ATTACHMENT B

AGREEMENT WITH ALTA IRRIGATION DISTRICT FOR AVENUE 416 WIDENING PROJECT SERVICES

AGREEMENT BETWEEN COUNTY OF TULARE AND ALTA IRRIGATION DISTRICT FOR AVENUE 416 WIDENING PROJECT SERVICES

THIS AGREEMENT BETWEEN COUNTY OF TULARE AND ALTA IRRIGATION DISTRICT FOR AVENUE 416 WIDENING PROJECT SERVICES (this "Agreement") is made and entered into as of the _____ day of _____, 2015 between ALTA IRRIGATION DISTRICT, a California irrigation district, hereinafter referred to as "District," and the COUNTY OF TULARE, a political subdivision of the State of California, hereinafter referred to as "County," with regard to the County's Avenue 416 Widening Project, hereinafter referred to as the " Road Widening".

RECITALS

WHEREAS, the Road Widening requires the relocation and replacement of a portion of the District's Caesar Ditch Pipeline and Headgate Structure, the AB Clark Box Culvert and Turnout Relocation, between Road 48 and Road 52 in the County of Tulare; and Uphill Pipeline Structure Relocation, and Windsor and McBriar Pipelines, and Traver Turnout Relocation (collectively referred to herein as the "Mitigation"); and

WHEREAS, the Mitigation that arises from the Road Widening includes the District's designing and constructing the Caesar Pipeline and Headgate Structure, Traver and AB Clark Turnout Relocation and Uphill Pipeline Structure Relocation, in accordance with the construction and engineering standards of District (hereinafter referred to as the "District Work"), and the County's designing and constructing the AB Clark Box Culvert, and the upgrading of the Windsor and McBriar Pipelines, in accordance with the construction and engineering standards of the District and County (hereinafter referred to as the "County Work"), and

WHEREAS, the District has the expertise and experience to design the District Work, to prepare plans and specification therefor, to estimate the costs of construction thereof, to complete some construction with its own forces, to advertise for bids to construct the remaining improvements, and to inspect the work of the construction; and

WHEREAS, the County has the expertise and experience to design the County Work, to prepare plans and specifications therefor, to estimate the costs of construction thereof, to advertise for bids to construct the County Work, and to inspect the work of the construction; and

WHEREAS, County and District desire that each complete their respective obligations set forth above; and

WHEREAS, County shall reimburse the District for the costs District incurs in completing the District Work, and County and District shall enter into an escrow agreement requiring County to deposit the construction cost for the District Work in an escrow account; and

WHEREAS, County and District have a common power under Section 6500 *et seq.* of the California Government Code to enter into and carry out the terms of this Agreement.

NOW, THEREFORE, IT IS AGREED as follows:

1. **SERVICES BY DISTRICT.** District shall procure engineering services necessary for District to perform its obligations hereunder with the goal of commencing construction of the District Work on or before September 1, 2015 and completing construction of the District Work on

or before December 31, 2015. No later than sixty (60) calendar days after receiving from the County authorization to proceed, District shall deliver to County a preliminary estimate of the costs of constructing the District Work for the County's review and approval (hereinafter referred to as the ("Preliminary Estimate"). If County issues a Notice to Proceed in accordance with Paragraph 2 below, on or before April 15, 2015, District shall deliver for review to County the plans and specifications for construction of the District Work along with the proposed documents to advertise for construction bids. On or before April 30, 2015, County shall approve the final version of those documents and issue all permits and approvals necessary to complete that construction. On or before July 1, 2015, and if County has timely given its approval and issued those permits and approvals, District shall advertise for bids to construct the Caesar Pipeline in accordance with those plans, specifications, permits and approvals. District shall observe all applicable Local, State, and Federal regulations for construction, advertising, and bidding procedures. Prior to award of the construction contract, District shall notify County of the apparent successful bidder and the bid price. After the award of the construction contract to the successful bidder, District shall provide construction oversight and inspection services as well as other services incidental to the construction of the Caesar Pipeline to assure that the construction is completed as specified. Upon substantial completion of the Caesar Pipeline, District shall (i) quitclaim its existing pipeline easement and property rights in the proposed road right of way to the County per Exhibit 1, and, in exchange, the County shall convey to the District easements and right of ways for the Caesar Pipeline in form and substance approved by District and (ii) disclaim any right to use or maintain the existing open AB Clark Ditch

easement, which ditch will be upgraded to a box culvert as part of the AB Clark box culvert improvements included in the County Work.

2. **COMPENSATION TO DISTRICT; ESCROW; CONSTRUCTION COSTS.** Monthly invoices for the engineering costs incurred by District to carry out its obligations hereunder shall be delivered to County for reimbursement as provided for in this Agreement. Within sixty (60) days after receipt of an invoice from the District, County shall reimburse District for the full amounts stated in that invoice. The cost of services provided by the District, and the engineering and design service costs incurred prior to issuance of the Notice of Award for construction of the District Work is estimated not to exceed Ninety Thousand Dollars ($90,000.00), and the District shall secure County approval prior to incurring any costs in excess of such amount .

On or before the issuance of the Notice of Award for construction of the County Work, District and County shall enter into an agreement(s) (i) for construction of each component improvement included in the County Work, and (ii) to establish an escrow with Fresno Escrow, Inc. or an escrow company acceptable to County and District, hereinafter referred to respectively as the "Escrow" and as the "Escrow Company." Prior to issuance of any Notice of Award for construction of any portion of the County Work, County shall deposit into the Escrow funds sufficient, to reimburse District for (i) the costs of the services District provides to review and plans and specifications for construction of the County Work in accordance with this Agreement, (ii) a District administrative fee equal to five percent (5%) of the sum of (a) the estimated cost of the District Work and County Work as approved by County and District, and (b) the total estimated cost of services provided by the District

hereunder, and (iii) the cost of construction of District Work and County Work, including, the cost of construction management, engineering or inspection services provided by District, and (iv) a contingency fund equal to ten percent (10%) of the total of all those costs and fees described in items(i) through(iv) inclusive, set forth above. County shall pay for all eligible costs incurred by District including, without limitation, the five percent (5%) District administrative fee and the cost of project construction pursuant to this Agreement based on the Project Estimate that is to be approved by County and District. In the event District presents one or more invoices to County or to the Escrow Company more than one hundred twenty (120) days after District files a Notice of Completion of the construction of the District Work and County Work, County shall have discretion to pay or not to pay the amounts stated in those invoices. All disbursements from the escrow account shall be requested by the District and approved by the County prior to the release of funds from the escrow account.

3. **COUNTY RESPONSIBILITIES.** County shall be the lead agency for the Road Widening, County Work and District Work, and shall, at its sole cost and expense, (i) complete all environmental reviews, (ii) obtain for the District exclusive rights-of-ways, temporary construction easements and perpetual pipeline easements, (iii) provide for all landowner improvements, all utility relocations, and soil testing, (iv) provide to District all relevant existing survey information, aerial photography, additional surveys as required, and (v) obtain appropriate federal and State permits as necessary to complete construction of the Road Widening, County Work and District Work. In order to meet the construction commencement goal of September 1, 2015, County shall issue to District on or before

January 10, 2015 a notice to proceed with the District Work. County shall provide to District all design surveys, right-of-way information and aerial photographs with respect to this Agreement. County, at County's sole expense, may inspect the work to ensure that the County Work, as built, conforms to the plans and specifications therefor. Such inspection may extend to all phases of the County Work, including but not limited to, the preparation of materials to be used. Failure of County to detect any deviation from those plans and specifications, deficient materials or workmanship, or any other defect in the work shall not release any contractor from its obligation to correct such defects or from any liability resulting therefrom.

4. **INDEMNITY.** Pursuant to Sections 895 through 895.8 of the Government Code, each party shall indemnify and hold harmless the other party from any loss, damage or liability arising out of the acts or omissions, in the performance of obligations and services, pursuant to this Agreement.

5. **AUTHORIZED REPRESENTATIVES.** District's General Manager and County's Resource Management Agency Director, or such designees as they may select, shall carry out the terms of this Agreement.

6. **NOTICE.** Any notice required under the terms of this Agreement shall be deemed received on the date actually delivered if by personal delivery, or on the second business day following deposit in the United States mail, postage prepaid, addressed as follows:

   A. DISTRICT: Alta Irrigation District
   Chris M. Kapheim, General Manager
   289 North L. Street
   Dinuba, CA 93618
   Phone (559) 591-0800
   FAX (559) 591-5190

B. **COUNTY:** County of Tulare
Director of Resource Management Agency
5961 South Mooney Blvd.
Visalia, CA 93277
Phone (559) 733-6291
FAX (559) 730-2653

The parties to which notice is to be given may be changed, from time to time, by action of either party, provided that it gives the other party to this Agreement written notice of said change.

7. **ENTIRE AGREEMENT.** This Agreement represents the entire agreement between District and County as to its subject matter and no prior oral or written understanding shall be of any force or effect. No part of this Agreement may be modified without the written consent of both parties.

8. **CONSTRUCTION.** This Agreement reflects the contributions of both parties and accordingly the provisions of Civil Code section 1654 shall not apply to address and interpret any uncertainty.

9. **NO THIRD PARTY BENEFICIARIES INTENDED.** Unless specifically set forth, the parties to this Agreement do not intend to provide any other party with any benefit enforceable legal or equitable right or remedy.

10. **GOVERNING LAW.** This Agreement shall be interpreted and governed under the laws of the State of California without reference to California conflicts of law principles.

11. **WAIVERS.** The failure of either party to insist on strict compliance with any provision of this Agreement shall not be consider a waiver of any right to do so, whether for that breach or

any subsequent breach. The acceptance by either party of either performance or payment shall not be considered to be a waiver of any proceeding breach of the Agreement by the other party.

12. **RECITALS.** The Recitals in this Agreement are fully incorporated into and are integral parts of this Agreement.

13. **CONFLICT WITH LAWS OR REGULATIONS/SEVERABILITY.** This Agreement is subject to all applicable laws and regulations. If any provisions 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.

14. **FURTHER ASSURANCES.** Each party shall execute any additional documents and perform any further acts as may be reasonably required to affect the purposes of this Agreement.

15. **ASSURANCES OF NON-DISCRIMINATION.** District and District's consultants shall not discriminate in employment or in the provision of services on the basis of any characteristic or condition upon which discrimination is prohibited by state or federal law or regulation.

16. **DISPUTE RESOLUTION.** If a dispute arises out of or relating to this Agreement, or the breach thereof, and if said dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by nonbinding mediation before resorting to litigation or some other dispute resolution procedure, unless the parties mutually agree otherwise. The mediator shall be mutually selected by the parties, but in the case of

disagreement, the mediator shall be selected by lot from among two nominations provided by each party. All costs and fees required by the mediator shall be split equally by the parties otherwise each party shall bear its own costs of mediation. If mediation fails to resolve the dispute within thirty (30) days, after the date one party gives notice to the other party of the need for mediation, either party may pursue litigation to resolve the dispute.

17. **EFFECTIVE DATE.** This Agreement shall become effective on the date first above written.

18. **TERM OF AGREEMENT.** This Agreement shall terminate on January 31, 2018 unless extended by both the County and the District.

IN WITNESS THEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

COUNTY OF TULARE

By _____
Chairman, Board of Supervisors

ATTEST: JEAN M. ROUSSEAU
County Administrative Officer/Clerk

By _____
Deputy Clerk

Approved as to form
County Counsel

By _____
Deputy County Counsel
12/17/14 20141765

ALTA IRRIGATION DISTRICT

By _____
Norman Waldner, President

By _____
Chris M. Kapheim, Secretary

Approved as to form
District's Counsel

By _____
Douglas B. Jensen