



**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: September 1, 2020

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: Approve Indemnification Agreement with CalBiogas North Visalia, LLC

REQUEST(S):

That the Board of Supervisors:

1. Approve the Indemnification Agreement with CalBiogas North Visalia, LLC in connection with an application for an encroachment permit to place an underground pressurized gas pipeline within County right-of-way of Avenue 328, north of the city of Visalia, for the period of September 1, 2020 to September 1, 2045; and
2. Authorize the Chair of the Board of Supervisors to sign the Indemnification Agreement; and
3. Adopt the Categorical Exemption prepared pursuant to the California Environmental Quality Act (CEQA) and the State CEQA Guidelines Section 15303: New Construction or Conversion of Small Structures for the placement of the underground pressurized gas pipeline; and
4. Authorize the Environmental Assessment Officer, or designee, to sign and file the Notice of Exemption with the County Clerk-Recorder.

SUMMARY:

CalBiogas North Visalia, LLC is proposing to construct 5.1 miles of an underground pressured gas pipeline within County right-of-way of Avenue 328, north of the city of Visalia.

SUBJECT: Approve Indemnification Agreement with CalBiogas North Visalia, LLC
DATE: September 1, 2020

The intent of the project is to transport dairy biogas from participating dairies to a Southern California Gas Company mainline tie-in. This conversion of dairy biogas and efficient utilization of certain dairy byproducts will reduce greenhouse gas emissions for the connected dairies, ultimately improving overall air quality in the region and reducing the County's reliance on non-renewable energy sources.

The scope of the project consists of the installation of HDPE (high-density polyethylene) gas pipeline and concomitant safety equipment, a minimum of three feet below the existing ground surface (with minor trenching and backfilling) along the 5.1-mile length of the pipeline. The surface conditions shall be restored to its original state following backfilling. The pipeline installations underneath Roads 80 and 108 shall be completed by method of jack-and-bore to minimize transportation disruption and ensure project safety.

Under the proposed indemnification agreement, CalBiogas North Visalia, LLC would be responsible for indemnifying and defending the County and its officers, agents, and employees from all claims and damages related to the pipeline and the associated encroachment permit allowing installation and use of the pipeline within County road right-of-way.

In accordance with the California Environmental Quality Act (CEQA), the County has determined that the Categorical Exemption is applicable to the proposed action: State CEQA Guidelines (14 Cal. Code Regs.) Section 15303.

Though the County has deemed the project to be categorically exempt from CEQA, if the project is located in part or in whole within the jurisdictional boundary of a regulatory agency such as the California Department of Fish and Wildlife and the California Regional Water Quality Control Boards, it shall be the responsibility of CalBiogas North Visalia, LLC to acquire the necessary permits and comply with the requirements, rules, regulations, and conditions applicable to the project.

FISCAL IMPACT/FINANCING:

No net County cost to the General Fund.

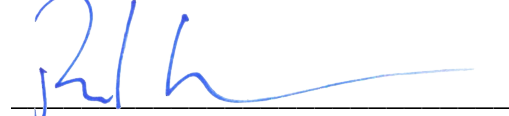
CalBiogas North Visalia, LLC will be solely responsible for the cost of installation and maintenance of the gas line. As part of the agreement, CalBiogas North Visalia, LLC or the project successors will be required to pay an annual fee to compensate the County for costs associated with monitoring the performance of the project.

LINKAGE TO THE COUNTY OF TULARE STRATEGIC BUSINESS PLAN:

The County's strategic business plan includes the "Quality of Life Initiative" and the "Economic Well Being Initiative". The proposed project helps the County achieve these goals by supporting the county's agriculture-based economy through the introduction of a new revenue stream from what was formerly an expense. Additionally, the proposed project will help improve the quality of life in the region by reducing greenhouse gas emissions and increasing utilization of renewable energy resources.

SUBJECT: Approve Indemnification Agreement with CalBiogas North Visalia, LLC
DATE: September 1, 2020

ADMINISTRATIVE SIGN-OFF:

A handwritten signature in blue ink, appearing to read 'R/S', is written over a horizontal line.

Reed Schenke, P.E.
Director

cc: County Administrative Office

Attachment(s): Attachment A – Vicinity Map
Attachment B – Indemnification Agreement
Attachment C – Notice of Exemption

**BEFORE THE BOARD OF SUPERVISORS
COUNTY OF TULARE, STATE OF CALIFORNIA**

IN THE MATTER OF APPROVE) Resolution No. _____
INDEMNIFICATION AGREEMENT WITH) Agreement No. _____
CALBIOGAS NORTH VISALIA, LLC)

UPON MOTION OF SUPERVISOR _____, SECONDED BY
SUPERVISOR _____, THE FOLLOWING WAS ADOPTED BY THE
BOARD OF SUPERVISORS, AT AN OFFICIAL MEETING HELD SEPTEMBER 1,
2020, BY THE FOLLOWING VOTE:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST: JASON T. BRITT
COUNTY ADMINISTRATIVE OFFICER/
CLERK, BOARD OF SUPERVISORS

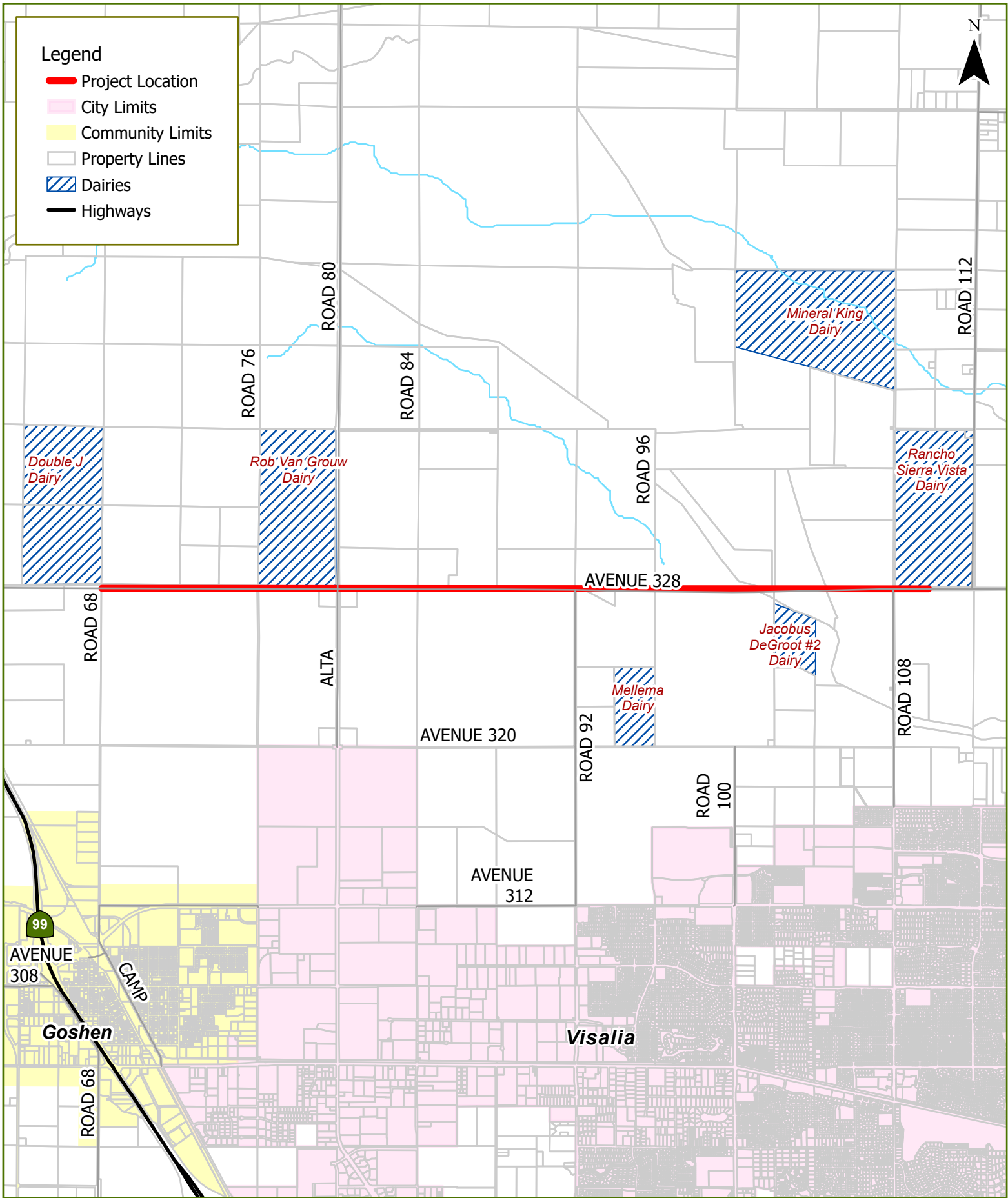
BY: _____
Deputy Clerk

* * * * *

1. Approved the Indemnification Agreement with CalBIOgas North Visalia, LLC in connection with an application for an encroachment permit to place an underground pressurized gas pipeline within County right-of-way of Avenue 328, north of the city of Visalia, for the period of September 1, 2020 to September 1, 2045; and
2. Authorized the Chair of the Board of Supervisors to sign the Indemnification Agreement; and
3. Adopted the Categorical Exemption prepared pursuant to the California Environmental Quality Act (CEQA) and the State CEQA Guidelines Section 15303: New Construction or Conversion of Small Structures for the placement of the underground pressurized gas pipeline; and
4. Authorized the Environmental Assessment Officer, or designee, to sign and file the Notice of Exemption with the County Clerk-Recorder.

Attachment A

Vicinity Map



Attachment B

Indemnification Agreement

**RECORDING REQUESTED BY AND WHEN
RECORDED MAIL TO:**

TULARE COUNTY RESOURCE
MANAGEMENT AGENCY
5961 South Mooney Boulevard
Visalia, California 93277

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

**INDEMNIFICATION AGREEMENT
IN CONNECTION WITH
APPLICATION FOR ENCROACHMENT PERMIT**

[TULARE COUNTY AGREEMENT NO. _____]

This INDEMNIFICATION AGREEMENT IN CONNECTION WITH APPLICATION FOR ENCROACHMENT PERMIT (this "Agreement") is dated and effective as of the _____ (____) day of _____, 2020, (the "Effective Date") by and between **COUNTY OF TULARE**, a State of California political subdivision ("County"), and **CALBIOGAS NORTH VISALIA LLC**, a California limited liability company (the "Applicant"), in Visalia, California, as described below. County and Applicant are singularly referred to as a "party" on a generic basis and collectively as the "parties."

Recitals

This Agreement is made with reference to the following facts and circumstances:

A. Applicant submitted an encroachment permit application (the "Application"), a true and correct copy of which is attached hereto as Exhibit "A" and incorporated herein by reference as if fully set forth at length, for a permit (the "Permit") granting Applicant an encroachment within a County right-of-way for constructing and installing, operating and using, and maintaining, repairing, replacing, servicing and upgrading approximately five and 1/10th miles (5.1 mi.) of a collection pipeline no greater than twelve inches (12 ins.) in diameter solely and exclusively for the purpose of transporting any and all biogas, methane gas, liquids, gases, solids, or any combination thereof (collectively the "Pipeline"); and

B. Applicant has agreed to make certain covenants with County in connection with and to indemnify, hold harmless and defend County for damages or claims related to the Permit and/or the Pipeline; and,

C. The foregoing covenants and agreement to indemnify hold harmless and defend County are acceptable to County;

THEREFORE, to memorialize the conditions, covenants, provisions and terms for the foregoing, the parties expressly agree and contract as follows:

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

Agreement

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

2. Registration of Pipeline Location. Upon completion of the construction and installation of the Pipeline, and prior to the acceptance of work in connection with the Permit, Applicant shall register the location of the Pipeline with **USA NORTH 811**, a California non-profit mutual benefit corporation or an equivalent underground service locating organization (generically "USLO"), and shall renew said registration annually to continue to provide for underground service locating. Applicant shall provide proof of registration set forth in Section 6. A failure to register and then maintain the registration of the Pipeline for underground service locating shall be grounds for County to terminate this Agreement and the Permit pursuant to Section 7. Applicant's duties, obligations and requirements under this Section 1 shall run so long as the Pipeline exists and shall apply to Applicant's successors and assigns of the Pipeline, the Permit, and this Agreement.

3. Plans for, Construction and Installation of, and Marking of the Pipeline. In connection with the Application, Applicant must submit to County for review a set of engineered plans detailing the Pipeline and its proposed construction and installation. Applicant's construction and installation of the Pipeline shall be according to the approved set of plans and shall not deviate from said plans. Design, construction and installation standards shall be substantially similar to gas pipeline installations or engineered equivalents. Upon the completion of its construction and installation, the Pipeline shall be marked with a stake or other distinguishable sign indicating a gas pipeline is in the vicinity.

4. "As-Built" Plans; Supplemental Surveys. Upon completion of its construction and installation, and prior to the Pipeline being placed into operation and use, Applicant shall provide County with an "as-built" plan set which reflects the actual location of the Pipeline, its depth, and diameter as constructed and installed within County right-of-way. The "as-built" plan set shall be prepared by and stamped by a registered civil engineer in good standing in the State of California. Applicant shall provide County with any supplemental surveys to reflect any subsequent corrections and/or changes to the Pipeline.

5. Abandonment. If the Pipeline is ever abandoned, then it shall be capped and filled with flowable fill 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, all to the satisfaction of County and otherwise in accordance with applicable Law (as defined in Section 17.8.3.3).

6. Encroachment Fee and Registration. Applicant shall pay to County an encroachment fee of two thousand seven hundred dollars and no cents per annum (\$2,700.00/annum). Payment shall be made to County within thirty (30) days of the date of County's invoice for said payment, and shall include proof of then-current registration with USLO with said payment.

7. Term; Renewal. Subject to Sections 8 and 17.5, the Permit and this Agreement shall have a term of twenty-five years (25 yrs.) from the Effective Date. However, Applicant's duties, obligations and responsibilities under Section 9 shall continue beyond the term of the Permit and/or this Agreement as set forth therein. The Permit and this Agreement shall be renewable at the end of said initial term for an additional twenty-five years (25 yrs.) unless either party gives written notice of its intention not to renew to the other party at least six months (6 mos.) before expiration of said initial term.

8. Revocation. The Permit and this Agreement and may be revoked by County if Applicant breaches any of its respective conditions, covenants, provisions and terms upon five (5) days written notice from County pursuant to Section 17.3. Said written notice shall set forth in detail the basis of Applicant's breach or breaches. During the five (5) day notice period, Applicant shall have the unfettered right to cure the breach or breaches. If Applicant fails to cure the breach or breaches during the five (5) day notice period, then the Permit and this Agreement shall be deemed revoked. Upon the revocation of the Permit and this Agreement, then Applicant shall be solely responsible for the

abandonment of the Pipeline pursuant to Section 5 at Applicant's sole cost and expense without right of reimbursement from County. If at any time Applicant fails to abandon the Pipeline as required by this Agreement, then County shall have the right, but not the duty, to undertake any actions necessary to accomplish such abandonment, all at Applicant's sole cost and expense. Upon written notice and demand, Applicant shall promptly pay or reimburse County for all costs and expenses reasonably incurred in undertaking such actions, in accordance with the procedures shown in section 12 below.

9. Indemnification. During the term of this Agreement, including any extension thereof, Applicant shall indemnify, hold harmless and defend County, its elected officials, agents, employees, officers and representatives, and its other Governmental Agencies (as defined in Section 17.8.3.2) from and against any and all Actions (as defined in Section 17.8.3.1), including death or injury to any person and/or damage to property, including County property, arising out of, concerning or related to the Permit, the Pipeline and/or this Agreement, including, without limitation, to the following:

- a. The construction, installation, operation, use, maintenance, repair, replacement, upgrade and abandonments, rehabilitation, replacement, or removal of the Pipeline, any actual, alleged or threatened spill, leak, or other release of waste or water related to operation of the Pipeline; and/or,
- b. Annuling, attaching, set aside and/or voiding any findings, entitlements, certification of California Environmental Quality Act ("CEQA") or other environmental review, and/or approvals by County given in regard to the Permit, the Pipeline, this Agreement, and/or any other related proceedings, or to impose personal liability against County's elected officials, agents, employees, officers and/or representatives, and/or its other Governmental Agencies resulting from their official involvement in the Permit, the Pipeline and/or this Agreement, including, without limitation, any Actions for attorneys' fees, private attorney general fees and/or costs awarded to any party and against County.

This indemnification and hold harmless obligation, and duty to defend shall continue until the expiration or revocation of the Permit and abandonment of the Pipeline pursuant to Section 5.

10. Assignment; Effect of Annexation. Subject to Tulare County Ordinance 3-07-1270, "Permit Not Transferable," Applicant may assign, convey, and otherwise transfer the Permit and this Agreement with the prior written consent of County, which shall not be unreasonably conditioned, delayed, or withheld. Tulare County Ordinance 3-07-1270 reads as follows as of the Effective Date:

A permit issued pursuant to the provisions of this Article [7, "Excavations and Obstructions in Highway,"] shall not be assigned or transferred by the permittee to any other person and any permit, which is assigned or transferred by the permittee, shall automatically become null and void.]

If the land on which the Pipeline is to be constructed is annexed to a city, then County may assign the Permit and this Agreement to the annexing city. The annexing city's council or its designee thereafter shall be deemed to have all of the rights, and duties, obligations and responsibilities of County under the Permit and this Agreement.

11. Insurance. Prior to approval of this Agreement by County, Applicant shall file with the Clerk of County Board of Supervisors evidence of the required insurance as set forth in the attached in Exhibit "B" attached hereto and incorporated herein by reference as if fully set forth at length. Insurance policies shall not be used to limit Applicant's liability or to limit the indemnification provisions and requirements of this Agreement or act in any way to reduce the policy coverage and limits available from the insurer(s).

12. Maintenance and Repairs. During the term of this Agreement, Applicant shall maintain, monitor, repair, replace, service, and upgrade the Pipeline at its sole cost and expense without right of reimbursement from County in order to ensure that it is safe to operate and use, is leak-free, and complies with all applicable Laws. Applicant shall make any required repairs, replacements and/or upgrades on the Pipeline as soon as is possible. If Applicant has not commenced a repair, replacement or upgrade referred to in a written notice from County to Applicant within five (5) days after date of notice, then County shall have the right, but not the duty, to repair, replace, or upgrade the Pipeline

or to contract with a licensed and qualified person to do so, and then to be reimbursed by Applicant for the resulting reasonable charges, costs, expenses and fees for same. Applicant shall so reimburse County for such reasonable charges, costs, expenses and fees within thirty (30) days after County's delivery to Applicant of a detailed written statement or bill evidencing same with supporting documentation as required.

13. Damages. Applicant is solely responsible for any damages to the Pipeline and any subsequent repairs or replacements to the Pipeline and County's facilities, including, without limitation, curb, gutter, road shoulder, and pavement in County's right-of-way should any excavation, construction, installation, or road work, either by County or any persons permitted by County to work in County right-of-way, damage the Pipeline as a result of any other than County or such person's gross negligence or willful misconduct.

14. Performance Bond. Applicant shall file with County a bond that guarantees the full performance of the work authorized by the Permit. The performance bond must be in a form approved by County. The amount of the bond shall be based on estimated costs to complete the work and repair the highway.

15. Property Taxes. Applicant acknowledges and understands that this Agreement may create a possessory interest subject to property taxation. Applicant shall pay any property taxes levied upon that interest before they become delinquent.

16. Compliance with Law. In performing its duties, obligations and responsibilities under the Permit and this Agreement, Applicant shall comply with any and all applicable Law.

17. Miscellaneous.

17.1. Attorneys' Fees and Disbursements. In the event of any arbitration, litigation or other dispute between the parties in connection with the interpretation, performance or enforcement of this Agreement, the prevailing party in such arbitration, litigation or other dispute shall be entitled, in addition to equitable relief or damages or both or other relief, to be reimbursed by the nonprevailing party for all costs and expenses of the arbitration, litigation, or other dispute including, without limitation, arbitration fees, court costs, expert witness fees, investigation costs and attorneys' fees and disbursements, incurred therein by such prevailing party or parties and, if such prevailing party or parties shall recover judgment in any such Action, such costs, expenses and attorneys' fees may be included in and as a part of such judgment. The prevailing party or parties shall be the party who is entitled to recover his costs of suit, whether or not the suit proceeds to final judgment. If no costs of suit are awarded, the arbitrator(s) or court, as applicable, shall determine the prevailing party. For the purpose of this Section 17.1, the term "attorneys' fees and disbursements" shall include, without limitation, fees and disbursements incurred in connection with the following: (i) contempt proceedings; (ii) discovery; (iii) any motion, proceeding or other activity of any kind or nature in connection with a bankruptcy proceeding or case arising out, concerning or related in any way to any petition under Title 11 of the United States Code, as the same shall be in effect from time to time, or any similar Law; (iv) garnishment, levy, and debtor and third party examinations; and, (v) post-judgment motions, proceedings or activity of any kind or nature, including, without limitation, any activity taken to collect or enforce any judgment.

17.2. Waiver. Either party may, by written notice to the other party: (i) extend the time for performance of any of the duties, obligations, responsibilities or other actions of the other under this Agreement; (ii) waive any inaccuracies in the representations and warranties of the other contained in this Agreement or in any documents delivered pursuant to this Agreement; (iii) waive compliance with any of the conditions or covenants of the other contained in this Agreement; or, (iv) waive or modify performance of any of the obligations of the other under this Agreement. Except as provided in the preceding sentence, no action taken pursuant to this Agreement, including, without limitation, any investigation by or on behalf of any party, shall be deemed to constitute a waiver by the party taking such action of compliance with any representations, warranties, covenants or agreements contained in this Agreement. The waiver by any party of a breach of any portion of this Agreement shall not operate or be construed as a waiver of any subsequent breach.

17.3. Notices. All notices, demands, or other communications that either party desires or is required or permitted to give or make to the other party under or pursuant to this Agreement (collectively referred to as "notices") shall be made or given in writing and shall either be: (i) personally served; (ii) sent by registered or certified mail,

postage prepaid; (iii) sent by telex or facsimile (“fax”), or e-mail; or, (iv) sent by a nationally recognized overnight delivery service or courier (such as Federal Express). All notices shall be addressed, faxed or e-mailed to, or personally served on the parties as follows:

COUNTY:	APPLICANT:
<p>TULARE COUNTY RESOURCE MANAGEMENT AGENCY 5961 South Mooney Boulevard Visalia, California 93277 Telephone No.: (559) 624-7000 Telefax No.: (559) 730-2653 E-Mail Address: rschenke@co.tulare.ca.us</p>	<p>Mr. Neil Black President CALBIOGAS NORTH VISALIA LLC c/o California Bioenergy LLC 324 South Santa Fe, Suite B Visalia, California 93292 Telephone No.: (559) 334-4213 E-Mail Address: nblack@calbioenergy.com</p>

Notices given by a party pursuant to the alternative methods described in this Section 17.2 shall be deemed to have been delivered to and received by the other party at the following times: (a) for notices personally served, on the date of hand delivery to the other party or its duly authorized employee, representative, or agent; (b) for notices given by registered or certified mail, on the date shown on the return receipt as having been delivered to and received by the other party or parties; (c) for notices given by fax or e-mail, on the date the notice is faxed or e-mailed to the other party or parties; provided, however, that notices given by fax or e-mail shall not be effective unless a duplicate copy of such faxed or e-mailed notice is promptly given by first-class mail, postage prepaid, and addressed as provided above; provided further, however, any notice given by fax or e-mail shall be deemed received on the next business day if such notice is received after 5:00 p.m. (recipient’s time) or on a nonbusiness day; or, (d) for notices delivered by overnight courier, on the next business day after same has been deposited with the courier as evidenced by the receipt provided by such courier to the party giving notice. Each party shall make an ordinary, good faith effort to ensure that it shall accept or receive notices that are given in accordance with this Section 17.2, and that any person to be given notice actually receives such notice. A party may change or supplement its designated agent, address, fax number or e-mail given above, or designate additional agents, addresses or fax numbers for notice purposes, by giving notice to the other party in the manner set forth in this Section 17.2, provided that any such address change shall not be effective until five (5) days after the notice is delivered or received by the other party.

17.3. Further Assurances. The parties shall in good faith cooperate with each other in satisfying all conditions contained in this Agreement, including, without limitation, executing any and all documents required to be executed and delivered by a party. Each party shall execute and deliver any and all additional papers, documents or other assurances and shall perform any further acts which may be reasonably necessary to carry out the intent of the parties and the provisions of this Agreement.

17.4. Binding Effect. Subject to Section 14, this Agreement shall inure to and for the benefit of and be binding upon each party’s respective parent, subsidiary or affiliated organizations, administrators, agents, attorneys, beneficiaries, conservators, custodians, directors, employees, executors, guardians, heirs, independent contractors, joint venturers, managers, members, officers, partners, predecessors, representatives, servants, stockholders, successors, trustees and all others acting for, under, or in concert with it, including associations, corporations, limited liability companies, and general or limited partnerships, present and future.

17.4. No Third-Party Beneficiary. This Agreement is made for the sole benefit of the parties and their respective successors and permitted assigns and no other person or persons shall have any right of action hereon.

17.5. No Partnership or Joint Venture Created; No Agency. The parties’ relationship is that of landlord and tenant and this Agreement is not intended to nor does create a partnership or joint venture or relationship between the parties. Nothing in this Agreement shall be construed, deemed or interpreted by the parties or by any third person to create the relationship of principal and agent between the parties.

17.6. Entire Agreement. This Agreement supersedes any and all other agreements, either oral or in writing, between the parties with respect to the subject matter hereof and contains all of the covenants and agreements between the parties with respect to such matter, and each party to this Agreement acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding.

17.7. Modification. This Agreement may be modified only by a written document signed by the parties.

17.8. Construction.

17.8.1. Generally. Unless the provisions or context otherwise require, this Section 17.8.1 shall govern the construction and interpretation of this Agreement and all documents executed and delivered pursuant to it. The captions of this Agreement's articles and sections do not in any manner define their scope, meaning or intent of this Agreement and all of documents executed and delivered pursuant to this Agreement. All exhibits referred to in this Agreement or any documents executed and delivered pursuant to this Agreement are deemed to be incorporated by reference as if fully set forth at length. Unless the provisions of this Agreement or the context require otherwise, the definitions contained in this Agreement shall govern the construction and interpretation of this Agreement and also all documents executed and delivered pursuant to this Agreement. The present tense includes the past and future tenses, and the future tense includes the present tense. The masculine, feminine or neuter gender shall be deemed to include the other. The singular or plural number shall be deemed to include the other. The words "shall" and "agrees" are mandatory, and "may" is permissive. The term "person" includes individuals, corporations, partnerships, trusts and other entities and associations. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The words "approval," "consent" and "notice" shall be deemed to be preceded by the word "written." Locative adverbs such as "herein," "hereto" and "hereunder" shall refer to this Agreement in its entirety and not to any particular paragraph, provision or section. The parties acknowledge that each party and its counsel, if applicable, have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto. The parties acknowledge, understand and agree that their respective agents and representatives executing this Agreement on behalf of each of the parties are learned and conversant in the English language, and that the English language shall control the construction, enforcement, governance, interpretation and performance of this Agreement.

17.8.2. Computation of Time. The time in which any act under this Agreement is to be done shall be computed by excluding the first (1st) day and including the last day. If the last day of any time period shall fall on a Saturday, Sunday or federal or State of California bank holiday, then the duration of such time period shall be extended so that it shall end on the next succeeding day which is not a Saturday, Sunday or federal or State of California bank holiday. Unless preceded by the word "business," the word "day" shall mean a "calendar" day. The phrase "business day" shall mean a day which is neither a Saturday, Sunday, or federal or State of California bank holiday.

17.8.3 Specific Definitions.

17.8.3.1. Definition of "Action." "Action" shall mean any arbitration, audit, cause of action, citation, claim, demand, lawsuit, inquiry, investigation, litigation, mediation, notice of violation, proceeding, summons, subpoena or action of any nature, administrative, civil, criminal, regulatory or otherwise, whether at law or in equity.

17.8.3.2. Definition of "Governmental Agency." "Governmental Agency" shall mean the **UNITED STATES OF AMERICA**, the **STATE OF CALIFORNIA**, **COUNTY OF TULARE**, a California political subdivision, foreign, local or other applicable court, governmental authority or public agency, rulemaking authority or taxing authority having jurisdiction over the subject matter of this Agreement.

17.8.3.3. Definition of "Laws." "Laws" shall mean all acts, administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Agency charged with the enforcement, interpretation or administration thereof, agreements with, approvals, authorizations, awards, codes, consents, declarations, decrees, directed duties, directives, guideline documents, guidelines, edicts, exemptions, injunctions, judgments, laws, licenses, non-contractual restriction, orders, ordinances, permits, process, regulations, requests, requirements, rules, rulings, sanctions, standards, statutes, treatises, waivers and/or writs, now in force or as may be enacted or amended, changed, modified, promulgated, revised, or supplemented, of any and all Government Agencies.

17.9. Governing Law; Venue. This Agreement shall be construed, enforced, governed by, interpreted and performed pursuant to the internal Laws, and not the Law of conflicts, of the State of California applicable to agreements, contracts and understandings made and to be performed in such state. The parties also agree that this Agreement is made and to be performed in Tulare County, California, and therefore that the only proper venue for any litigation shall be the Tulare County Superior Court.

17.10. Partial Invalidity. If any condition, covenant, provision or term of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

17.11. Recordation; Quitclaim. Upon the effectiveness of this Agreement pursuant to Section 17.15, this Agreement shall be recorded in the Tulare County Official Records. Upon the expiration or earlier termination of the Lease Term, Applicant agrees to execute and acknowledge, and then deliver to County for recording in the Tulare County Official Records, a quitclaim deed in favor of Landlord.


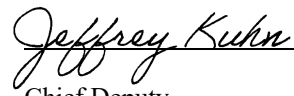
17.12. Time of the Essence. Time is of the essence under this Agreement.

17.13. Separate Counterparts; Facsimile & Electronic Signatures. This Agreement shall be executed in two (2) or more separate counterparts, each of which, when so executed, shall be deemed to be an original and to constitute the one and same contract. This Agreement may be signed and signatures transmitted by facsimile, and any such facsimile copy shall be equivalent to a binding signed original for all purposes. This Agreement also may be executed electronically, whether using an electronic signature and delivery service such as DocuSign or eSignLive, or by use of electronically copied/saved and transmitted executed documents, such as by emailing a PDF of the signed document. The parties expressly agree that the actual execution and delivery of this Agreement specifically shall be governed by the Electronic Signatures in Global and National Commerce Act (ESIGN), 15 United States Code Section 7001 et seq., and the governing Law applicable to the remainder of this Agreement shall be as otherwise stated herein. Notwithstanding the foregoing, only one original executed and acknowledged document shall be recorded pursuant to Section 17.11.

17.14. Warranties and Authority of the Parties. Each party understands, acknowledges, agrees, represents and warrants to the other party that it has received independent legal advice from its attorneys with respect to the advisability of entering into this Agreement or has intentionally elected not to seek the advice of counsel and has carefully reviewed and considered the terms and conditions of this Agreement and that its execution of this Agreement is free and voluntary. Where required in this Agreement or by an escrow or a title company, the parties shall deliver documentation which authorizes the transaction contemplated herein and which further evidences the authority of the individuals or officers who are empowered to execute and carry out the terms of this Agreement.

[SIGNATURES ON THE NEXT PAGE; REMAINDER OF THIS PAGE]

17.15. Effectiveness. This Agreement shall become effective upon both its execution by all and then the later of the following: (i) the Effective Date; or, (ii) the issuance of the Permit.

COUNTY:	APPLICANT:
<p>COUNTY OF TULARE, a State of California political subdivision</p> <p>By: _____</p> <p>Its: <u>Chair of the Board of Supervisors</u></p>	<p>CALBIOGAS NORTH VISALIA LLC, a California limited liability company, or its assignee(s) and/or nominee(s)</p> <p>By:  _____</p> <p>Its: NEIL BLACK President</p>
<p>Jason T. Britt, County Administrative Officer/Clerk of the Board of Supervisors of County of Tulare</p> <p>By: _____</p> <p>_____ Deputy</p>	
<p>Approved as to Form by County Counsel</p> <p>By  _____</p> <p>Chief Deputy</p> <p><u>Matter No. 2020950</u></p>	

[ACKNOWLEDGEMENTS ATTACHED]

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENTS

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

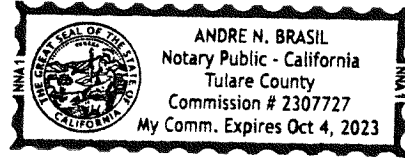
STATE OF CALIFORNIA)
)ss.
COUNTY OF Tulare)

On July 30th, 2020, before me, Andre N Brasil, a Notary Public, personally appeared Neil Black, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity(ies) upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS MY HAND AND OFFICIAL SEAL.

[Signature]
NOTARY PUBLIC



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)ss.
COUNTY OF _____)

On _____, 2020, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity(ies) upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS MY HAND AND OFFICIAL SEAL.

NOTARY PUBLIC

Exhibit A
Encroachment permit
application

APPLICATION FOR ENCROACHMENT PERMIT

COUNTY OF TULARE
RESOURCE MANAGEMENT AGENCY
5961 S. MOONEY BLVD.
VISALIA, CA 93277
(559) 624-7000

ANY REQUIREMENTS OR REGULATIONS YOU FEEL UNJUST MAY BE APPEALED TO THE COUNTY BOARD OF SUPERVISORS. THE CONTRACTOR AND APPLICANT UNDERSTAND THAT THIS IS AN APPLICATION ONLY, NOT A PERMIT. NO WORK SHALL START UNTIL A PERMIT IS ISSUED AND THE PERMIT IS ON THE JOB SITE.

The undersigned hereby applies for a permit to allow them to do certain work within the right-of-way of a County Highway, in accordance with Sections 3-07-1160 to 3-07-1385 of the Ordinance Code of Tulare County. The necessary information concerning said work is as follows:

1. LOCATION and DESCRIPTION of the proposed work to be done within right-of-way.

A. General location described by number or name of highway.

Road Road 68 From Avenue To Avenue
Avenue Avenue 328 From Road To Road
Other From To

B. Description of exact location in feet of encroachment from the County property line or section line and edge of pavement, starting from the nearest cross road property line. (If more room is needed attach a sheet).

Example: Install 6" steel Water main on Road 100 starting 1510' south of the Center Line of Ave. 100, at 25' east of the center line or section line of Road 100, and 5' east of the edge of oil, then south for 350', then east 5' to private property.

INSTALL:

Install 12" HDPE pipe perpendicular to Rd. 68 at 4,6543 ft south of Ave. 320. Install 12" HDPE pipe perpendicular to Rd. 68 at Ave. 320. Install 4" HDPE pipe parallel to Rd. 92 offset east by 21 ft for a distance of 11 ft. Install 4" HDPE pipe perpendicular to Ave. 328 at 5,679 ft east of Rd. 92. Install 8" HDPE pipe perpendicular to Ave. 328 at 7,874 ft west of Rd. 80. Install 3" HDPE pipe perpendicular to Ave. 328 at 1,471 ft west of Rd. 80. Install 8" HDPE pipe perpendicular to Ave. 328 at 2,167 ft west of Rd. 108. Install 3" HDPE pipe perpendicular to Ave. 328 at 1,461 ft east of Rd. 108. Install 10" HDPE pipe parallel to Ave. 328 for 7,874 ft west of Rd. 80. Install 10" HDPE pipe parallel to Ave. 328 for 16,209 ft east of Rd. 80. Install 3" HDPE pipe parallel to Ave. 328 for 2,167 ft west of Rd. 108. Install 3" HDPE pipe parallel to Ave. 328 for 1,461 ft east of Rd. 108.

2. ATTACH TWO (2) SETS OF PLANS showing road right-of-way, edge of pavement from property line. The exact location of proposed work, all County drain pipes, roads, avenues, type of driveways, bridges (need blowup), footage of encroachment for each road and all existing utilities.

3. TYPE OF WORK to be done. (check one)

Sewer Water Elec. Service A.C. Driveway Pipeline
TV Cable Other Natural Gas Pipeline

4. PURPOSE OF THE PROPOSED WORK. (check one)

New Main Replacement New Service Other

5. Will pavement be cut or disturbed.

Yes No Bore Open Trench

6. The materials which will be used to perform this work are as follows.

Plastic Pipe Steel Pipe Cable Concrete Pipe Other
Size 3",4",8",10",12" Size Size Size
Type HDPE Type Type Type
SDR Rating

7. The proposed work will be commenced on or about 7/11/20

To be completed on or about 12/31/20

8. Other pertinent information, including additional information required by the Resource Management Agency (RMA).

IF ADDITIONAL SPACE IS REQUIRED FOR FURNISHING ANY OF THE INFORMATION REQUIRED, PUT THE INFORMATION ON A SEPARATE SHEET OF PAPER AND ATTACH IT TO THIS APPLICATION.

The applicant agrees that the aforementioned work is subject to, and will be performed in accordance with all of the provisions of Sections 3-07-1160 to 3-07-1385 of the Ordinance Code of Tulare County. The applicant agrees to hold the County, its officers, agents and employees harmless from any and all causes of action, penalties, liabilities or loss resulting from claims or court actions arising out of any accidents, loss or damage to persons or property occurring as a result of any work performed pursuant to the permit.

The applicant agrees that the County shall not be responsible for any damage to any structure or installation constructed pursuant to a permit which is not clearly or visibly marked by the construction, reconstruction, maintenance or repair or by use of overweight equipment on the highway. The applicant agrees that he, his successors and assigns, upon being notified of such damage by the Resource

Management Agency Director or designee, shall immediately repair, remove or relocate the damaged structure or installation.

9. As required by sections 3-07-1195 to 3-07-1215 of the Ordinance Code of Tulare County, the following insurance policy and bond are furnished covering said work.

BOND (Min. \$5,000 to Max. \$25,000 determined by R.M.A.) (check one) INSURANCE POLICY (check one)

- On file with R.M.A. Enclosed

Bond Amount \$

10. APPROVAL OF SERVING PUBLIC UTILITY, PUBLIC AGENCY, OR COMMUNITY SERVICES DISTRICT FOR UTILITY, SEWER OR WATER CONNECTIONS:

Table with 4 columns: Name of Serving Utility, Phone number, Signature, Date. Rows for CONTRACTOR (PCL Industrial Services, Inc.) and APPLICANT (California Bioenergy, LLC).

FOR COUNTY USE ONLY

Application Received, Insurance expires, Bond expires, Field Review, Office Check, OK for Permit

Returned for correction

Notes to be added to Permits

CALIFORNIA BIOENERGY

IMPROVEMENT PLANS FOR:
NORTH VISALIA CLUSTER LANE B STAGE 1

KEY MAP - PIPELINE ROUTING

PLOT DATE: May 28, 2020
JOB NO.: 19374
FILE NAME: 03-K.M.P.ROUTING
SHEET NO.: 03 OF 30
K1

PREPARED BY:  4CREEKS

BRW BY: KC, MH
CHK BY: KJM

324 S. SANTA FE ST., STE. A
VISALIA, CA 93281
P.O. BOX 7393
VISALIA, CA 93282
TEL: 559.902.2052
FAX: 559.902.2115



NO.	DATE	DESCRIPTION

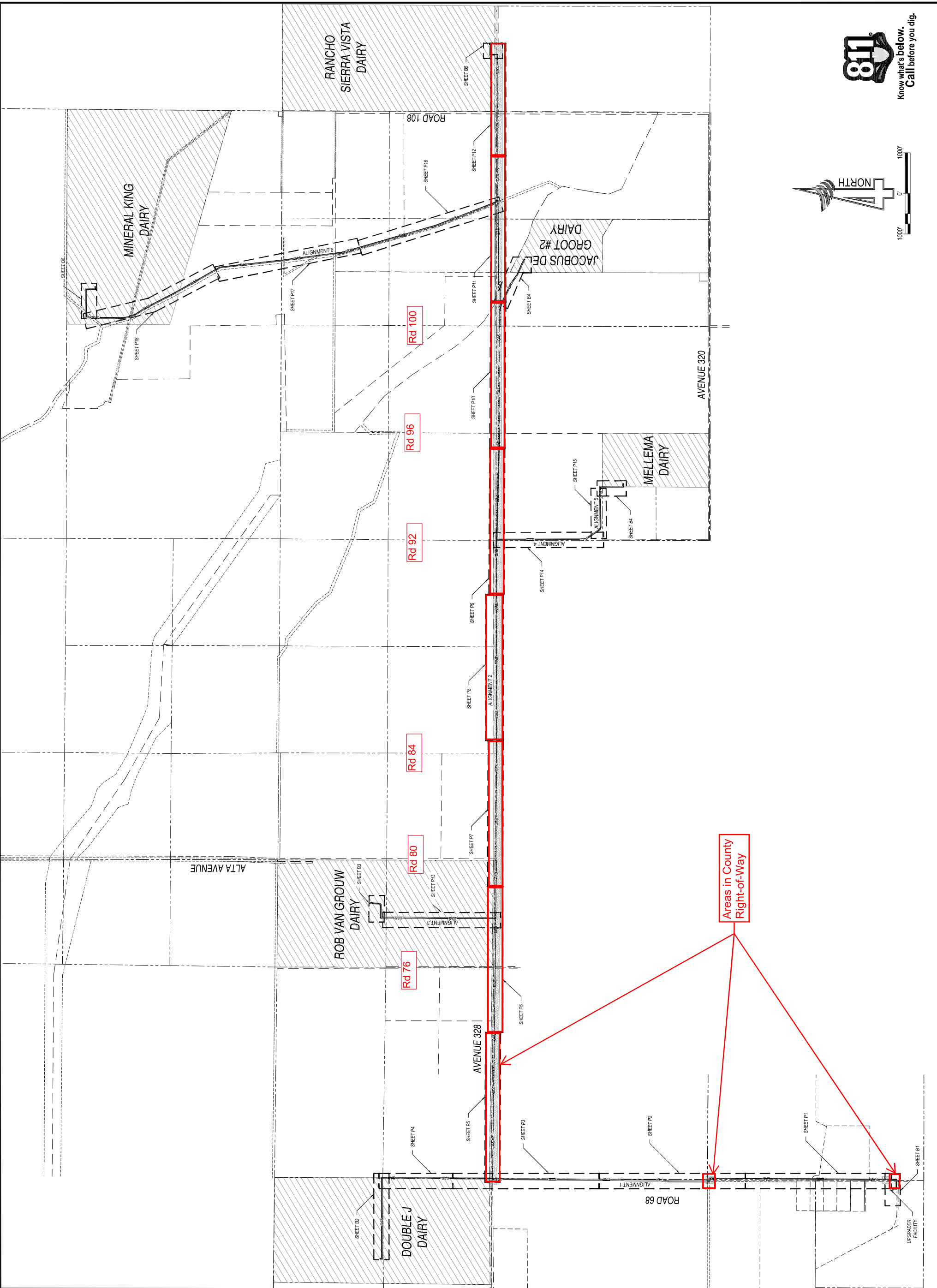


Exhibit B

Insurance requirements

PROFESSIONAL SERVICES CONTRACTS
INSURANCE REQUIREMENTS

CONTRACTOR shall provide and maintain insurance for the duration of this Agreement against claims for injuries to persons and damage to property which may arise from, or in connection with, performance under the Agreement by the CONTRACTOR, his agents, representatives, employees and subcontractors, if applicable.

A. Minimum Scope & Limits of Insurance

1. Insurance Services Office Commercial General Liability coverage of \$1,000,000 combined single Limit per occurrence (occurrence Form CG 00 01). If an annual aggregate applies it must be no less than \$2,000,000.
2. Insurance Services Office Form Number CA 00 01 covering Automobile Liability, (any auto) of \$1,000,000 per occurrence. If an annual aggregate applies it must be no less than \$2,000,000.
3. Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
4. Professional Liability (Errors and Omissions) Insurance appropriate to the CONTRACTOR'S profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate. If the required insurance is written on a claims made form, the retroactive date must be before the date of the contract or the beginning of the contract work and must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract work.

B. Specific Provisions of the Certificate

1. CONTRACTOR must submit endorsements to the General Liability and Auto Liability reflecting the following provisions:
 - a. *The COUNTY, its officers, agents, officials, employees and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the Contractor; or automobiles owned, leased, hired or borrowed by the CONTRACTOR.*
 - b. *For any claims related to this project, the CONTRACTOR's insurance coverage shall be primary insurance as respects the COUNTY, its officers, agents, officials, employees and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officers, agents, officials, employees or volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.*
 - c. *Each insurance policy required by this agreement shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days prior written notice has been provided to the County.*
2. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the COUNTY for all work performed by the CONTRACTOR, its employees, agents and subcontractors.

- a. *Waiver of Subrogation. The workers' compensation policy shall be endorsed with a waiver of subrogation in favor of the COUNTY for all work performed by the contractor, its employees, agents and subcontractors. CONTRACTOR waives all rights against the County and its officers, agents, official, employees and volunteers for recovery of damages to the extent these damages are covered by the workers compensation and employers liability.*

C. Deductibles and Self-Insured Retentions

The COUNTY Risk Manager must approve any deductible or self-insured retention that exceeds \$100,000.

D. Acceptability of Insurance

Insurance must be placed with insurers with a current rating given by A.M. Best and Company of no less than A(-):VII and a Standard & Poor's Rating (if rated) of at least BBB and from a company approved by the Department of Insurance to conduct business in California. Any waiver of these standards is subject to approval by the County Risk Manager.

E. Verification of Coverage

Prior to approval of this Agreement by the COUNTY, the CONTRACTOR shall file with the submitting department, certificates of insurance with original endorsements effecting coverage and a copy of the declarations page from the policy in effect in a form acceptable to the COUNTY. Endorsements must be signed by persons authorized to bind coverage on behalf of the insurer. The COUNTY reserves the right to require certified copies of all required insurance policies at any time.

Attachment C

Notice of Exemption

NOTICE OF EXEMPTION

To: Office of Planning and Research
1400 Tenth Street, Room 121
Sacramento, CA 95814

Tulare County Clerk
Room 105, Courthouse
221 South Mooney Blvd.
Visalia, CA 93291

Lead Agency: Tulare County Resource Management Agency
5961 South Mooney Blvd.
Visalia, CA 93277
(559) 624-7000
Attn: hguerra@co.tulare.ca.us

Applicant(s): CalBioGas North Visalia LLC
324 S. Santa Fe St.
Visalia, CA 93292
559-667-9560

Project Title: No. Visalia Biogas Gathering Line

Project Location - Specific: Various Locations, see attached map (Phase 1 Vicinity Map)

Project Location - Section, Township, Range: Section Various, Township 17S and 18S, Range 23E and 24E of the Goshen, Monson, Traver USGS 7 ½ minute quadrangle.

Project Location - City: Visalia

Project Location - County: Tulare

Description of Nature, Purpose, and Beneficiaries of Project: CalBiogas North Visalia, LLC proposes to construct 5.1 miles of a pressurized underground gas pipeline within portions of the County of Tulare right-of-way of Avenue 328, north of the City of Visalia. The intent of the project is to transport dairy biogas from participating dairies (see attached map showing pipeline route) to a Southern California Gas Company mainline tie-in facility. The scope of the project consists of the installation of HDPE gas pipeline and concomitant safety equipment along the 5.1-mile alignment. On September 1, 2020, the Tulare County Board of Supervisors approved an indemnification agreement to allow some segments of the underground pipeline to utilize County right-of-way within easements along or across public roadways. All of Tulare County will benefit as the Project would recover manure methane at dairies and using the methane as a renewable source of natural gas.

Exempt Status: *(check one)*

- Ministerial (Sec. 21080(b)(1); 15268);
- Declared Emergency (Sec. 21080(b)(3); 15269(a));
- Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- General Rule: CEQA guidelines 15061(b)(3);
- Categorical Exemption: Categorical Exemption: State CEQA Guidelines Section 15301 Existing Facilities (Class 1 Exemption); and Section 15303 New Construction or Conversation of Small Structures (Class 3 Exemption);
- Statutory Exemptions:

Reasons why project is exempt: The Project will not involve any new developments or changes to existing land uses, nor are any proposed, there will be no additional vehicular trips generated as a result of the proposed Activity/Project. The Activity/Project will result in no adverse impact to the environment including aesthetics, air quality, agriculture, biology, cultural, greenhouse gases, hazards/hazardous materials, land use/planning, noise, public services, traffic, or utilities/service systems. Furthermore, the proposed Project site will be required to comply with applicable San Joaquin Valley Unified Air District rules and regulations, including but not limited to, Rule 2010 (Permits Required), Rule 2201 (New and Modified Stationary Source Review), and Rule 9510 (indirect Source Review). The Activity/Project will result in reduction of methane-related GHG by using methane gas emissions from the dairies as an alternative/renewable fuel source, is consistent with draft Tulare County Dairy Climate Action Plan (which incorporates strategies to promote the use of renewable energy sources, including digesters for energy-production), and is also consistent with and implements the California Environmental Protection Agency Air Resources Board's Short-Lived Climate Pollutant Reduction Strategy March 2017;

DATE RECEIVED FOR FILING AT TULARE COUNTY CLERK

Methane Emissions Reductions from Dairy Manure. As the equipment modification will occur at an existing site and pipelines for this Activity/Project will remain within County of Tulare Rights-of-Way, this action is consistent with 14 Cal. Code Regs. Section 15301(b) Existing facilities or both investor and public owned utilities used to provide electric power, natural gas, sewerage, or other public utility services and; 14 Cal. Code Regs. Section 15303(d) Water main, sewage, electrical gas, and other utility extensions, including street improvements, or reasonable length to serve such construction. Therefore, the use of CEQA Guidelines Sections 15301(b) and 15303(d), as noted above, are applicable and appropriate for this Activity/Project.

Name of Public Agency Approving Project: Tulare County, RMA – Economic Development and Planning Branch

Project Planner/Representative: _____ **Area Code/Telephone:** 559-624-7000

By: _____ Date: _____ Title: Chief Environmental Planner
Hector Guerra

By: _____ Date: _____ Title: Environmental Assessment Officer
Reed Schenke, P.E. RMA Director

Signed by Lead Agency

Date Received for filing at OPR: ____

Attachment [No. Visalia Biogas Gathering Line, Phase 1 Vicinity Map]

