

SAMPLE FORMS

Sheet 1

Contracts

Consent to Common Use Agreement - Form No. 6679 (1/01)

(See Attached Form)

(TO BE INSERTED BY UTILITY)

ADVICE LETTER NO. 2988
DECISION NO.

101

ISSUED BY

William L. Reed

Vice President
Chief Regulatory Officer

(TO BE INSERTED BY CAL. PUC)

DATE FILED Jan 18, 2001
EFFECTIVE Feb 27, 2001

RESOLUTION NO. _____

Recording requested by and
when recorded mail to

Southern California Gas Company
c/o Sempra Energy
Right of Way Dept.
Attn: _____
P.O. Box 3249
Los Angeles, California 90051-1249

CONSENT TO COMMON USE

This Consent to Common Use ("Agreement") is entered into this _____ day of _____, _____, by and between Southern California Gas Company, [successor in interest to Southern Counties Gas Company,] a California Corporation, ("SoCalGas") whose principal place of doing business is located at 555 West Fifth Street, Los Angeles, California 90013-1011, and _____ a _____ ("[Insert Name for Third Party]").

WHEREAS, SoCalGas was granted a certain non-exclusive easement to construct, operate, maintain (and for other purposes) a certain pipeline and its appurtenances and equipment ("Facilities"), dated _____, recorded _____, in Book _____, Page _____, as Instrument No. _____ of Official Records in the office of the County Recorder of _____ County, State of California ("Gas Easement"); and,

WHEREAS, said Gas Easement is located within real property owned by _____; and,

WHEREAS, [Third Party] is the owner of a non-exclusive easement for _____ purposes ("[Insert Name of Third Party's Easement]"), and

WHEREAS, the [Third Party's] Easement is within or overlaps the Gas Easement and [Third Party] plans to make use of its [Third Party] Easement which includes a portion of the Gas Easement ("Area of Common Use") for the construction, maintenance and use of _____ [Insert name of the purpose for which Third Party is going to use its easement] all as shown on Exhibit(s) _____ attached hereto and incorporated by reference. SoCalGas consents to Third Party's use of the Area of Common Use and agrees that the use of it by Third Party for the [Third Party's use/facilities] will not be an unreasonable interference with the Gas Easement, in consideration of, and upon, the following terms and conditions.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. **Recitals.** The above recitals are true and are incorporated by reference.
2. **No Warranties.** SoCalGas is not the owner of the underlying fee. [Third Party] is responsible for obtaining any required permission from the fee owner. SoCalGas MAKES

NO REPRESENTATIONS AS TO WHETHER THE PROPERTY IS SUITABLE FOR THE USE INTENDED BY [THIRD PARTY], AS TO ANY PHYSICAL CHARACTERISTICS OF THE REAL PROPERTY INCLUDING BUT NOT LIMITED TO THE LOCATION OR DEPTH OF SOCALGAS' FACILITIES, SOIL CHARACTERISTICS, COMPACTION, OR DRAINAGE AND DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED.

3. **Conditions of Approval.** SoCalGas hereby consents to the construction, maintenance and use by [Third Party] of the use as shown on Exhibit [A or B] within the Area of Common Use, subject to the following conditions and covenants: **[Insert the following provisions as applicable]**

(a) [Third Party] shall construct only the [Third Party Facilities] as shown in Exhibit [A or B] and shall make no changes thereto without the prior written consent of SoCalGas.

(b) The only parallel subsurface encroachments allowed within the Area of Common Use shall be those shown on Exhibit A or B which must be at least ___ feet away from the outside diameter of the Facilities. For all substructure crossings, a minimum vertical separation of twelve (12) inches to the Facilities must be maintained. All allowed substructure excavations within thirty six (36) inches of the Facilities shall be hand dug. Blind bores across the Area of Common Use are not allowed. In the event of boring, the Facilities must be daylighted and provided a minimum thirty six (36) inch open trench between the Facilities and the bore pit.

(c) No change of grade within the Area of Common Use shall be made without the prior written approval of SoCalGas, which approval shall be given or withheld in its reasonable discretion within _____ () business days of the date SoCalGas receives notice of the proposed grade change from [Third Party] (including, without limitation, any additional notice given after receipt of SoCalGas' disapproval). If SoCalGas fails to give its written approval or disapproval (with specific reasons for disapproval) within such _____ () business day period, the proposed grade change shall be deemed disapproved by SoCalGas. Any plans changing the grade shall be submitted to SoCalGas _____ () business days prior to start of work. In any case, the final grade shall not be less than three (3) feet nor more than eight (8) feet of earthen cover over the top of the Facilities. Furthermore, no change of grade shall be made at any time and for any reason without prior plan review and the on-site presence of an authorized representative of SoCalGas. If any change of grade is approved, prior to the grade change, prescribed methods to protect the Facilities from possible damage shall be determined by and at the reasonable discretion of the on-site SoCalGas representative.

(d) Temporary grade reductions below three (3) feet of cover may be allowed, but only those performed with _____ [insert description of the equipment and methodology to be used]. In no instance shall the temporary grade over the Facilities be less than thirty (30) inches of cover. Third Party shall restore cover to the depth required as soon as possible. Such temporary removal of cover over the Facilities will be done with equipment no heavier nor invasive than necessary, and in any event, no more so than a [motor grader, Cat. Model 12-G or equivalent – or insert the other

equipment SoCalGas agrees to], and no mechanized equipment shall be within three (3) feet of the Facilities. No scrapers will be used over the Area of Common Use.

(e) Reasonable ingress and egress for SoCalGas (access rights to and from the Gas Easement) must be maintained.

(f) No trees or deep-rooted plants shall be planted within the Gas Easement.

(g) The maintenance and repair of the [Third Party's facilities] within the Area of Common Use shall be the responsibility of Third Party, and SoCalGas shall have no responsibility therefor.

(h) Third Party shall notify or cause to be notified all of its contractors or subcontractors of the presence of the Facilities and the terms of this Consent to Common Use and shall maintain or cause to be maintained all marker posts as reasonably required by SoCalGas during all phases of construction. Within ten (10) business days of SoCalGas' written demand, Third Party shall pay or cause to be paid Two Hundred Dollars (\$200.00) for each marker post lost, buried or damaged, (which is the reasonable probable costs of replacement).

(i) In the event SoCalGas deems it necessary to repair or replace its Facilities and/or appurtenances, or relocate its Facilities within the Gas Easement, or to change its method of operation or maintaining its Facilities within the Gas Easement, and the same necessitates the removal of any of the [Third Party's facilities] placed upon the Gas Easement, said [Third Party's facilities] being either those allowed improvements named above, or any other improvement or structure placed upon the Gas Easement in violation of the terms or covenants contained herein, SoCalGas shall have the right, to remove said [Third Party's facilities] and shall not be obligated to replace the same.

(j) This Agreement is subject to California Public Utilities Commission ("CPUC") General Order 69-C (including as amended), the terms of which are hereby incorporated by reference. If this Agreement is terminated upon the grounds specified in General Order 69-C, Third Party agrees to remove [Third Party's facilities] within the time specified in written notice from SoCalGas, and restore the Area of Common Use to the condition it was prior to the installation of [Third Party's facilities]. If Third Party does not so remove [Third Party's facilities], SoCalGas may remove them, at Third Party's expense, with no liability to Third Party.

(k) Third Party shall comply with all applicable laws, rules, permits and regulations in the construction and maintenance of the [Third Party's facilities] and in the conduct of its activities under this Agreement.

(l) Third Party shall pay all taxes associated with the [Third Party's facilities].

(m) Upon written demand, Third Party will reimburse SoCalGas, for any increased costs incurred by SoCalGas for projects initiated by SoCalGas for installation, maintenance, repair, removal, or relocation of any of its Facilities which exceed the cost which would have been incurred if the [Third Party's facilities] had not been constructed.

4. **No Other Improvements.** No improvements, including but not limited to, structures, buildings, concrete pads, walls or fences, lighting structures, trees, deep-rooted shrubs or changes of grade - other than those shown on Exhibit [A or B] - shall be made, constructed or installed in the Area of Common Use.
5. **Existing Gas Easement.** This Agreement shall not in any way alter, modify or terminate any provision of the Gas Easement, except as expressly provided herein. Third Party shall use said Area of Common Use in such a manner as not to unreasonably interfere with the rights of SoCalGas. Nothing herein contained shall be construed as a release or waiver of any claim for damages which SoCalGas may now have or may hereafter acquire resulting from the construction, alteration or maintenance of any of the [Third Party's facilities] or any of its other improvements to which SoCalGas may have consented, in such a manner as to cause unreasonable interference with the use of said Area of Common Use by SoCalGas. No action or inaction by SoCalGas shall be deemed a waiver of any right hereunder unless it is set forth expressly in writing and is signed by an authorized representative of SoCalGas.
6. **No Subordination.** SoCalGas does not by this consent, and shall not be deemed by this Agreement, to subordinate its rights in the Area of Common Use to any use which Third Party shall make of said area. [In the event SoCalGas shall install any additional or replacement Facilities in the Area of Common Use, said Facilities shall be deemed to be installed and operated under the terms of SoCalGas's Gas Easement, but any such additional or replacement Facilities shall be subject to the provisions contained in this Agreement.] **[Insert if appropriate]**
7. **Indemnity.** Third Party agrees to indemnify and hold harmless SoCalGas, its officers, directors, employees, agents, successors and assigns from any and all liability (including attorneys' fees and costs) for personal injuries or property damage and all other claims, demands, liabilities losses, or causes of action which arise out of or are connected with [Third Party's] actions or [Third Party's facilities], excepting only those losses, claims and damages arising from the sole negligence or willful misconduct of SoCalGas, its officers, agents and employees.
8. **Environmental Indemnity.** Third Party shall indemnify and save SoCalGas harmless from and against any and all liability, costs, damages, expenses (including attorneys' fees) arising from Third Party's breach of or failure to comply with any environmental or endangered species law, regulation or permit, including but not limited to those resulting from a release of any hazardous material brought onto the Gas Easement or adjacent land by Third Party (or its contractors' or subcontractors') and any taking or other violation of any endangered species law. **[Insert the previous provision as appropriate; additional environmental provisions may be added].**
9. **Insurance.** Upon the request of SoCalGas, [during construction] Third Party shall maintain workers' compensation insurance as required by law, employers' liability insurance with limits of at least \$ __ million each employee and each disease, comprehensive general liability insurance in an amount not less than \$ __ million per occurrence, **[other types of insurance, as applicable, depending upon the type of facilities (and the encroachment) Third Party is installing]** issued by an insurer reasonably acceptable to SoCalGas. All liability [name other insurance which must name

SoCalGas additional insured] shall name SoCalGas as an additional insured, shall be primary and not contributing to any insurance maintained by SoCalGas, and shall provide for ___ days notice to SoCalGas before cancellation or material reduction in coverage. Certificates of insurance evidencing the required coverage and provisions shall be furnished to SoCalGas prior to commencing any activities on the Gas Easement.

10. **Attorneys' Fees.** In the event SoCalGas shall bring suit to compel performance of or recover for the breach of any covenant, term or condition contained herein, or to collect any sum due hereunder, and such suit results in a judgment for SoCalGas, Third Party shall pay to SoCalGas reasonable attorneys' fees in addition to the amount of the judgment and costs.
11. **No Waiver.** No delay or omission of the exercise of any right or remedy of SoCalGas shall impair such right or remedy or be construed as a waiver. Any waiver by SoCalGas must be in writing and shall not be construed as a waiver of any other default or omission concerning the same or any other provision of this Agreement.
12. **Existing Encumbrances.** This Consent to Common Use is granted subject to all existing licenses, leases, grants, exceptions, reservations, deeds of trust and other matters of record or which should reasonably be apparent upon a physical inspection of the Gas Easement and the underlying fee property.
13. **USA Notice.** Prior to any construction within the Area of Common Use, Third Party or its contractor shall provide the notice required by Government Code § 4216 et seq. (or any successor statute) and shall hand excavate to verify the depth and location of all existing gas pipelines within the Area of Common Use.
14. **Entire Agreement.** This is the entire agreement between the parties; any modifications must be in writing and signed by both parties.
15. **Notices.** Any notices or other documents required or permitted to be served on any party to this Agreement shall be written and deemed served upon personal delivery to the party, when faxed during normal business hours of the receiving party (provided the transmitting party mails a confirming copy the same business day), or two business days after deposit in the United States Mail, first-class postage prepaid, to the following address/facsimile numbers for each respective party:

THIRD PARTY.

SOCALGAS

FAX: _____
TEL.: _____

Southern California Gas Company
c/o Sempra Energy
P.O. Box 3249
Los Angeles, California 90051-1249
ATTN: Right of Way Department
FAX: (213) 244-8211
TEL.: (213) 244-5067

- 16. **Miscellaneous.** California law shall govern this Agreement. Each party has had the opportunity to review and have its counsel review this Agreement and negotiate its terms, therefore, any rule that ambiguities are construed against the drafter shall not apply to this Agreement.
- 17. **No Assignment.** This Agreement shall inure to the benefit of and be binding upon the successors and assigns of both parties, except that Third Party shall have no right to make assignments or transfers, in whole or in part, of this Agreement or its rights hereunder or change or expand the uses made of the Area of Common Use, without the prior written consent of SoCalGas.
- 18. **Future Consents.** Notwithstanding anything herein to the contrary, SoCalGas shall have no obligation to consent to any future uses of or improvements in its Gas Easement area.
- 19. **Authority.** The individual executing this Agreement on behalf of each party represents and warrants that he/she is duly authorized to execute and deliver this Agreement on behalf of such party.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate by their respective duly authorized officials as of the year and date first written above.

SOUTHERN CALIFORNIA GAS COMPANY

THIRD PARTY

By: _____

By: _____

Title: _____

Title _____

Date: _____

Date _____