



**RESOURCE MANAGEMENT
AGENCY
COUNTY OF TULARE
AGENDA ITEM**

BOARD OF SUPERVISORS

KUYLER CROCKER
District One

PETE VANDER POEL
District Two

AMY SHUKLIAN
District Three

EDDIE VALERO
District Four

DENNIS TOWNSEND
District Five

AGENDA DATE: June 4, 2019

Public Hearing Required	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Scheduled Public Hearing w/Clerk	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Published Notice Required	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Advertised Published Notice	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Meet & Confer Required	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Electronic file(s) has been sent	Yes <input checked="" type="checkbox"/>	N/A <input type="checkbox"/>
Budget Transfer (Aud 308) attached	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Personnel Resolution attached	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Agreements are attached and signature line for Chairman is marked with tab(s)/flag(s)	Yes <input checked="" type="checkbox"/>	N/A <input type="checkbox"/>

CONTACT PERSON: Celeste Perez PHONE: (559) 624-7010

SUBJECT: Agreement with LE Cooke Co. for Placement of Irrigation Pipeline

REQUEST(S):

That the Board of Supervisors:

1. Approve an agreement with LE Cooke Co., in connection with an application for an encroachment permit to place an irrigation pipeline within County right-of-way of Road 148, between Avenue 272 and Avenue 280, for the period of June 4, 2019 to June 4, 2044; and
2. Authorize the Chairman to sign the Agreement.

SUMMARY:

LE Cooke Co. has submitted an encroachment permit application to the Resource Management Agency requesting permission to install 3,700 lineal feet of 12-inch Polyvinyl Chloride (PVC) irrigation pipeline within the County road right-of-way of Road 148, located between Avenue 272 and Avenue 280.

The County does not normally allow the longitudinal placement of private utilities within the County road right-of-way. The attached indemnification agreement will allow LE Cooke Co. to place the pipeline in County right-of-way and to indemnify the County. LE Cooke Co. have exhausted other alternatives to place the pipeline outside of County right-of-way, due to the inability to obtain pipeline easements from neighboring properties. The agreement shall indemnify the County in connection with the proposed pipeline for damages and/or claims related to spills, leaks, environmental compliance and other associated issues as mentioned in detail in the agreement. All work within the County right-of-way will be performed under an encroachment permit at no cost to the County.

SUBJECT: Agreement with LE Cooke Co. for Placement of Irrigation Pipeline
DATE: June 4, 2019

FISCAL IMPACT/FINANCING:

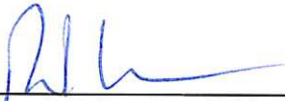
No Net County Cost.

LE Cooke Co. will be solely responsible for the cost of installation and maintenance of the water line.

LINKAGE TO THE COUNTY OF TULARE STRATEGIC BUSINESS PLAN:

Strategic Initiative No. 2 Economic Well Being includes the goals of protecting the county's agriculture-based economy, which is provided for in this agreement by accommodating an irrigation line for the purposes of supporting agricultural activities.

ADMINISTRATIVE SIGN-OFF:



Reed Schenke, P.E.
Director

cc: County Administrative Office

Attachment(s): Attachment A – Vicinity map
Attachment B – Indemnification Agreement

IN THE MATTER OF AGREEMENT) Resolution No. _____
WITH LE COOKE CO. FOR) Agreement No. _____
PLACEMENT OF IRRIGATION PIPELINE)

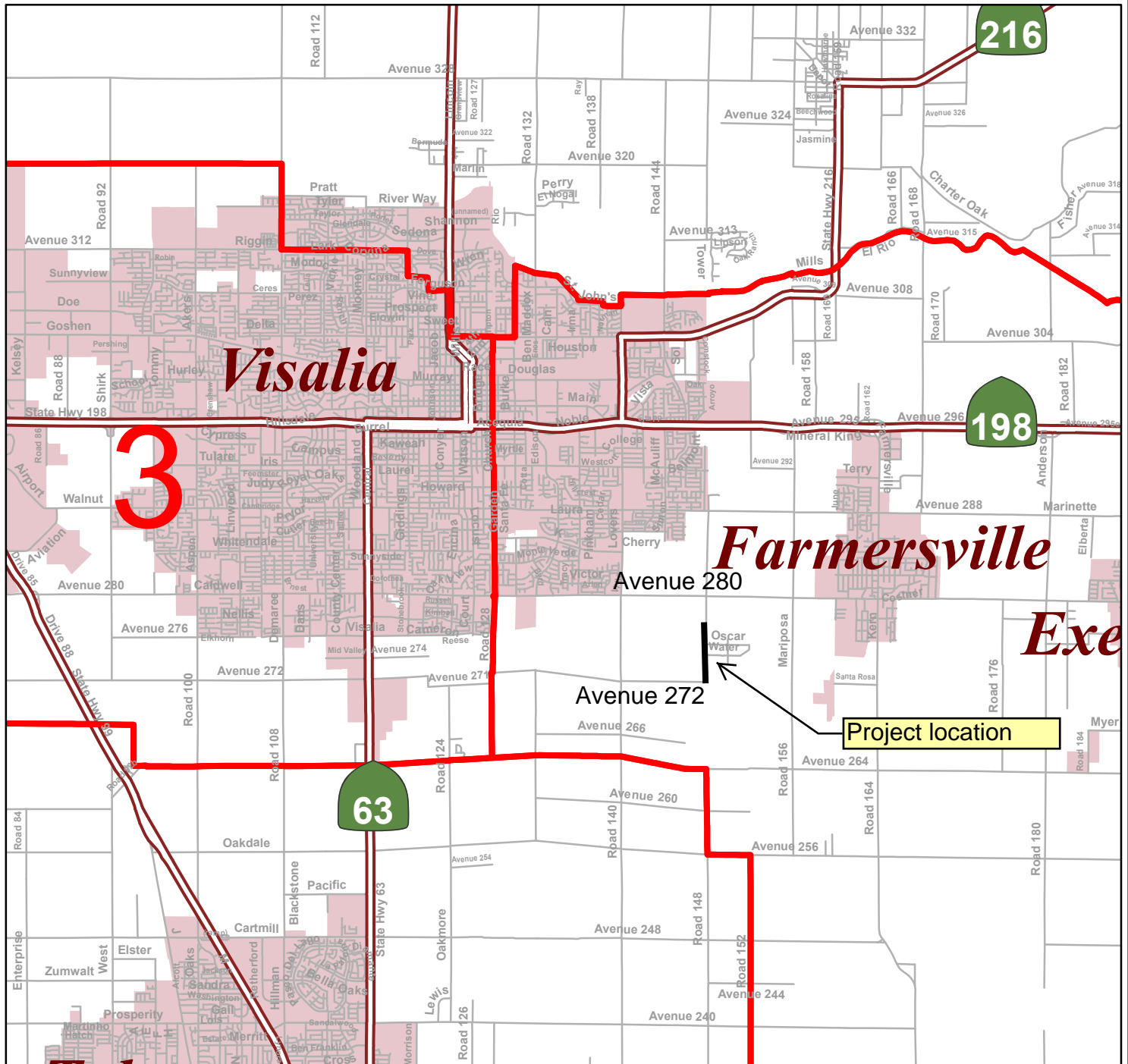
1. Approved an agreement with LE Cooke Co., in connection with an application for an encroachment permit to place an irrigation pipeline within County right-of-way of Road 148, between Avenue 272 and Avenue 280, for the period of June 4, 2019 to June 4, 2044; and
2. Authorized the Chairman to sign the Agreement.

Attachment A

Vicinity Map



Vicinity Map



0 1 2 4 Miles

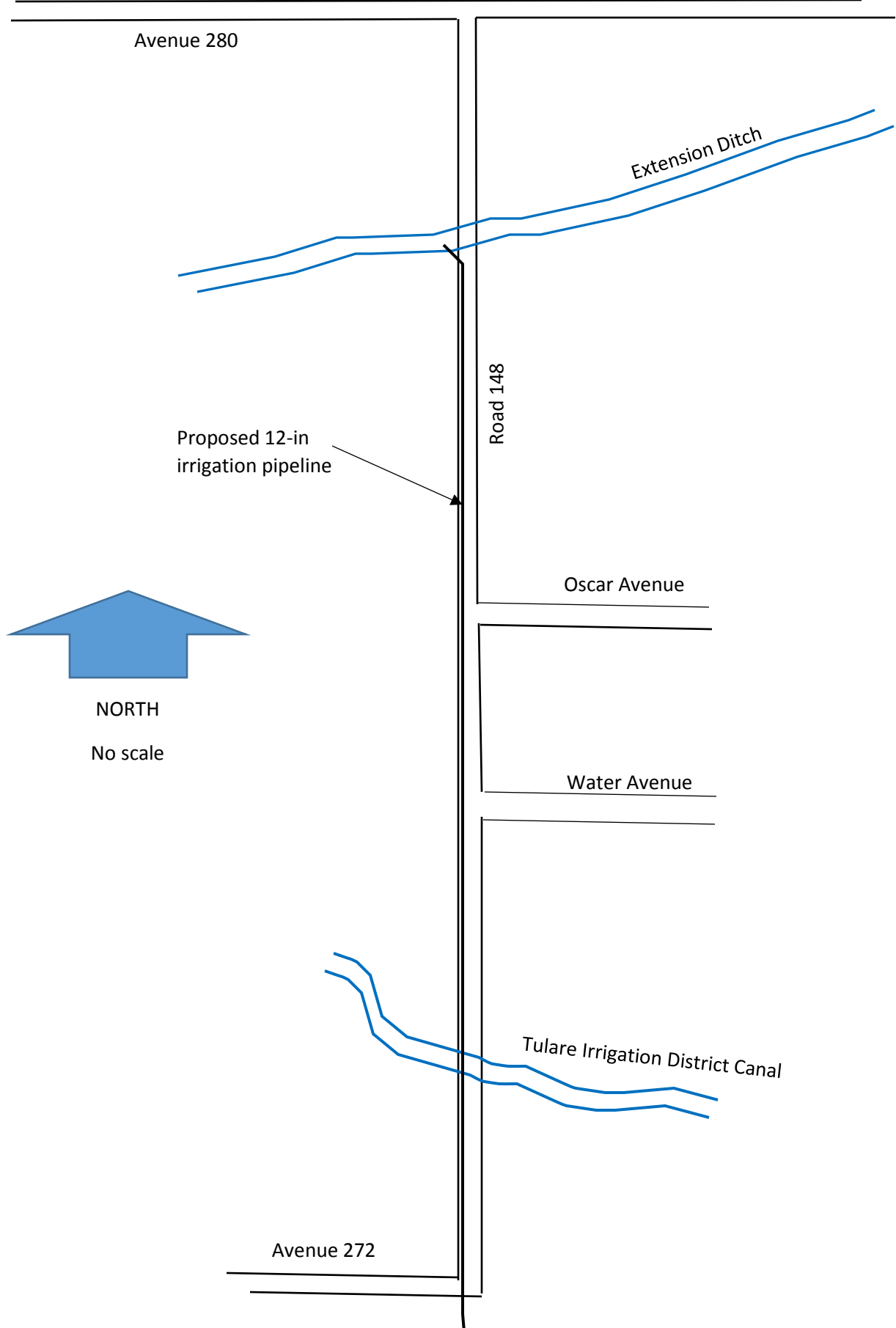


Supervisorial District: 1

- Site
- Supervisorial Districts



Proposed LE Cooke Co. pipeline project



Attachment B

Indemnification Agreement

Recording Requested by
and Return to:
Reed Schenke
RMA Director
Atten: Craig Anderson

AGREEMENT
In Connection with
Application for Encroachment Permit

THIS INDEMNIFICATION AGREEMENT (the "Agreement") is entered into this _____ day of _____, 20____, by and between L.E. COOKE CO with its principal place of business at 26333 Road 140, Visalia, CA 93292 and the County of Tulare ("County").

WHEREAS, L.E. COOKE CO has submitted an application for an encroachment permit (the "Permit Application") attached as EXHIBIT A, to County for a permit granting L.E. COOKE CO an encroachment for the construction of approximately 3700 lineal feet of 12-inch irrigation Pipeline (the "Pipeline"). L.E. COOKE CO intends to construct said Pipeline within the County right-of-way of Road 148; and

WHEREAS, L.E. COOKE CO will make certain covenants to County in connection with the proposed Pipeline and whereby L.E. COOKE CO will indemnify County for damages or claims related to spill, leaks or other problems associated with the proposed Pipeline.

NOW, THEREFORE, AND IN CONSIDERATION of the mutual covenants contained herein, the parties hereto agree as follows:

1. Indemnification.

- (a) L.E. COOKE CO shall hold harmless, defend and indemnify County, it agents, officers and employees or assigns from and against any liability, claims, actions, costs, damages or losses of any kind, including death or injury to any person and/or damage to property, including County property, arising from, or in connection with this agreement or permit including but not limited to construction of the Pipeline, actual, alleged or threatened spill, leak or other release of waste water. This indemnification obligation shall continue beyond the term of this Agreement or permit as to any acts or omissions of L.E. COOKE CO occurring during the term of this Agreement or any extension of this Agreement.
- (b) L.E. COOKE CO shall indemnify, defend and hold harmless the county from and against any claims, actions, or proceedings against the County to attach, set aside, void, or annul any findings, entitlements, certification of California Environmental Quality Act ("CEQA") or other environmental review, and/or approvals by the County given in regard to the Project described or identified in

TULARE COUNTY AGREEMENT NO. _____

this Application, agreement or permit and/or any other related proceedings (hereinafter referred to collectively as “Project”), or to impose personal liability against such County officials, agencies, departments, commissions, agents, officers, or employees resulting from their official involvement in any Project proceedings, including any claims and actions for attorneys’ fees, private attorney general fees and/or costs awarded to any party and against the County.

2. Registration of Pipeline Location. Upon completion of the Pipeline and prior to the acceptance of work in connection with the L.E. COOKE CO, L.E. COOKE CO will register the location of the Pipeline with USA North 811 or an equivalent underground service locating organization, and shall renew annually to continue to provide for underground service locating. L.E. COOKE CO shall provide proof of registration set forth in Paragraph 15. Failure to do so may revoke this Agreement set forth in Paragraph 16. This obligation runs so long as the Pipeline exists and it is L.E. COOKE CO’s obligation to ensure that any future owner of the Pipeline maintains proper registration.
3. Plans. A set of engineered plans detailing the Pipeline construction shall be submitted to, reviewed and approved by the County. Approval of these plans will not be unreasonably withheld. Construction shall be according to the approved set of plans and shall not deviate from said plans. Design and construction standards shall be substantially similar to Pipeline installations or engineered equivalents. The Pipeline shall be marked with a stake or other distinguishable sign indicating a Pipeline is in the vicinity.
4. As-builts. Upon completion of construction, and prior to the Pipeline being placed in any service, L.E. COOKE CO shall provide County with an as-built plan set which reflects the location of the Pipeline, its depth, diameter and the location within County right-of-way, prepared by and stamped by a Registered Civil Engineer in good standing in the State of California. L.E. COOKE CO shall provide County with any supplemental surveys to reflect any subsequent corrections and/or changes to the Pipeline.
5. Abandonment. Pipeline abandonment shall be capped and filled with flowable fill consisting of a controlled low-strength material consisting of fluid mixture of cement, fly ash, aggregate, water and with admixtures as necessary to provide workable properties to the satisfaction of the County.
6. Effectiveness: Term and Termination. The effectiveness of this Agreement is conditioned on the issuance of an encroachment permit pursuant to the Permit Application (the “Pipeline Permit”). The term of this Agreement shall be the same as the term of the Pipeline Permit and any extensions thereof. This indemnification obligation will continue beyond the term of this Agreement or the permit as to any acts or omissions occurring during the term of this Agreement or permit or any extensions of this Agreement or permit.
7. Amendment. This Agreement shall not be modified or amended except by means of a writing signed by each of the parties to this Agreement.

8. Assignment. Subject to Tulare County Ordinance 3-07-1270, L.E. COOKE CO will not assign or transfer their rights or obligations under this Agreement unless the County has given its prior written consent; such consent will not be unreasonably withheld. Notwithstanding the foregoing, the County herein agrees to a one-time assignment to Sun Pacific, Inc, provided the assignment takes place within one hundred twenty (120) days of this Agreement.

9. Notices.

(a) Except as may be otherwise required by law, any notice to be given shall be written and shall be either personally delivered, sent by facsimile transmission or sent by first class mail, postage prepaid and addressed as follows:

COUNTY: Tulare County Resource Management Agency
5961 S. Mooney Blvd.
Visalia, CA 93277
Phone No.: 559-624-7000
Fax No.: 559-730-2653

L.E. COOKE CO: L.E. Cooke Co.
26333 Road 140
Visalia, CA 93292
Phone No.: 559-732-9146
Fax No.: 559-732-3702

(b) Notice personally delivered is effective when delivered. Notice sent by facsimile transmission is deemed to be received upon successful transmission. Notice sent by first class mail shall be deemed received on the fifth day after the date of mailing. Either party may change the above address by giving written notice pursuant to this paragraph.

10. Power to Grant. The Parties acknowledge that the County may authorize an encroachment permit under Streets and Highway Code § 1460 et seq. and Tulare County Ordinance Code 3-07-1160 et seq. The Parties also acknowledge that the encroachment permit is not a lease and that under Streets and Highways Code § 1463, the permit may be revoked on five (5) days notice.

11. Insurance. Prior to approval of this Agreement by COUNTY, L.E. COOKE CO shall file with the Clerk of the Board of Supervisors evidence of the required insurance as set forth in EXHIBIT B attached. Insurance policies shall not be used to limit L.E. COOKE CO liability or to limit the indemnification provisions and requirements of this contract or act in any way to reduce the policy coverage and limits available from the insurer(s).

12. Repairs. L.E. COOKE CO will make all repairs on the project as soon as is possible. In the event L.E. COOKE CO has not commenced a repair referred to in a written

- notice from County to L.E. COOKE CO within thirty (30) days after date of notice, County will have the right to repair or contract to repair and to be reimbursed by L.E. COOKE CO. The full amount of the reimbursement is to be paid within thirty (30) days after County's delivery to L.E. COOKE CO or a written statement or bill evidencing the cost of the repair.
13. Damages. L.E. COOKE CO is solely responsible for any damages to the Pipeline and any subsequent repairs to the Pipeline and the County's facilities including, but not limited to, road shoulder, and pavement in the County right of way should any excavation, construction, or road work, either by County or any entities permitted by the County to work in County right of way, damage the Pipeline.
 14. Lawful Permit. The encroachment permit may become invalid if L.E. COOKE CO has not obtained all necessary permits, if any permits become invalid, or if L.E. COOKE CO fails to comply with the conditions of any permit or this Agreement.
 15. Encroachment Fee and Registration. L.E. COOKE CO agrees to pay to the County an annual encroachment fee not to exceed six hundred dollars (\$600) dollars on a reimbursement basis for actual expenditures incurred for Agreement preparation and Permit Application processing. L.E. COOKE CO shall submit payment to the County within 30 days of the date of County's invoice for said payment, and shall provide proof of registration with USA North 811 or an equivalent underground service locating organization with said payment.
 16. Revocation: The Parties acknowledge that in the future County may require L.E. COOKE CO (or any successor) to remove the encroachment from the County right-of-way. The Parties acknowledge that Agreement may be revoked by the County at any time for any reason. To revoke this Agreement, County shall give written notice to L.E. COOKE CO set forth in Paragraph 9 above. If this Agreement is revoked, L.E. COOKE CO shall be solely responsible for the removal of Pipeline from the County right-of-way at no cost to the County. If L.E. Cooke CO (or any successor) shall fail to remove the encroachment, then the County may remove and charge the reasonable costs of removal against L.E. COOKE CO.
 17. Exhibits and Recitals. The Recitals and the Exhibits to this Agreement are fully incorporated into and are integral parts of this Agreement.
 18. Conflict with Laws. This Agreement is subject to all applicable laws and regulations. If any provision of this Agreement is found by any court or other legal authority, or is agreed by the parties, to be in conflict with any code or regulation governing its subject, the conflicting provision shall be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the Agreement to either party is lost, the Agreement may be terminated at the option of the affected party. In all other cases the remainder of the Agreement shall continue in full force and effect.
 19. Compliance with Law. L.E. COOKE CO shall provide services in accordance with applicable Federal, State and local laws, regulations and directives.

20. Governing Law. The construction and interpretation of this Agreement shall be governed by and construed according to the laws of the State of California.
21. Counterparts. This Agreement may be executed and delivered in multiple counterparts, all of which, when executed and delivered, shall have the full force and effect of an original.
22. Bond. L.E. COOKE CO will file a bond that guarantees the full performance of the work authorized by the permit. The bond must be in a form approved by the County. The amount of the bond will be based on estimated costs to complete the work and repair the highway.
23. Maintenance. L.E. COOKE CO will be responsible for all maintenance, monitoring, repair and up-keep of the Pipeline insuring that it is safe and leak-free.
24. Property Taxes. L.E. COOKE CO acknowledges and understands that this Agreement may create a possessory interest subject to property taxation. L.E. COOKE CO will pay any property taxes levied upon that interest before they become delinquent.
25. Effect of Annexation. If the land on which the Pipeline is to be constructed is annexed to a city, the County may assign to the annexing city all of its rights and responsibilities under this Agreement. The city council or its designee shall be deemed to have all of the rights and responsibilities conferred upon the County by this Agreement.
26. Renewal. This Agreement shall be renewable at the end of twenty-five (25) years from the date of the Agreement unless either party gives written notice of its intention not to renew before expiration of the twenty-five (25) years. County shall notify L.E. COOKE CO of any changes in the terms of this Agreement at least thirty (30) days prior to the notice period for renewal or termination.
27. Recordation. Upon execution of this Agreement by the County and L.E. COOKE CO, this Agreement shall be recorded in the Office of the Tulare County Recorder. From and after the date of recordation, the terms and conditions of this Agreement shall be binding upon the heirs, executors, administrators, grantees, successors and assigns of L.E. COOKE CO as covenants running with the land.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date set forth above.

[remainder of page intentionally blank]


COUNTY OF TULARE
RESOURCE MANAGEMENT AGENCY

By: _____
Chairman Board of Supervisors

ATTEST: JASON T. BRITT
County Administrative Officer/Clerk of the Board
of Supervisors of the County of Tulare

By: _____
Deputy Clerk

Approved as to form
County Counsel

By:  2019.735
Deputy 5/13/19

L.E. COOKE CO

By: 

Title: 

By: 

Title: President