

**RHODES-FINE DITCH – CULVERT EXTENSION AND DITCH RELOCATION
AGREEMENT**

THIS AGREEMENT (this “AGREEMENT”) is made effective as of _____, 2018, by and between the PORTERVILLE IRRIGATION DISTRICT (“DISTRICT”), an irrigation DISTRICT established under the laws of the State of California, as Trustee and Agent for RHODES-FINE DITCH COMPANY, and the COUNTY OF TULARE, a political subdivision of the State of California (“COUNTY”).

RECITALS

A. WHEREAS, DISTRICT is the trustee of the “FACILITIES”, which include such open canals and pipelines owned by Rhodes-Fine Ditch Company and operated and managed by DISTRICT as trustee and agent, as more particularly described and depicted in Exhibit “A”, which is incorporated herein by this reference.

B. WHEREAS, COUNTY is undertaking the Avenue 152 Safety Improvement PROJECT (the “PROJECT”) to install safety devices including traffic signal in order to improve safety along the corridor between CA-99 and Road 222 near Porterville, CA.

C. WHEREAS, in connection with the PROJECT, COUNTY will be adding left turn lanes on Avenue 152 that will shift the north edge of pavement closer to the FACILITIES.

D. WHEREAS, COUNTY desires to mitigate the effects of said encroachment by replacing the existing ditch that the DISTRICT uses as part of its water conveyance system (as shown in Exhibit “A”) with a buried pipe and related improvements (the “IMPROVEMENTS”), described and depicted in Exhibit “B”, incorporated herein by reference (the “PLANS”).

E. WHEREAS, COUNTY may hire a contractor to construct the IMPROVEMENTS on COUNTY's behalf (the "CONTRACTOR"), which CONTRACTOR shall be a general CONTRACTOR and their sub-contractors, as applicable, hired to construct the IMPROVEMENTS, and which CONTRACTOR shall hold the applicable, current, valid license from the State of California for the services performed.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

ARTICLE I

THE WORK

1.1 Commencement and Completion. COUNTY agrees that the CONTRACTOR shall begin the construction of the IMPROVEMENTS on a date approved by the DISTRICT; provided that the construction of the IMPROVEMENTS shall not interfere with DISTRICT's use of the FACILITIES for conveyance and delivery of water. In connection with DISTRICT's priority as set forth herein, CONTRACTOR shall coordinate with DISTRICT on the timing of work to be performed on the IMPROVEMENTS. Time is of the essence in completing the PROJECT.

1.2 The Work. COUNTY agrees to construct the IMPROVEMENTS in strict conformity with the IMPROVEMENTS and PLANS shown in the Exhibit B. COUNTY agrees that it and/or the CONTRACTOR shall furnish all tools, labor, materials, equipment, transportation, services, and supplies necessary to construct and complete the IMPROVEMENTS.

1.3 Protection of Public Utilities. COUNTY shall be responsible for the removal and relocation of any public utility FACILITIES within the PROJECT, and for the repair of any such FACILITIES damaged during the PROJECT. If DISTRICT learns of the existence

of any utility FACILITIES not identified on the PLANS or in the Specifications, DISTRICT shall immediately notify COUNTY in writing. Email is acceptable too.

1.4 Workmanship. All workmanship shall conform to the best trade practices, and particular attention shall be given to the appearance of exposed work.

ARTICLE II

ACCEPTANCE

2.1 Inspection. Upon completion of the IMPROVEMENTS, DISTRICT and COUNTY shall jointly inspect the same to confirm that the CONTRACTOR has constructed the IMPROVEMENTS in the manner specified in the PLANS and as otherwise required by the terms and conditions of this AGREEMENT. DISTRICT shall have no obligation to accept the IMPROVEMENTS to the extent they are constructed in a manner that does not conform to the requirements of this section or Section 1.1.

2.2 Restoration. COUNTY shall ensure or cause the CONTRACTOR to ensure that the area in vicinity of the IMPROVEMENTS is restored as nearly as possible to the condition it would have been in but for the construction of the IMPROVEMENTS.

2.3 As-Builts. COUNTY shall furnish DISTRICT with as-built drawings of the IMPROVEMENTS.

2.4 Acceptance. Upon the satisfaction of the foregoing, COUNTY shall quitclaim the IMPROVEMENTS to DISTRICT, DISTRICT shall adopt a certificate of acceptance thereof, and the parties hereto shall cause to be recorded in the Tulare COUNTY Recorder's Office a Notice of Completion of the IMPROVEMENTS. The quitclaim deed shall be substantially similar to that which is provided in Exhibit C to this AGREEMENT.

ARTICLE IV

WARRANTY

4.1 For a period of one (1) year following the recordation of the Notice of Completion referenced above, COUNTY shall warrant the condition of the IMPROVEMENTS against any patent or latent defects, and shall cause CONTRACTOR to do the same, and to the fullest extent allowed under applicable law shall indemnify DISTRICT from all losses and damages arising from the failure of any reason of material or construction deficiencies during said warranty period. Thereafter DISTRICT will not hold COUNTY or the CONTRACTOR liable for any work or cost related to any future maintenance or operation of the FACILITIES including the IMPROVEMENTS.

ARTICLE V

INSURANCE

5.1 COUNTY shall cause the CONTRACTOR to procure and maintain general liability insurance and add DISTRICT as an insured. The COUNTY's insurance requirements usually range between \$2,000,000 to \$4,000,000 depending on the PROJECT cost and the existing liabilities during construction works.

ARTICLE VI

MISCELLANEOUS

6.1 Effect of Headings. The subject headings of the articles, paragraphs, and subparagraphs of this AGREEMENT are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.

6.2 Entire Agreement. The recitals and the exhibits to this AGREEMENT

fully incorporated into and are integral parts of this AGREEMENT. This AGREEMENT constitutes the entire AGREEMENT between the parties pertaining to the subject matter contained in it and supersedes all prior and contemporaneous AGREEMENTs, representations, and understandings of the parties. No supplement, modification, or amendment of this AGREEMENT shall be binding unless executed in writing by all of the parties hereto.

6.3 Waiver. Waiver of any breach of this AGREEMENT by any party hereto shall not constitute a continuing waiver or a waiver of any breach of the same or another provision of this AGREEMENT.

6.4 Counterparts. This AGREEMENT may be executed in any number of counterparts and each such counterpart shall be deemed to be an original instrument, all of which together shall constitute one and the same instrument.

6.5 Binding Effect. This AGREEMENT shall be binding upon and inure to the benefit of the heirs, executors, administrators, assigns, and successors of the parties hereto.

6.6 Governing Law. This AGREEMENT shall be governed by the laws of the State of California.

6.7 Construction. All words used in this AGREEMENT, shall be construed to include the plural as well as the singular number and vice versa. Words used herein in the present.

6.8 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 paragraph. The addresses noted below shall be that party's address for delivery or mailing of notices. 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, two (2) days after the postmark thereon. If sent by regular mail the notice shall be deemed given forty-eight (48) hours after the same mailed with postage prepaid and addressed as required herein. 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 of the same to the Postal Service or courier. Notices transmitted by facsimile transmission or similar means shall be deemed delivered upon telephone confirmation of receipt (confirmation report from fax machine is sufficient), provided a copy is also delivered via delivery or mail. If notice is received after 5:30 P.M. On Monday to Thursday or 12 noon on Friday or on a Saturday, Sunday or holiday as recognized by the COUNTY, it shall be deemed received on the next business day.

To DISTRICT at:

Porterville Irrigation District

22086 Ave 160

Porterville, California 93257

Fax: (559) 784 - 6733

To COUNTY at:

COUNTY of Tulare

Resource Management Agency

5961 S. Mooney Blvd.

Visalia, CA 93277

Fax: (559) 730 - 2653 Confirming,

(559) 624-7000

or at such other address as either party may, by like notice, designate to the other party in writing.

6.9 Parties in Interest. Nothing in this AGREEMENT, whether expressed or

implied, is intended to confer any rights or remedies on any persons other than the parties hereto and their respective successors and assigns, nor is anything in this AGREEMENT intended to relieve or discharge the obligation or liability of any third person to any party to this AGREEMENT, nor shall any provision give any third person any right of subrogation or action over and against any party to this AGREEMENT.

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

"COUNTY"

THE COUNTY OF TULARE
DISTRICT, political subdivision of the State of California

By _____
Pete Vander Poel, Chairman
COUNTY of Tulare Board of Supervisors

"DISTRICT"

Porterville Irrigation
Trustee of Rhodes Fine Ditch
a California irrigation DISTRICT

By Eva Bork,
President

By [Signature]
Secretary

ATTEST

COUNTY Administration Officer/Clerk of the Board

By _____
Deputy Clerk

Approved as to Form
COUNTY Counsel

By [Signature]
Deputy

Date 2/13/16

Exhibit A

Facilities

NO.	REVISIONS
1	ISSUED FOR CONSTRUCTION
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COUNTY OF TULARE
RESOURCE MANAGEMENT AGENCY
3565 SOUTH WOODWAY BLVD.
TULARE, CA 93277
(819) 834-7000
WWW.TULARECOUNTY.CA.GOV/TDMA




EXHIBIT - A
IRRIGATION FACILITIES
AVE 152 SAFETY
IMPROVEMENT PROJECT
TULARE COUNTY

EX-A

1 of 3

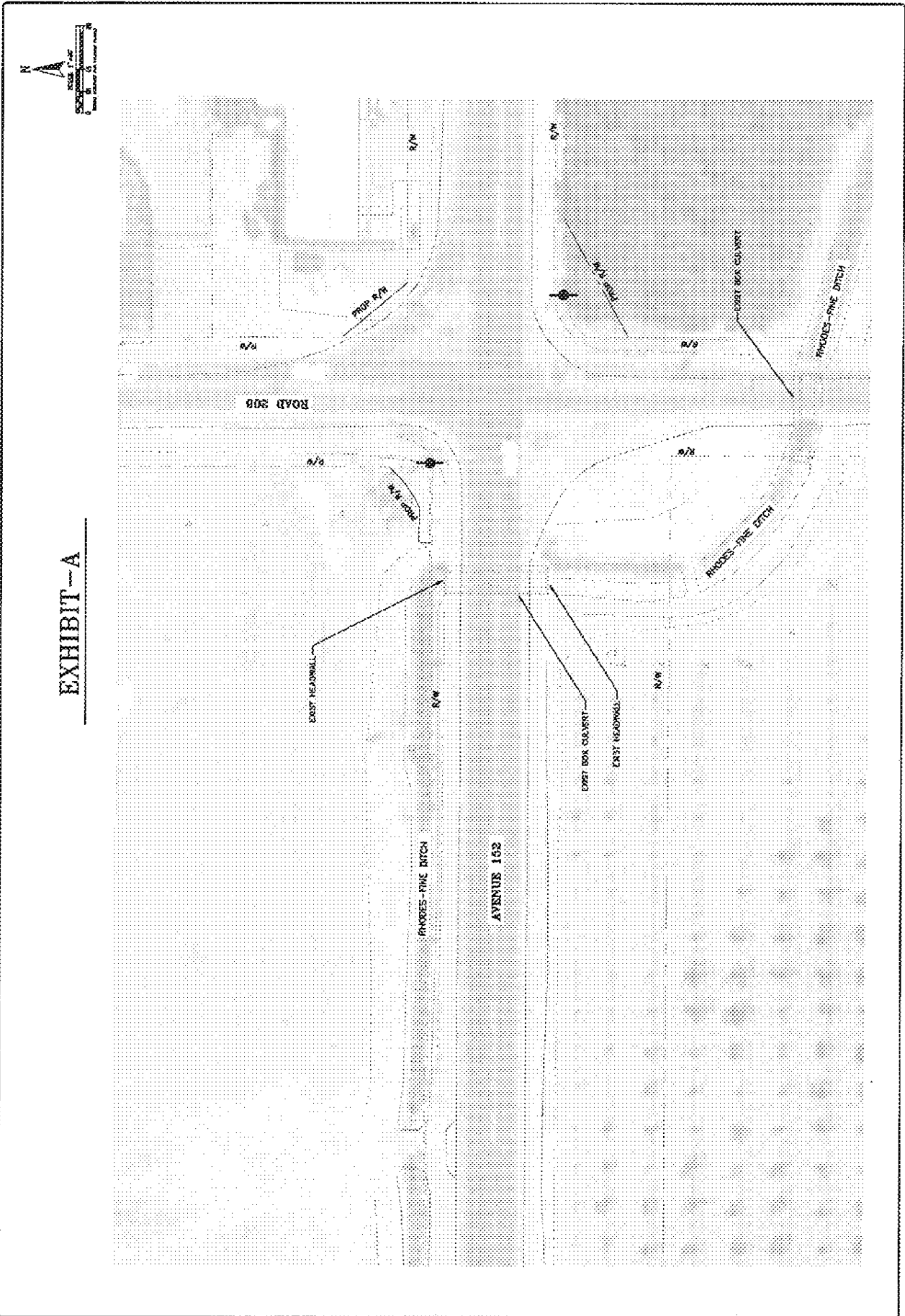


Exhibit B

Improvement

Plans

Exhibit C

Quitclaim Deed

Example

Recording Requested by:
County Of Tulare

When recorded, mail to:
General Services Property Management
5953 S Mooney Blvd
Visalia, CA 93277

(This space for Recorders use only.)

No recording fee required; this document is exempt from fee pursuant to Sections 6103 and 27383 of the California Government Code. This deed is exempt from tax pursuant to Section 11922 of the California Revenue and Taxation Code.

QUITCLAIM DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the **County of Tulare**, does hereby remise, release and forever quitclaim to **Porterville Irrigation District, an irrigation district established under the laws of the State of California, as Trustee and Agent for Rhodes –Fine Ditch Company**, the pipe connection to the existing box culvert at the intersection of the Avenue 152 and Road 208, located in the County of Tulare, State of California. Said modifications more particularly described as follows:

A pipe connection to connect PVC pipe to the north of the existing box culvert which will allow to reroute the existing Rhodes-Fine Ditch to the north through buried PVC pipe. Detailed shown on Exhibit "A".

Exhibit "A"

Dated this _____ day of _____, 20__

GRANTOR
COUNTY OF TULARE

BY _____

STATE OF CALIFORNIA
COUNTY OF TULARE

On _____, 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 capacities, and that by his/her/their signature(s) on the
instrument the person(s), or the entity 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 _____