



**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: August 13, 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: Encroachment Agreement with Alta Irrigation District for Phase 1 of the Seville and Yettem Water System Improvement Projects

REQUEST(S):

That the Board of Supervisors:

1. Approve Encroachment Agreement with Alta Irrigation District for Phase 1 of the Seville and Yettem Water System Improvement Projects; and
2. Authorize the Chairman of the Board of Supervisors to sign the Encroachment Agreement on behalf of Tulare County.

SUMMARY:

The County is also the lead agency on the Seville and Yettem Water System Improvement Project (the "Project"), which is primarily broken into two phases. Phase 1 of the Project is to design and construct a new community based municipal storage tank, water distribution system, and appurtenances in the community of Seville. The new municipal system will replace the existing distribution system, which has excessive leaks and requires the community be in a continuous "boil water" status. Phase 2 of the Project consists of a new well, an interconnection pipeline between the water systems in Yettem and Seville, and water meters in Yettem. Phase 1 is funded by a grant from the State Water Resources Control Board ("Water Board") (Tulare County Agreement No. 28938) and is currently under construction.

As part of the Project, the County previously submitted an application to the Tulare County Local Area Formation Commission (LAFCo) to create the Yettem-Seville Community Services District (YSCSD) to provide drinking water to the two

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DATE: August 13, 2019

communities, which will ultimately operate the new water system in Seville and the County's Zone of Benefit water system in Yettem. LAFCo conditionally approved the YSCSD formation subject to various terms and conditions. The residents of Seville and Yettem then voted in November 2018 to form the YSCSD subject to the terms and conditions of LAFCo. Staff are currently working with YSCSD to prepare an agreement to effect the transfer all of the assets, obligations, and liabilities of the water systems to YSCSD after the completion of Phase 1 (the Transfer Agreement). The Transfer Agreement will also define the working relationship between the County and the CSD for the grant application for funding and the construction of Phase 2.

Construction plans and specifications were approved and the project was authorized to bid on January 9, 2018 by Resolution No. 2018-0040. The construction contract for the Project was awarded to Brough Construction on June 12, 2018 under Tulare County Agreement No. 28656. As part of Phase 1 of Construction, the County must obtain an encroachment agreement (the Agreement, included as Attachment B) from Alta Irrigation District (AID), as the water distribution pipes in Seville must cross Sontag Ditch, an AID canal, in four locations. Work cannot commence on these crossings until the Agreement is finalized.

The Agreement requires that the County, at its sole cost and expense, obtain all necessary permits, licenses, authorizations, approvals or other governmental dispensations required to proceed with the County's activities pursuant to the Agreement. The Agreement requires that County ensure all construction activity is performed in conformance with all applicable Federal and State laws and regulations, and in a good and workmanlike manner. Additionally, the Agreement requires that the County comply with all AID indemnification and liability insurance requirements.

Please note the following critical Agreement requirements:

- The Agreement has a ten (10) year term length and at any time, the District may unilaterally terminate the agreement if the District determines that it is necessary to do so to protect the interests of the District or the public. This term length deviates substantively from the standard County boilerplate.
- The Agreement requires that the County must indemnify AID however no reciprocal indemnification is required or specified.
- The Agreement allows the County to fully assign all rights and obligations of this agreement to the Yettem-Seville Community Services District, which will be included as a condition of the Transfer Agreement described above.

The County will be the first signatory to this agreement, as the County is requesting the ability to encroach on AIDs property and AID will not process the Agreement until they receive the signed agreement.

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FISCAL IMPACT/FINANCING:

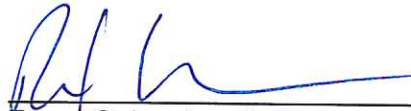
There is no Net County Cost to the General Fund.

This encroachment agreement fee was \$1,600 total, based on \$400 per crossing as outlined in the agreement, and was previously paid so as to begin this process. The project funding and budget is \$4,028,896, including construction costs, construction contingency, staff time, permitting, and other project related expenses. Funding for the construction of Phase 1 of the project, including this fee, is provided by the State Water Resources Control Board under Tulare County Agreement No. 28938.

LINKAGE TO THE COUNTY OF TULARE STRATEGIC BUSINESS PLAN:

The County's five-year strategic plan includes a Quality of Life initiative to provide an adequate and safe water supply. This project would help the residents of the community of Seville with drought related issues that have impacted both the availability and safety of their drinking water supplies.

ADMINISTRATIVE SIGN-OFF:



Reed Schenke, P.E.

Director

RS:rm/ap

cc: County Administrative Office

Attachment(s) Attachment A: Project Vicinity Map
Attachment B: Encroachment Agreement

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

IN THE MATTER OF ENCROACHMENT)
AGREEMENT WITH ALTA IRRIGATION) Resolution No. _____
DISTRICT FOR PHASE 1 OF THE SEVILLE) Agreement No. _____
AND YETTEM WATER SYSTEM)
IMPROVEMENT PROJECTS)

UPON MOTION OF SUPERVISOR _____, SECONDED BY
SUPERVISOR _____, THE FOLLOWING WAS ADOPTED BY THE
BOARD OF SUPERVISORS, AT AN OFFICIAL MEETING HELD AUGUST 13, 2019,
BY THE FOLLOWING VOTE:

AYES:
NOES:
ABSTAIN:
ABSENT:

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

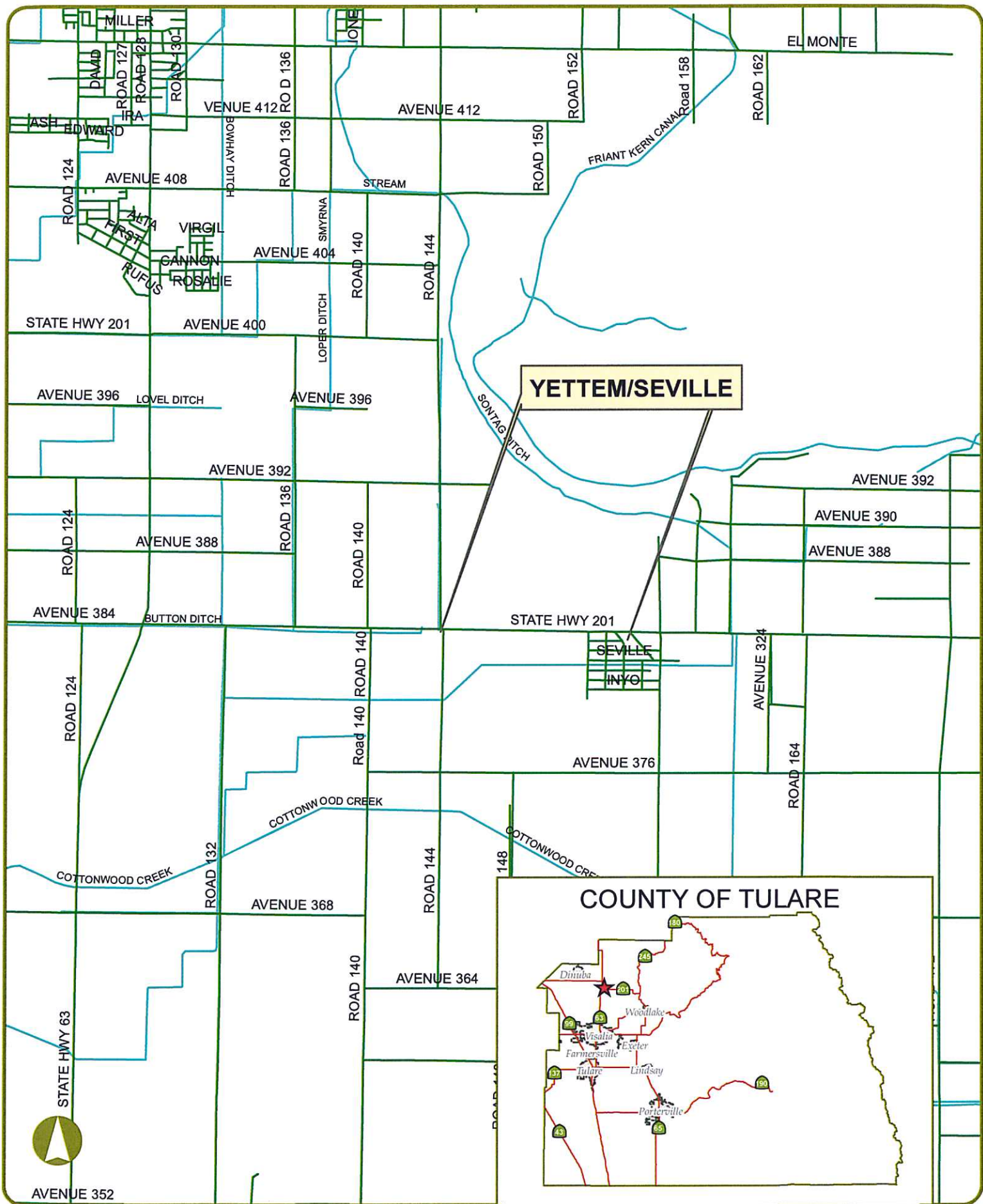
BY: _____
Deputy Clerk

* * * * *

1. Approved Encroachment Agreement with Alta Irrigation District for Phase 1 of the Seville and Yettem Water System Improvement Projects; and
2. Authorized the Chairman of the Board of Supervisors to sign the Encroachment Agreement on behalf of Tulare County.

ATTACHMENT A

VICINITY MAP



ATTACHMENT B

ENCROACHMENT AGREEMENT

**RECORDING REQUESTED BY
ALTA IRRIGATION DISTRICT**

**AND WHEN RECORDED RETURN TO:
ALTA IRRIGATION DISTRICT
289 NORTH L STREET
DINUBA, CALIFORNIA 93618**

—NO FEE—

Benefit of Alta Irrigation District
Pursuant to Government Code § 6103

SPACE ABOVE THIS LINE FOR RECORDERS USE ONLY

ENCROACHMENT AGREEMENT

THIS ENCROACHMENT AGREEMENT (this “Agreement”) is made and entered into this ____ day of _____, 201__ (the “Effective Date”), by and between ALTA IRRIGATION DISTRICT, a California irrigation district (the “District”) and THE COUNTY OF TULARE, a political subdivision of the State of California (the “County”). The District and County are sometimes collectively referred to in this Agreement as the “Parties” or singularly as a “Party” or by their individual names.

RECITALS

A. WHEREAS, the District has prior rights and was formed on August 14, 1888 for the purpose of delivering surface water from the Kings River to landowners in the Counties of Fresno, Kings, and Tulare; and

B. WHEREAS, the District is a California Irrigation District organized and existing under and by virtue of the Irrigation District Law, Division 11 of the California Water Code; and

C. WHEREAS, the District must have full access to and control over its facilities and the operation thereof, so the District may have to take possession and control of any improvements in the District’s right-of-way to prevent damage to those facilities or impairment of the operations thereof; and

D. WHEREAS, the District holds an easement and right-of-way for ditches, canals, pipelines, and other water conveyance facilities known as the Sontag Ditch (“District Property”); and

E. WHEREAS, the County desires to obtain from the District, and District is willing to grant to County the right to encroach underground upon the District Property as set forth herein; and

F. WHEREAS, the County anticipates that the Yetttem-Seville Community Services District may assume all interest in the Encroachment; and

G. WHEREAS, the Parties agree this Agreement will bind any future successors of the Encroach, which the Parties believe to be the Yetttem-Seville Community Service District, or any entity which acquires interest in the Encroachment.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, the Parties hereby agree as follows:

1. **Right to Encroach.** For consideration, and subject to the terms and conditions of this Agreement, the District hereby grants to the County the right to place and maintain four (4) subterranean water pipeline crossings (“Encroachment”).

2. **Encroachment.** The authorized Encroachment (near the intersection of Seville Avenue and Roads 153, 154, 155, and 156 in the community of Seville) is limited to about fifty (50) linear feet, at each crossing, of high density polyethylene conduit with a nominal diameter of about six (6) inches for the crossings at Roads 153, 154, and 155 and nominal diameter of about eight (8) inches at Road 156, installed at a depth such that there is a minimum vertical separation of three (3) feet between the exterior walls of the Encroachment and District facility, and crossing at approximately ninety (90) degrees to the centerline of District facility. Encroachment will maintain that depth, associated with the vertical separation requirement, for the full width of the District’s Property; no grade breaks. Exhibit “A” is a tabular summary of key parameters associated with the Agreement. Improvements not authorized under this Agreement include, but are not limited to, the following: signage, poles, pull boxes, guy wires, or any other improvements altering District operations or maintenance activity.

3. **Location.** The location where the Encroachment is permitted on District Property is described in Exhibit “B” and shown on Exhibit “C”, attached hereto and incorporated herein by these references. Exhibit “C” contains plan and profiles views i) delineating horizontal and vertical separation between Encroachments and District facility, ii) labeling flow line elevations for Encroachment and District facility, iii) identifying Encroachment and District facility(ies), and iv) showing limits of District Property.

4. **Cost and Fee.** County acknowledges and agrees to pay, in full as part of the execution of this Agreement, an encroachment fee of Four Hundred Dollars and No Cents (\$400.00) per crossing. Encroachment fee will accompany two (2) signed originals of this Agreement. If payment is not provided with the signed originals, then execution of this Agreements will be delayed.

5. **Limitations; Obligations.**

(a) The exercise by County of its rights pursuant to the Agreement is subject to the right of District to the full and beneficial use and enjoyment of the District Property. County shall not in any way interfere with or disrupt District’s use of the District Property.

(b) Prior to placement of the Encroachments, County, at its sole cost and expense, shall obtain all necessary permits, licenses, authorizations, approvals or other governmental dispensations required to proceed with County's activities pursuant to this Agreement.

(c) County shall ensure that all activities performed on District Property with respect to the Encroachments are performed (i) in conformance with all applicable federal and State laws and regulations, and (ii) in a good and workmanlike manner.

(d) County shall promptly pay all claims, especially those secured by a mechanic's or materialman's lien against the District Property or any interest therein, for labor or materials furnished or alleged to have been furnished to or for County at or for use on the Encroachments thereto.

6. **Placement, Maintenance and Repair.** County shall not enter the District Property for any reason, including the installation, placement, maintenance, or repair of the Encroachment, without the prior written consent of the District. Furthermore, County shall not install or place the Encroachment until the manner of placement, the plans and specifications for such placement, and the description of materials to be used have been submitted in writing to the District and have been approved in writing by the District. The placement, installation, maintenance, repair, and replacement of the Encroachment shall be at the sole cost and expense of the County. In no event shall the District be responsible for any damage to such Encroachment, whether caused by District maintenance and cleaning operations, or otherwise. County further agrees at all times to keep the Encroachment in a state of good and safe repair, at County's sole cost and expense. Moreover, County shall be responsible for all costs and expenses associated with replacing, restoring, or relocating the Encroachment if District, at the sole discretion of District, repairs, replaces, updates, or maintains District facilities or the District Property.

Notwithstanding anything else to the contrary in this Agreement, District shall at all times have the right (but not the obligation) to stop the use of the Encroachment if District determines it to be in an unsafe condition. Upon such cessation and at County's sole cost and expense, County shall take actions determined by the District to be necessary to bring the Encroachment into a good and safe condition. If within a reasonable time County fails to take such necessary actions to bring the Encroachments into a good and safe condition, then District may terminate County's rights under this Agreement by providing notice to the County of such termination.

7. **Inspection.** County agrees to notify the District's Superintendent at least two (2) business days before Work commences within the District's Property. At the County's sole cost and expense, the District may inspect the Work to ensure that the Project, as built, conforms to the Plans and Specifications. Such inspections may extend to all phases of the Work, including, but not limited to, the preparation of materials to be used. Failure of the District to detect any deviation from the Plan and Specifications, deficient materials or workmanship or any other defects in the Work shall not (i) release the County or Contractor from any obligation to correct such defects or from any liability resulting therefrom, or (ii) impose any liability on the District.

8. **Rights Not Exclusive.** The rights granted herein by the District are not exclusive and shall not in any way interfere with District's use of the District Property. The District reserves the right to the full and beneficial use and enjoyment of the District Property for any and all District purposes. To maintain District facilities, District shall have the right to use any Encroachments placed, maintained, or constructed. County shall construct, operate, or maintain the Encroachments in a manner that does not diminish or restrict the ability of the District to use District Property for any District purpose and County shall have no right to encroach upon the District Property other than as expressly granted by the District pursuant to this Agreement. County shall have no right to increase the extent of the encroachment into the District Property as granted within this Agreement, without the express written authorization of the District.

9. **Term.** The term of this Agreement shall be ten (10) years, commencing on the Effective Date of this Agreement and ending on the tenth (10th) anniversary thereof. After the initial ten (10) years, the term of this Agreement is automatically extended for additional one (1)-year terms, unless at least thirty (30) days prior to the end of the previous term either Party gives written notice of termination. Notwithstanding any other provision in this Agreement to the contrary, it is understood and agreed by both Parties that the rights granted hereunder are permissive in character, and that the District shall have the right to terminate the right to encroach granted hereunder in the sole and exclusive judgment of the District whenever the District determines it is necessary to do so to protect the interests of the District or the public, or to protect and preserve the property or facilities of the District. Notwithstanding the above, District may terminate this Agreement upon the termination of use or abandonment of the Encroachments. Abandonment shall occur upon the non-use of the Encroachments for one (1) year. Upon any termination of this Agreement, County shall promptly stop the use of and remove said Encroachments from the District Property, at County's sole cost and expense.

10. **Indemnity; Liability Insurance.** County agrees to indemnify, defend, and hold the District and its directors, officers, employees, agents and consultants, harmless from and against any and all claims, demands, losses, obligations, damages, liabilities, causes of action, costs, and expenses (including without limitation, reasonable attorneys', paralegals, and other professionals fees and costs) arising out of or in connection with any rights granted herein, the placement of the Encroachments as permitted by this Agreement, or its use, operation, maintenance, or repair, including, without limitation, all damage to property of the County or District, District Utilities, and personal injury and property damage to third parties.

The Parties acknowledge that the County is self-insured. The Parties further understand that the County's general contractor has procured and shall maintain for the duration of the project, Commercial General Liability (CGL) insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Encroachments, condition of the District Property, and any improvements thereon. Coverage shall be at least as broad as Insurance Services Office (ISO) Form CG 0001 covering on an "occurrence" basis, with limits no less than Two Million Dollars (\$2,000,000) per occurrence for bodily injury, personal injury and property damage. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. The District and its directors, officers, employees, agents and consultants, are to

be covered as additional insured's on the CGL. Upon demand, at the sole discretion of the District, and as a condition to the continued exercise of the rights granted hereunder, County may be required to provide the District with a certificate of such general contractor's insurance naming the District and its directors, officer, employees, agents and consultants. The insurance policy required by this clause shall be endorsed to state that coverage shall not be cancelled except after thirty (30) days prior written notice (10 days for non-payment) has been provided to the District.

11. **Notices.** All notices required or permitted by this Agreement or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified, or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission and shall be deemed sufficiently given if served in a manner specified in this Section 11. The addresses and addressees noted below are that Party's designated address and addressee for delivery or mailing of notices.

To District: Alta Irrigation District
289 North L Street
Dinuba, California 93618
Telephone: (559) 591-0800
Facsimile: (559) 591-5190

To County: County of Tulare
Resource Management Agency
5961 S. Mooney Blvd. Visalia, CA 93277
Telephone: (559) 624-7000
Facsimile: (559) 730-2653

Either Party may, by written notice to the other, specify a different address for notice. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, three (3) days after the postmark date. If sent by regular mail, the notice shall be deemed given forty-eight (48) hours after it is addressed as required in this section and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantee next day delivery shall be deemed given twenty-four (24) hours after delivery to the Postal Service or courier. Notices transmitted by facsimile transmission shall be deemed delivered upon telephone or similar confirmation of delivery (confirmation report from fax machine is sufficient), provided a copy is also delivered via personal delivery or mail. If notice is received after 4:00 p.m. or on a Saturday, Sunday, or legal holiday, it shall be deemed received on the next business day.

12. **Entire Agreement.** This Agreement and items incorporated herein contain all of the agreements of the Parties with respect to the matters contained herein, and no prior agreement or understanding pertaining to any such matter shall be effective for any purpose.

13. **Amendments.** No provisions of this Agreement may be amended or modified in any manner whatsoever except by an agreement in writing duly authorized by representatives of both Parties.

14. **Successors.** The terms, covenants, and conditions of this Agreement shall be binding upon and shall inure to the benefit of the heirs, executors, administrators and assignees of the respective Parties. The Parties acknowledge that the County intends to assign its interests in the Encroachment to the Yettem-Seville Community Services District, or whatever entity that acquires the interest in the Encroachment, and that such assignment is subject to this Agreement.

15. **Assignment.** County may assign any or all of its rights and obligations under this Agreement. The County shall remain directly liable to the District for the performance of any and all provisions of this Agreement or any agreement relating hereto, until it assigns its entire interest in the Encroachment, subject to this Agreement, to the Yettem-Seville Community Services District, or whatever entity that acquires the County's entire interest in the Encroachment.

16. **Governing Law.** This Agreement and all documents provided for herein and the rights and obligations of the Parties hereto shall be governed in all respects, including validity, interpretation and effect, by the laws of the State of California (without giving effect to any choice of law principles).

17. **Severability.** If any term or provision of this Agreement is, to any extent, held invalid or unenforceable, the remainder of this Agreement shall not be affected.

18. **Headings.** The subject headings of the sections of this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of the provisions herein.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

“County”

“District”

COUNTY OF TULARE,
a political subdivision of the State of California

ALTA IRRIGATION DISTRICT,
a California irrigation district

By _____
Kuyler Crocker, Chairman
County of Tulare Board of Supervisors

By _____
Jack Brandt, President

By _____
Chad B. Wegley, Secretary

ATTEST

County Administration Officer/Clerk of the Board

By _____
Deputy Clerk

Approved as to Form
County Counsel

By 
Deputy 2019578 7/26/19

Date _____

EXHIBIT “A”

Encroachment Owner	County of Tulare
Type of Encroachment	HDPE
Purpose of Encroachment	Water Line
Ditch Crossing	Sontag
Diameter / Size	6 inches (Rds 153, 154, 155) 8 inches (Rd 156)
Year Installed	2019
Minimum Vertical Separation	3 feet
Latitude @ Entrance (Sontag, Rd. 156) Longitude @ Entrance (Sontag, Rd. 156)	36.482752° -119.223296°
Latitude @ Exit (Sontag, Rd. 156) Longitude @ Exit (Sontag, Rd. 156)	36.482617° -119.223297°
Latitude @ Entrance (Sontag, Rd. 155) Longitude @ Entrance (Sontag, Rd. 155)	36.482759° -119.225421°
Latitude @ Exit (Sontag, Rd. 155) Longitude @ Exit (Sontag, Rd. 155)	36.482623° -119.225422°
Latitude @ Entrance (Sontag, Rd. 154) Longitude @ Entrance (Sontag, Rd. 154)	36.482743° -119.227677°
Latitude @ Exit (Sontag, Rd. 154) Longitude @ Exit (Sontag, Rd. 154)	36.482613° -119.227675°
Latitude @ Entrance (Sontag, Rd. 153) Longitude @ Entrance (Sontag, Rd. 153)	36.482758° -119.229934°
Latitude @ Exit (Sontag, Rd. 153) Longitude @ Exit (Sontag, Rd. 153)	36.482618° -119.229935°

EXHIBIT "B"

Real property in the County of Tulare, State of California, described as follows:

Sontag Ditch (Road 156 and Seville Avenue)

EXHIBIT “C”

Plan and Profiles Views of Encroachments (not part of recording; see project folder at Alta Irrigation District, 289 North “L” Street, Dinuba CA. 93618).