth in Section C below have been satisfied. Each subsequent phase as described in Section III will be similarly prepared and attached to this Agreement and numbered sequentially with the initial phase being Exhibit B-1.

B. Stop Work: Within each Exhibit B, Project shall have the right to approve or stop work to be performed within a phase as identified in such Exhibit B, provided that Project will use commercially reasonable efforts to minimize effects of Project's stop work order. Project will be responsible for payment of Services rendered and any costs incurred by SoCalGas pursuant to an executed Exhibit B, prior to receipt by SoCalGas of a written stop work notice.

C. Conditions Precedent:

1. SoCalGas' obligation to perform the Services under any executed Exhibit B and in any event prior to the commencement of any Services hereunder is subject to the condition precedent that Project shall have paid SoCalGas for SoCalGas' estimated costs and expenditures related to such phase within ___[#] days after Project's execution of such Exhibit B.

2. Prior to commencement of actual construction of any facilities pursuant to an executed Exhibit B, SoCalGas shall have received any and all federal, state and local regulatory approvals and permits that are necessary for such work to commence. SoCalGas may suspend Services at any time during the term of this Agreement if, after good faith efforts have been made, it has been unable to acquire any necessary permits or authorizations.

D. Termination Conditions - In the event the conditions in subsection IIB have not been satisfied or waived by all Parties by the date specified therein, the Parties shall meet within fifteen (15) days following such date to discuss in good faith whether Exhibit B of this Agreement can be restructured on a mutually satisfactory basis under the circumstances. In the event the Parties are unable to agree on such a restructuring within forty-five (45) days after the first meeting on such matter, this Agreement may either (i) be extended up to an additional ninety (90) days thereafter by mutual consent obtained on or before such 45th day, or (ii) be terminated if any Party, within fifteen (15) days thereafter, gives ten (10) days prior written notice of termination; provided, however, such termination shall not become effective if such

condition under Subsection IIB has been satisfied or waived prior to the effective date of such termination.

E. Cooperation - Each Party shall cooperate with the other Parties as is reasonable under the circumstances, and keep the other Parties advised of all significant developments in connection with obtaining satisfaction of the conditions specified in Subsection II.A and II.B. SoCalGas is and at all times during the term of this Agreement shall be an independent contractor providing Services to Project. 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.

F. Termination Charges - In the event that Project has executed an Exhibit B and the conditions precedent in subsection IIB have been satisfied or waived by the responsible party, and this Agreement is terminated under Subsection IIC, or for any other reason by Project, Project shall pay to SoCalGas the actual costs of that portion of SoCalGas' services performed or costs incurred for the design, engineering, permit preparation, asset or rights-of-way procurement and/or construction or other Services under any approved Exhibit Bs incurred as of such date of termination. In the event that (a) Project issues an order to stop work pursuant to subsection IIB for any Exhibit B or terminates this Agreement and (b) SoCalGas continues with the system upgrades despite the Project's stop order SoCalGas shall not charge Project for any new commitments made by SoCalGas resulting in subsequent costs incurred after the date of the stop notice associated with such system upgrades.

SECTION III

CONSTRUCTION, PAYMENT, AND OPERATIONS

A. Installation of Facilities - SoCalGas shall design, engineer, provide permit preparation and right of way acquisition, and if necessary, construct, and install Utility Facilities as it deems necessary to have the capability to redeliver from the outlet of the SoCalGas' facilities at the Interconnection Point Gas volumes in an amount up to the Takeaway Capacity mutually agreed upon in the applicable Exhibit B subject to reimbursement from Project as provided herein. Utility Facilities shall be designed and constructed by SoCalGas to meet all applicable legal and regulatory requirements as well as to meet the minimum specifications of SoCalGas for materials, installation, testing and acceptance, provided however, all such actions shall be in compliance with an executed Exhibit B and follow commercially reasonable standards. Any and all material, including but not limited to all information, reports, drawings, plans, and/or designs developed by SoCalGas, its agents or subcontractors hereunder are owned by and remain the property of SoCalGas.

1. No Utility Facilities or Services for Takeaway Capacity which are to be paid for by Project shall be designed, engineered or constructed by SoCalGas without Project's prior written approval of the estimated cost, as set forth in Section IIA. Project acknowledges that the estimated cost is an estimate only and that Project will be responsible for SoCalGas' actual costs incurred consistent with the specifications in the applicable Exhibit B and commercially reasonable standards including, but not limited to, its labor and internal overheads, procurement, taxes, permits and associated fees, subcontractor and agent costs. SoCalGas will provide documentation acceptable to Project on the calculation of internal overheads. Actual

costs may not include any damages or other liabilities that SoCalGas has incurred as a result of its own negligence.

2. SoCalGas shall submit to Project, as available from time to time, any proposals regarding the scope of services to be performed in a subsequent phase, and schedules for construction (including ordering materials) and estimated costs related to implementing such phase, based on the mutually agreed date projected as the In-Service Date (as determined in good faith from time to time);

3. SoCalGas shall provide monthly status reports to Project in a form mutually agreed upon by the Parties. This reporting process will provide Project information on the status of performance and identify any material changes in cost, and any delays in schedule or other matters, including permitting, that would impact completion of the scope of Services set forth in an approved Exhibit B.

4. Project shall, within the time period set forth in subsection II.A, accept any such Exhibit B proposal in writing if it agrees to such proposal; if no acceptance is received within such time it shall be deemed rejected and SoCalGas shall take no further action; and

5. Project shall be solely responsible hereunder for any additional costs attributable to Project's delay or refusal in approving any phase or cost proposal by SoCalGas.

6. SoCalGas shall notify Project when it becomes aware that the cost of Services pursuant to any executed Exhibit B has exceeded or appears it will exceed the estimated cost by more than _____[#] percent (%). Project may issue a Stop Work Order as set forth in Section IIA. At such time, SoCalGas may submit a revised Exhibit B for Project's approval and require additional prepayment from Project prior to continuing any further services. If Project agrees to the revised Exhibit B it will execute and pay within the time limits set forth in Section I A, however, Project is not required to agree to such revised Exhibit B. In the event Project does not agree, SoCalGas may discontinue work until Project has paid such additional amount. In the event any such condition is not satisfied or waived by the date applicable thereto, this Agreement may be terminated by either Party as specified in Subsection IIC.

B. Payment by Project - Project shall advance SoCalGas' estimated costs of the Services set forth in subsection IIA within the scope of an approved Exhibit B. After a final accounting has been made by SoCalGas but in no event later than _____[date], Project shall reimburse SoCalGas within thirty (30) days of invoice from SoCalGas for its actual costs above the prepaid estimated costs, including indirect costs and overheads, carrying costs, designing, engineering, installing, permitting and constructing the Utility Facilities set forth in an executed Exhibit B, and including any related income, CIAC, or other tax liability thereon, even if such costs are above cost estimates provided to Project by SoCalGas. After a final accounting has been made by SoCalGas but in no event later than _____[date], any advances paid, which are in excess of SoCalGas' actual costs, shall be returned to Project.

1. Project may request and SoCalGas shall agree to Project's audit by a certified public accountant of the accounting records applicable to the construction of the Utility Facilities installed and owned by SoCalGas hereunder at Project's expense. Such audit may be conducted during the term hereof or for a period of up to one year after termination.

2. Refund: In the event a final non-appealable decision of the California Public Utilities Commission provides that SoCalGas shall refund, credit, or reimburse Project any pre-payments made hereunder, or portion thereof, for Work done pursuant to this Agreement, SoCalGas shall comply fully with such decision and implement its ruling as appropriately applied to the specific terms of this Agreement. In the event that (a) a private letter ruling from the Internal Revenue Service is issued to SoCalGas which holds that any amount paid by Project to SoCalGas as contribution in aid of construction (“CIAC”) under the terms of this Agreement is not subject to federal income taxation, (b) any abatement, appeal, protest, or other contest results in a determination that any payments or transfers made by Project to SoCalGas are not subject to federal income tax, (c) if SoCalGas receives a refund from any taxing authority for any overpayment of tax attributable to any payment or property transfer made by Project to SoCalGas pursuant to this Agreement, (d) in the event a final non-appealable decision of the California Public Utilities Commission provides that SoCalGas shall refund, credit, or reimburse Project any pre-payments made hereunder, or portion thereof, for CIAC paid pursuant to this Agreement, or (e) if for any other reason any amount paid by Project to SoCalGas as CIAC under the terms of this Agreement is not subject to federal income taxation, SoCalGas shall promptly refund to Project the following:

(i) Any payment made by Project for taxes that is attributable to the amount determined to be non-taxable,

(ii) Any amounts paid by Project to SoCalGas for such taxes which SoCalGas did not submit to the taxing authority, and

(iii) With respect to any such taxes paid by SoCalGas, any refund or credit SoCalGas receives or to which it may be entitled from any Governmental Authority, provided, however, that SoCalGas will remit such amount promptly to Project only after and to the extent that SoCalGas has received a tax refund, credit or offset from any Governmental Authority for any applicable overpayment of income tax related to the Work, subject of this Agreement.

C. Coordination with Other Users of Interconnection Point – Each Party acknowledges that third parties may enter into arrangements with SoCalGas for the delivery of gas through the Interconnection Point, including contracts for capacity in excess of Takeaway Capacity agreed upon in any executed Exhibit B. In such regard, SoCalGas agrees that in no event shall SoCalGas’ subsequent contracts with third parties for upgrades for Takeaway Capacity increase the costs agreed to by Project as agreed to in any of the Project’s executed Exhibit Bs. Any cost allocation impacts arising from the involvement of third parties will be determined in SoCalGas’ CPUC Application 04-12-004, or another pertinent CPUC proceeding.

SECTION IV

ASSIGNMENT

Assignment - 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, such consent may not be unreasonably withheld.

SECTION V

NOTICES

A. Form of Notice - All notices including invoices provided for herein shall be given in writing, and either hand delivered, or sent by prepaid priority courier, or sent by telephone facsimile (“telefax”) with original to follow by regular mail. In the case of courier delivery, delivery shall be deemed to occur three (3) business days after delivery to the courier by the sending Party and in the case of telefax the following business day after telephonic confirmation that the message was sent and received. Unless changed as set forth below, the addresses and telefax number of the Parties for purposes of this Section V are as follows:

Project:

Mailing Address:
Telefax Number:

SoCalGas:

Mailing Address: Southern California Gas Company
Box 3249 ML 22E1
Los Angeles, California 90051-1249
Telefax Number: (213) 244-8449

B. Telephone Contacts - At any time a telephone call is required to confirm the sending and receipt of any telefax notices, the following telephone numbers shall be utilized:

Project:

Confirmation Telephone:
Contact:

SoCalGas:

Confirmation Telephone:
Contact: LNG Business Manager

C. Changes - The designated contact, address and telefax and telephone numbers specified herein may be changed from time to time by the Party affected after two (2) days written notice.

SECTION VI

LIMITED WARRANTY

A. Services. SoCalGas warrants to Project that the Services performed by SoCalGas will meet or exceed all generally accepted industry standards for this type of work. SoCalGas disclaims any other warranty, express or implied, and disclaims all implied warranties of fitness for intended purpose.

B. Limitation of Liability. The warranties expressly provided for above are in lieu of all other express or implied warranties. SoCalGas is not committing to provide any capacity on its system or access rights to its system to Project as a result or benefit of this Agreement. In no event shall SoCalGas be liable for punitive, consequential, indirect, incidental, or special damages or for lost business or lost profits, whether under tort, breach of contract, strict liability, or any other theory, even if SoCalGas has been advised of the possibility of such damages.

SECTION VII

MISCELLANEOUS

A. Laws - The formation, interpretation and performance of this Agreement shall be governed by the internal laws of the State of California, without reference to principles of conflicts of laws.

B. Force Majeure- In no event shall SoCalGas be liable for breach of this Agreement if it cannot perform its obligations under this Agreement because of forces not under its control including, but not limited to, acts of God, labor disputes or strikes (whether involving SoCalGas' or its subcontractor's workforce), shortages of parts or materials, civil unrest, war, inability to obtain governmental approvals or permits, or government orders. In the event of such delay, the time for completion shall be extended by a period of time reasonably necessary to overcome the effect of such delay.

C. Execution of Documents - Each Party shall do all necessary acts and make, execute, and deliver such written instruments as shall from time to time be reasonably necessary to carry out the terms of this Agreement.

D. 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 attorney's fees shall be paid to the prevailing party.

E. Publicity - Any public statements, publicity or press releases concerning this Agreement and the transactions contemplated by this Agreement shall be jointly planned and coordinated by and between the Parties. No Party shall act unilaterally regarding such publicity

or press releases without the prior written approval of the other Parties, which approval shall not be unreasonably withheld.

F. 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 negotiations, will be resolved with binding arbitration, except for areas explicitly under federal and state jurisdiction.

G. Regulation - SoCalGas is a California utility subject to the jurisdiction of the CPUC. In the event the CPUC, or any other administration agency with jurisdiction over the subject matter hereof, materially change, alter or modify this Agreement, such that a party is deprived of its benefits anticipated herein such Party may terminate this Agreement upon 15 days notice or immediately if necessary to comply. In such event Project remains liable for payment of those costs incurred by SoCalGas pursuant to any approved Exhibit B up to such date.

H. Prior Agreements - This Agreement is limited to the construction of, and cost allocation for, SoCalGas' Facilities as defined in Exhibit B.

I. Entire Agreement - This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof, supersedes all prior discussions, agreements and understandings, whether oral or written, which the Parties may have in connection herewith and may not be amended or modified except by written agreement of the Parties, and shall not be modified by course of performance, course of conduct or usage of trade.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed in two (2) copies by their authorized representatives as of the day and year first written above.

[Company Name]

By: _____

Title: _____

SOUTHERN CALIFORNIA GAS COMPANY

By: _____

Title: _____

Exhibit B – Estimate Schedule of Contributions - _____ Basis
 _____ – Deliveries at _____
 Date

Pipeline Facilities & Compressor Stations	
<u>xxxxx MMcf/d Case</u>	<u>Requesting Party Initials for Each Item Desired</u>
List applicable facilities here	
List applicable facilities here	
List applicable facilities here	
List applicable facilities here	
List applicable facilities here	
• Initial Step	
o Estimated to take ----- months**	
▪ List step here	
▪ List step here	
o contribution required - +\$-----	
• Next Step	
o Estimated to take ----- months**	
▪ List step here	
▪ List step here	
▪ List step here	
▪ List step here	
o contribution required - +\$-----	
• Next Step	
o Estimated to take ----- months**	
▪ List step here	
▪ List step here	
▪ List step here	
▪ List step here	
o contribution required - +\$-----	
• Next Step	
o Estimated to take ----- months**	
▪ List step here	
▪ List step here	
▪ List step here	
o contribution required - +\$-----	
Ready to flow gas in estimated ----- months**	
Total estimated cost = \$-----	

** Estimated time is subject to change in the event of unforeseen permitting, environmental, construction, force majeure or other legal or regulatory actions that may cause delay.

+ Amount of contribution is an estimate only. Project agrees to pay actual costs per the Agreement.

Southern California Gas Company

By: _____

By: _____

Accepted on: _____

Accepted on: _____