

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



FROM: TLMA - Transportation Department

SUBMITTAL DATE:
August 29, 2013

SUBJECT: Amendment No. 1 to Utility Agreement with The Southern California Gas Company for the Relocation of a Gas Transmission Pipeline, Clay Street Grade Separation Project, General Drive to Linares Avenue, City of Jurupa Valley

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the submitted Amendment Number 1 to the Utility Agreement between the County of Riverside (County) and the Southern California Gas Company for the relocation of gas transmission pipeline facilities, which are in conflict with the planned railroad grade separation improvement project at the Clay Street and Union Pacific Railroad (UPRR) crossing in the City of Jurupa Valley; and

Juan C. Perez
Director of Transportation and Land Management

JP:mk
(Continued On Attached Page)

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 1,019,200	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2013/2014

SOURCE OF FUNDS: CMAQ (100%)	Positions To Be Deleted Per A-30	<input type="checkbox"/>
There are no General Funds used in this project.	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE
BY:
Tina Grande

County Executive Office Signature

FORM APPROVED COUNTY COUNSEL
BY: MARSHAL VICTOR
DATE: 8/21/13

Departmental Concurrence

Dept't Recomm.: Policy Consent

Per Exec. Ofc.: Policy Consent

2013 266 - 3 54 5: 05

Prev. Agn. Ref. 6/18/13 (3-60) | District: 2/2 | Agenda Number:

3-91

The Honorable Board of Supervisors

RE: Amendment No. 1 to Utility Agreement with The Southern California Gas Company for the Relocation of a Gas Transmission Pipeline, Clay Street Grade Separation Project, General Drive to Linares Avenue, City of Jurupa Valley

August 29, 2013

Page 2 of 2

2. Authorize the Chairman of the Board to execute Amendment Number 1 to the Agreement on behalf of the County.

BACKGROUND: Construction of the Clay Street Railroad Grade Separation Improvement Project is anticipated to begin in the first quarter of 2014.

The railroad grade separation project will lower Clay Street under UPRR tracks and construct the bridge structure that will support the railroad tracks and will include associated improvements. This project will improve motorist safety by separating vehicle traffic from rail traffic.

By action of June 18, 2013, the Board of Supervisors authorized the execution of the Utility Agreement with the Southern California Gas Company for the relocation of a 30-inch diameter high pressure gas transmission pipeline, which is in conflict with the project improvements. The work will be performed by the Southern California Gas Company in accordance with plans prepared by the Company.

Subsequent to the execution of the Agreement, the Transportation Department was informed by the State of California Department of Transportation (Caltrans) that the State disapproved the language of the Agreement pertaining to the Buy-America requirements that now apply to such contracts.

The County has negotiated alternate language with the Southern California Gas Company and has received approval from the State. Execution of the Amendment is necessary in order to enable funding of both the gas pipeline relocations and of the grade separation project.

The Amendment to the Agreement has been reviewed and approved by County Counsel.

The County has secured Congestion Mitigation and Air Quality Improvement Program (CMAQ) funding from the Federal Highway Administration (FHWA) for the project and will utilize those funds for the relocation of the conflicting gas pipeline facilities.

Project Number: B7-0753

**County of Riverside
Amendment to Utility Agreement**

Fed. Aid. No. PNRSTCIL-5956 (178)
County Project no. B7-0753
Owner's File: 90592-001

**Amendment No. 1
Utility Agreement
Relocation of Gas Pipeline Facilities
Clay Street Grade Separation project**

Whereas the County of Riverside, hereinafter called "County" and Southern California Gas Company, hereinafter called "Owner", have entered into that certain Utility Agreement, executed June 18, 2013, which sets forth the terms and conditions for the relocation of Owner's pipeline; and,

Whereas, County has been informed by the State of California Department of Transportation that the "Buy America" clause of the executed agreement must be amended in order to be compliant with Federal Law and the State of California's implementation of the Federal Buy America requirements.

Now, therefore, it is agreed between the parties as follows:

1. The second paragraph of Section III is replaced in its entirety with the following:

OWNER will comply with the "Buy America" requirements to which LOCAL AGENCY is subject as set forth in the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) Sections 1041(a) and 1048(a), 23 U.S.C. 313 and C.F.R. Part 635.410 ("Buy America"), which are referenced herein, and which require that all steel and iron products, and their coatings, used in any projects with NEPA clearance be produced in the United States, unless a waiver has been granted by FHWA or the project is subject to a general waiver. LOCAL AGENCY acknowledges that OWNER is not responsible for LOCAL AGENCY'S receipt or non-receipt of FHWA funding. LOCAL AGENCY'S reimbursement to OWNER of amounts due to OWNER is not conditioned upon LOCAL AGENCY's compliance with the Buy America requirements and/or receipt of funding from FHWA. LOCAL AGENCY shall be responsible for all increased costs incurred by LOCAL AGENCY or OWNER associated with compliance with Buy America.

2. Owner agrees to the first sentence of the amended language above for this Utility Agreement only, and County acknowledges that Owner's agreement to the first sentence shall not set a precedent for future utility agreements.

3. All other terms and conditions of said Agreement remain unchanged.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement Amendment as of the date indicated above.

COUNTY OF RIVERSIDE

SOUTHERN CALIFORNIA
GAS COMPANY

By _____
Chairman of the Board of Supervisors

By 
Jimmie Cho
Vice President, Field Services

Dated _____

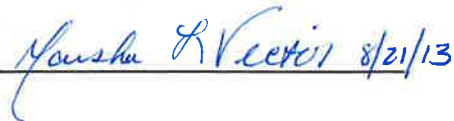
Dated 8-5-2013

ATTEST:

By _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By  8/21/13

By  _____

County of Riverside
UTILITY AGREEMENT (23 CFR §645.113)

<i>County</i>	<i>Route</i>	<i>P.M.</i>	<i>Project #</i>
Riverside	N/A	N/A	B7-0753
Fed. Aid No. PNRSTCIL-5956(178)			
Owner's File PLAN # 90592-001			
FEDERAL PARTICIPATION: On the Project: Yes			
On the Utilities: Yes			

The County of Riverside hereinafter called "LOCAL AGENCY" proposes to construct a railroad grade separation, including street realignment and reconstruction, drainage, and bridge improvements on Clay Street between General Drive and Linares Avenue within the City of Jurupa Valley, Riverside County, California.

And: Southern California Gas Company

Hereinafter called "OWNER," owns and maintains one 30-inch high-pressure natural gas pipeline within the limits of the LOCAL AGENCY's project that requires relocation to accommodate the LOCAL AGENCY's project.

It is hereby mutually agreed that:

I. WORK TO BE DONE (23 CFR §645.113)

In accordance with Notice to OWNER dated _____, OWNER shall relocate conflicting underground gas pipeline within Clay Street. All work shall be performed substantially in accordance with OWNER's Plan No. 90592-001 dated 11-20-2012 consisting of 4 sheets, a copy of which is on file in the Transportation Department at 4080 Lemon Street, 8th floor, Riverside, CA 92501.

Deviations from the OWNER's plan described above initiated by either the LOCAL AGENCY or the OWNER, shall be agreed upon by both parties hereto under a Revised Notice to Owner. Such Revised Notices to Owner, approved by the LOCAL AGENCY and acknowledged by the OWNER, will constitute an approved revision of the OWNER's plan described above and are hereby made a part hereof. No work under said deviation shall commence prior to receipt by the OWNER of the Revised Notice to Owner. Changes in the scope of the work will require an amendment to this Agreement in addition to the revised Notice to Owner.

II. LIABILITY FOR WORK

Existing facilities are located in their present position pursuant to rights superior to those of the LOCAL AGENCY and will be relocated at LOCAL AGENCY's expense.

III. PERFORMANCE OF WORK (23 CFR §645.115)

OWNER agrees to perform the herein-described work with its own forces or to cause the herein described work to be performed by the OWNER's contractor, employed by written contract on a continuing basis to perform work of this type, and to provide and furnish all necessary labor, materials, tools and equipment required therefore, and to prosecute said work diligently to completion.

OWNER acknowledges the "Buy America" requirements to which LOCAL AGENCY is subject as set forth in the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) Sections 1041(a) and 1048(a), 23 U.S.C.313 and C.F.R. Part 635.410 ("Buy America"), which are referenced herein, and which require that all steel and iron products, and their coatings, used in any projects with NEPA clearance be produced in the United States, unless a waiver has been granted by FHWA or the project is subject to a general waiver. OWNER will endeavor to, but

cannot ensure compliance with, the Buy America requirements. For those materials which would not comply with "Buy America" requirements, OWNER will provide LOCAL AGENCY with information regarding the materials to assist with any request for waiver which may be submitted to the Federal Highway Administration ("FHWA") by LOCAL AGENCY. The final responsibility to comply with Buy America remains with LOCAL AGENCY and not OWNER, and LOCAL AGENCY acknowledges that OWNER is not responsible for LOCAL AGENCY'S receipt or non-receipt of FHWA funding. LOCAL AGENCY'S reimbursement to OWNER of amounts due to OWNER is not conditioned upon LOCAL AGENCY's compliance with the Buy America requirements and/or receipt of funding from FHWA.

IV. PAYMENT FOR WORK (23 USC § 123)

It is estimated that the cost of the work provided for by this agreement and as hereinafter set forth is the sum of \$1,019,200. LOCAL AGENCY agrees to advance to OWNER the sum of \$1,019,200 to apply to the cost of the work to be undertaken as provided hereinabove. Said sum of \$1,019,200 will be deposited by the LOCAL AGENCY with OWNER within 45 days after execution of the Agreement by the parties hereto and upon receipt of an OWNER's bill for the advance.

In the event actual relocation costs as established herein are less than the sum of money advanced by LOCAL AGENCY to OWNER, OWNER hereby agrees to refund to LOCAL AGENCY the difference between said actual cost and the sum of money so advanced. In the event that the actual cost of relocation exceeds the amount of money advanced to OWNER, in accordance with the provisions of this Agreement, LOCAL AGENCY will reimburse OWNER said excess costs upon receipt of five (5) copies of an itemized bill as set forth herein.

The OWNER shall submit a final bill to the LOCAL AGENCY within 270 days after the completion of the work described in Section I above. If the LOCAL AGENCY has not received a final bill within 270 days after notification of completion of OWNER's work described in Section I of this Agreement, and LOCAL AGENCY has delivered to OWNER fully executed Director's Deeds, Consents to Common Use or Joint Use Agreements as required for OWNER's facilities; LOCAL AGENCY will provide written notification to OWNER of its intent to close its file within 30 days.

The final billing shall be in the form of an itemized statement of the total costs charged to the project, less the credits provided for in this Agreement, and less any amounts covered by progress billings. However, the LOCAL AGENCY shall not pay final bills, which exceed the estimated cost of this Agreement without documentation of the reason for the increase of said cost from the OWNER. If the final bill exceeds the OWNER's estimated costs solely as the result of a revised Notice to Owner as provided for in Section I, a copy of said revised Notice to Owner shall suffice as documentation.

In any event if the final bill exceeds 125% of the estimated cost of this Agreement, an amended Agreement shall be executed by the parties to this Agreement prior to the payment of the OWNER'S final bill. Any and all increases in costs that are the direct result of deviations from the work described in Section I of this Agreement shall have the prior concurrence of LOCAL AGENCY.

Detailed records from which the billing is compiled shall be retained by the OWNER for a period of three years from the date of the final payment and will be available for audit in accordance with Contract Cost Principals and Procedures as set forth in 48 CFR, Chapter 1, Part 31 by LOCAL AGENCY and/or Federal Auditors. Review of proprietary and/or non-public information may require execution of a Non-Disclosure Agreement between recipients of the information and OWNER.

V. PREVAILING WAGE REQUIREMENTS FOR CONTRACTED WORK

Pursuant to Public Works Case No. 2001-059 determination by the California Department of Industrial Relations dated October 25, 2002, work performed by OWNER's contractor is a public work under the definition of Labor Code Section 1720(a) and is therefore subject to prevailing wage requirements. OWNER shall verify compliance with this requirement in the administration of its

contracts referenced above.

VI. GENERAL CONDITIONS (23 CFR §645)

All costs accrued by OWNER as a result of LOCAL AGENCY's request of June 13, 2011 to review, study and/or prepare relocation plans and estimates for the project associated with this Agreement may be billed pursuant to the terms and conditions of this Agreement.

If LOCAL AGENCY's project which precipitated this Agreement is canceled or modified so as to eliminate the necessity of work by OWNER, LOCAL AGENCY will notify OWNER in writing, and LOCAL AGENCY reserves the right to terminate this Agreement by Amendment. The Amendment shall provide mutually acceptable terms and conditions for terminating the Agreement.

OWNER shall submit a Notice of Completion to the LOCAL AGENCY within 30 days of the completion of the work described herein.

It is understood that said highway is a federal-aid highway and accordingly, 23 CFR Part 645 is hereby incorporated into this Agreement. The Work is subject to the terms and conditions of that certain Collectible Work Authorization dated on or about February 14, 2013 ("CWA"), and in the event of any conflict, the terms and conditions of the CWA shall control.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the day and year above written.

COUNTY OF RIVERSIDE

OWNER
SOUTHERN CALIFORNIA GAS COMPANY

By _____
Chairman, Board of
Supervisors

By  ASX
Jimmie Cho
Vice President, Field Services

Dated _____

Dated June 4, 2013

ATTEST:

Kecia Harper - Ithem
Clerk of the Board

By _____
Deputy Clerk of the Board

APPROVED AS TO FORM:

Pamela Walls
County Counsel

By _____
Deputy County Counsel



**SOUTHERN CALIFORNIA GAS COMPANY
COLLECTIBLE WORK AUTHORIZATION**

Date Prepared 2/14/2013
 Estimate Prepared By Kevin Kuennen
Purchaser Name and Job Address
 Name Riverside County Transportation Department Attn: Stan D.
 Address 3523 14th Street
 City Riverside State CA Zip 92501
 Phone # 951-955-6800
 Purchaser's SS# _____
Purchaser requests and authorizes The Gas Company to perform the following work:

WO # 90592.000
 Work Request # N/A IO # 300697147
 ML SC8080 Phone # 951-845-0709
Billing Name and Address, If Different
 Name County Of Riverside, CA - Transportation Dept.
 Address 3523 14th Street
 City Riverside State CA Zip 92501
 Phone # 951-955-6800
 Or Federal Tax ID # _____

Work Authorization Contract Acceptance
Valid for 90 days from above date-of-issue

Conduct planning and engineering work, order materials, select contractor and conduct relocation of 30-inch diameter Line 2001 near the intersection of Clay Street and Linares Avenue. This section of Line 2001 is in conflict with the County's Clay Street Grade Separation Project in the Jurupa Valley area of Riverside County.

TOTAL COMPANY LABOR	TOTAL MATERIALS	TOTAL THIRD PARTY CHARGES (Including Contractor Labor)	TOTAL PAVING, PERMIT, & OTHER	SUBTOTAL	ITCCA	TOTAL ESTIMATES
161,745.00	215,815.00	628,757.00	12,883.00	1,019,200.00	-	1,019,200.00

Purchaser agrees to pay The Gas Company the actual cost - the estimated amount is due and payable in advance and any additional balance within 30 days of invoice.

The estimated cost of the Work is furnished only for the convenience of the Purchaser. It is intended to reflect The Gas Company's general past experience of the cost of similar work under favorable conditions. Because of unforeseen contingencies and other factors, the actual cost may be considerably higher or lower than this estimate. Therefore, the estimate is not a warranty by The Gas Company of the actual cost. The actual cost shall include overhead costs contained in The Gas Company's appropriate billing formula. Purchaser agrees to pay within 30 days of invoice any additional amounts whenever The Gas Company determines the cost of Work completed exceeds any amounts previously paid. When labor costs exceed the estimate, The Gas Company may, but is not obligated to notify Purchaser, and cease all Work until approval for the increased cost is obtained from Purchaser. If the total actual cost is less than the deposit(s), The Gas Company will refund the difference (without interest). Purchaser agrees that if The Gas Company brings any action to enforce the provisions of this Agreement, it shall be entitled to recover its attorney's fees and costs, in addition to any other relief to which it is entitled.

Purchaser agrees that any excavation made by Purchaser that is to be entered by Gas Company employees, agents or subcontractors shall conform to all requirements of the State of California construction safety orders, particularly the provisions of Article 6, Sections 1539 through 1547, which relate to the safe construction of trenches and excavations. Purchaser further agrees to take all reasonable care in protecting The Gas Company's property from damage, including the use of procedures which will not place any undue strain on pipes during excavation and backfill or cause damage to pipe protective coatings.

Purchaser shall indemnify, defend and hold harmless The Gas Company from and against any and all liability of every kind and nature for - (i) injury to or death of persons, including without limitation, employees or agents of The Gas Company or of Purchaser; (ii) damage, destruction or loss, consequential or otherwise, to or of any and all property, real or personal, including without limitation, property of The Gas Company, Purchaser or any other person; (iii) violation of local, state or federal laws or regulations (excluding environmental laws or regulations); and (iv) including attorney's fees incurred in defending against such liability or enforcing this provision - resulting from or in any manner arising out of or in connection with the performance of the Work including the indemnity obligations imposed on The Gas Company by the owner of the Job Address if other than Purchaser, by the local jurisdiction in which the Work is performed or which issues a permit for any part of the Work, excepting only those liabilities arising from the sole negligence or willful misconduct of The Gas Company or its agents compared to any other person.

Purchaser shall indemnify, defend and hold The Gas Company harmless from and against any and all liability (including attorney's fees incurred in defending against such liability or in enforcing this provision) arising out of or in any way connected with the violation of or compliance with any local, state or federal environmental law or regulation as a result of pre-existing conditions at the Job Address, release or spill of any pre-existing hazardous materials or waste, or out of the management and disposal of any pre-existing contaminated soils or groundwater, hazardous or non-hazardous, removed from the ground as a result of the Work ("Pre-Existing Environmental Liability"), including but not limited to liability for the costs, expenses and legal liability for the environmental investigations, monitoring, containment, abatement, removal, repair, cleanup, restoration, remedial work, penalties, and fines arising from the violation of any local, state or federal law or regulation, attorney's fees, disbursements, and other response costs. As between Purchaser and The Gas Company, Purchaser agrees to accept full responsibility for and bear all costs associated with Pre-Existing Environmental Liability. Purchaser agrees that The Gas Company may stop Work, terminate the Work, redesign it to a different location or take other action reasonably necessary to complete the Work without incurring any Pre-Existing Environmental Liability.

AGREED AND ACCEPTED _____
(DATE)

PURCHASER County Of Riverside, CA - Transportation Dept.
(NAME OF COMPANY)

Jimmie I. Cho, V.P. Field Services
SoCal Gas Co AUTHORIZED REPRESENTATIVE (PRINT)

JOHN J. BENOIT CHAIRMAN, BOARD OF SUPERVISORS
PURCHASER OR AUTHORIZED REPRESENTATIVE (PRINT) TITLE

SIGNATURE OF AUTHORIZED REPRESENTATIVE

John J. Benoit
SIGNATURE OF PURCHASER OR AUTHORIZED
 DATED: 6/18/13
 ATTEST:
KECIA HARPER-JHEM, Clerk
 By Kathleen
 DEPUTY

DATED: _____

JUN 18 2013 3-00

FORM APPROVED COUNTY COUNSEL
 BY: Victor "COLLAUTH" 6/16/13
 MARSHAL VICTOR DATE



**SOUTHERN CALIFORNIA GAS COMPANY
COLLECTIBLE WORK AUTHORIZATION**

Date Prepared 2/14/2013
 Estimate Prepared By Kevin Kueanan
 Purchaser Name and Job Address
 Name Riverside County Transportation Department Attn: Stan D.
 Address 3523 14th Street
 City Riverside State CA Zip 92501
 Phone # 951-955-6800
 Purchaser's SS# _____

WO # 90592.000
 IO # 300697147
 Work Request # N/A
 ML SC8080 Phone # 951-845-0709
 Billing Name and Address, if Different
 Name County Of Riverside, CA - Transportation Dept.
 Address 3523 14th Street
 City Riverside State CA Zip 92501
 Phone # 951-955-6800
 Or Federal Tax ID # _____

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Valid for 90 days from above date-of-issue

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The estimated cost of the Work is furnished only for the convenience of the Purchaser. It is intended to reflect The Gas Company's general past experience of the cost of similar work under favorable conditions. Because of unforeseen contingencies and other factors, the actual cost may be considerably higher or lower than this estimate. Therefore, the estimate is not a warranty by The Gas Company of the actual cost. The actual cost shall include overhead costs contained in The Gas Company's appropriate billing formula. Purchaser agrees to pay within 30 days of invoice any additional amounts whenever The Gas Company determines the cost of Work completed exceeds any amounts previously paid. When labor costs exceed the estimate, The Gas Company may, but is not obligated to notify Purchaser, and cease all Work until approval for the increased cost is obtained from Purchaser. If the total actual cost is less than the deposit(s), The Gas Company will refund the difference (without interest). Purchaser agrees that if The Gas Company brings any action to enforce the provisions of this Agreement, it shall be entitled to recover its attorney's fees and costs, in addition to any other relief to which it is entitled.

Purchaser agrees that any excavation made by Purchaser that is to be entered by Gas Company employees, agents or subcontractors shall conform to all requirements of the State of California construction safety orders, particularly the provisions of Article 6, Sections 1538 through 1547, which relate to the safe construction of trenches and excavations. Purchaser further agrees to take all reasonable care in protecting The Gas Company's property from damage, including the use of procedures which will not place any undue strain on pipes during excavation and backfill or cause damage to pipe protective coatings.

Purchaser shall indemnify, defend and hold harmless The Gas Company from and against any and all liability of every kind and nature for - (i) injury to or death of persons, including without limitation, employees or agents of The Gas Company or of Purchaser; (ii) damage, destruction or loss, consequential or otherwise, to or of any and all property, real or personal, including without limitation, property of The Gas Company, Purchaser or any other person; (iii) violation of local, state or federal laws or regulations (excluding environmental laws or regulations); and (iv) including attorney's fees incurred in defending against such liability or enforcing this provision - resulting from or in any manner arising out of or in connection with the performance of the Work including the indemnity obligations imposed on The Gas Company by the owner of the Job Address if other than Purchaser, by the local jurisdiction in which the Work is performed or which issues a permit for any part of the Work, excepting only those liabilities arising from the sole negligence or willful misconduct of The Gas Company or its agents compared to any other person.

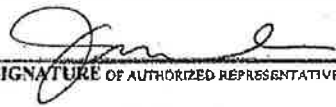
Purchaser shall indemnify, defend and hold The Gas Company harmless from and against any and all liability (including attorney's fees incurred in defending against such liability or in enforcing this provision) arising out of or in any way connected with the violation of or compliance with any local, state or federal environmental law or regulation as a result of pre-existing conditions at the Job Address, release or spill of any pre-existing hazardous materials or waste, or out of the management and disposal of any pre-existing contaminated soils or groundwater, hazardous or non-hazardous, removed from the ground as a result of the Work ("Pre-Existing Environmental Liability"), including but not limited to liability for the costs, expenses and legal liability for the environmental investigations, monitoring, containment, abatement, removal, repair, cleanup, restoration, remedial work, penalties, and fines arising from the violation of any local, state or federal law or regulation, attorney's fees, disbursements, and other response costs. As between Purchaser and The Gas Company, Purchaser agrees to accept full responsibility for and bear all costs associated with Pre-Existing Environmental Liability. Purchaser agrees that The Gas Company may stop Work, terminate the Work, redesign it to a different location or take other action reasonably necessary to complete the Work without incurring any Pre-Existing Environmental Liability.

AGREED AND ACCEPTED _____ (DATE)

PURCHASER County Of Riverside, CA - Transportation Dept. (NAME OF COMPANY)

Jimmie I. Cho, V.P. Field Services
SoCalGas Co. AUTHORIZED REPRESENTATIVE (PRINT)

PURCHASER OR AUTHORIZED REPRESENTATIVE (PRINT) TITLE


SIGNATURE OF AUTHORIZED REPRESENTATIVE

SIGNATURE OF PURCHASER OR AUTHORIZED

DATED: 6/4/2013

DATED: _____