

COPY

R E C E I V E D  
FEB 3 2000  
Ramy/Wash #1

CONSTRUCTION SERVICES AGREEMENT

RICE CREEK  
WATERSHED DISTRICT

This Agreement, dated 1-20-2000, is made and entered into between the Rice Creek Watershed District (herein called "OWNER"), and B.U.F. INC., a corporation (herein called "CONTRACTOR"), for the Anoka 10-22-33 AND Ramsey Co. 8, the Project.  
Ramsey/Wash JDI

Montgomery Watson Americas, Inc., is acting on behalf of the OWNER as the ENGINEER on this project.

OWNER and CONTRACTOR have agreed that CONTRACTOR will perform the Services set forth below, which are part of the CONTRACT identified above. The Services are covered by this AGREEMENT and any attachments or schedules. This AGREEMENT supersedes all prior agreements and understandings, constitutes the entire agreement between CONTRACTOR and OWNER and may only be changed by written amendment executed by both parties.

1. SCOPE OF SERVICES

During the term of this Agreement, CONTRACTOR shall furnish the services set forth in the Schedule A, attached hereto and made a part hereof. Such services shall be performed by individuals as employees of CONTRACTOR, an independent Contractor, and not as employees of OWNER.

2. TERM OF AGREEMENT AND TIME OF PERFORMANCE

The agreement shall commence on the date first stated above and the CONTRACTOR is authorized to commence performance of the services as of that date. The AGREEMENT terminates on the 31st day of December, ~~2000~~ The CONTRACTOR shall complete the services covered by this AGREEMENT in accordance with the time schedule attached hereto, including any intermediate milestones and/or phase submittals. In the event that no time schedule is attached hereto, then the services shall be completed prior to the termination date above.

3. PAYMENT RATES AND BILLING

a. As compensation for services to be performed by CONTRACTOR, OWNER will pay CONTRACTOR the amount set forth in the Schedule B attached hereto and made part of this Agreement. OWNER shall not have any liability for any other expenses or costs incurred by CONTRACTOR, unless otherwise provided in the Schedule.

b. CONTRACTOR shall keep accurate records of the time expended by it. Payment for services performed by CONTRACTOR shall be made by OWNER upon the submission by CONTRACTOR of invoices or time statements to OWNER as follows: Work shall be paid on a time and materials or lump sum basis in accordance with Schedule B.

c. Invoices submitted by CONTRACTOR will:

1. Accurately describe services rendered during the invoice period, including hours and respective dates of performance and any reports submitted or percent of work completed during the invoice period, as determined by CONTRACTOR and verified by OWNER.

2. Identify any other authorized expenses incurred hereunder; and

3. Make reference to this Agreement or otherwise identify the invoice in such manner as OWNER may reasonably require.

d. CONTRACTOR shall not take any action hereunder which could cause the amount for which OWNER would be obligated to CONTRACTOR to exceed the sum of \$ 6,800. For other than lump sum (fixed price) Agreements, CONTRACTOR shall advise OWNER in writing when costs incurred under this Agreement are equal to 75% of the aforesaid sum. Notwithstanding any other provisions of this Agreement, OWNER shall not be obligated to pay to CONTRACTOR any amount in excess of the aforementioned sum for quantities supplied or performed, provided however that this sum may be increased from time-to-time by OWNER in writing.

4. LIENS

CONTRACTOR will promptly pay for all services, labor, and material, and equipment used or employed in the Scope of Services, and will maintain all materials, equipment, structures, buildings, premises, and other subject matter hereof, free and clear of mechanic's or other liens. CONTRACTOR will, if requested and upon completion of the Scope of Services and before final payment, furnish OWNER with reasonable evidence that all services, labor, materials, and equipment have been paid for in full.

5. INDEPENDENT CONTRACTOR

CONTRACTOR is an independent contractor and will maintain complete control of and responsibility for its employees, subcontractors, and agents. The CONTRACTOR shall supervise, inspect, and direct the WORK competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the WORK in accordance with the Contract Documents. The CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction and safety precautions and programs incidental thereto. The CONTRACTOR shall be responsible to see that the completed WORK complies accurately with the Contract Documents.

6. DIFFERING SITE CONDITIONS

a. The CONTRACTOR shall notify the OWNER, in writing, of the following unforeseen conditions, hereinafter called differing

site conditions, promptly upon their discovery (but in no event later than 14 days) and before they are disturbed:

1. Subsurface or latent physical conditions at the site of the work differing materially from those indicated, described, or delineated in this Agreement.

2. Unknown physical conditions at the site of the work of an unusual nature differing materials from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement.

b. The Rice Creek Watershed District (ENGINEER) will review the pertinent conditions, determine the necessity of obtaining additional explorations or tests with respect thereto, and advise the OWNER, in writing, of the ENGINEER's findings and conclusions.

c. If the OWNER concludes that because of newly discovered conditions a change in the Contract Documents is required, a Change Order will be issued as provided in Paragraph 18 to reflect and document the consequences of the difference.

d. In each such case, an increase or decrease in the Contract Price or an extension or shortening of the Contract Times, or any combination thereof, will be allowable to the extent that they are attributable to any such difference. If the OWNER and the CONTRACTOR are unable to agree as to the amount or length thereof, a claim may be made therefor as provided in Paragraph 18.

e. The CONTRACTOR's failure to give notice of differing site conditions within 14 days of their discovery or before they are disturbed shall constitute a waiver of all claims in connection therewith, whether direct or consequential in nature.

## 7. INSURANCE

a. The CONTRACTOR will maintain throughout this agreement the following insurance:

1. Workers' compensation insurance in the statutory amount and employer's liability insurance in an amount not less than \$500,000 for all employees engaged in the work.

2. Comprehensive automobile and vehicle liability insurance covering claims for injuries to members of the public and/or damages to property of others arising from use of motor vehicles including onsite and offsite operations, and owned, non-owned, or hired vehicles, with \$1,000,000 combined single limits.

3. Commercial general liability insurance covering claims for injuries to members of the public or damage to property of others arising out of any covered negligent act or omission of CONTRACTOR or of any of its employees, agents, or lower tier subcontractors, with \$1,000,000 per occurrence and in the aggregate.

b. Insurance coverage in items 2 and 3 above will name OWNER and the ENGINEER, and their officials and employees as additional insureds. Such insurance will be the primary coverage to OWNER and the ENGINEER

c. CONTRACTOR and any lower tier subcontractors will provide waivers of subrogation against OWNER, their officers, affiliates, employees, agents, and subcontractors with respect to the insurance listed above.

d. Before commencing work under this agreement, CONTRACTOR will furnish OWNER with certificates of insurance verifying coverages, additional insureds, and waiver of subrogation as set out above. Certificates will also state that the insurance carrier will give OWNER thirty days notice of any insurance cancellation or material alteration. In the event work is performed by a lower tier Subcontractor, CONTRACTOR shall be responsible for any liability arising directly or indirectly out of the work performed that is not otherwise covered by the lower tier Subcontractor's insurance.

## 8. INDEMNITY AND LIABILITY

CONTRACTOR agrees to indemnify, defend, and hold OWNER and ENGINEER and their directors, officers, agents, and employees, harmless from and against any and all liability, claims, suits, loss, damages, costs, and expenses, including but not limited to, attorney's fees and court costs, including all costs of appeals arising out of or resulting from any negligent acts, errors, or omissions, or willful misconduct of CONTRACTOR in the performance of its services and duties hereunder. This indemnification obligation will not be limited in any way by any limitation on the amount or type of insurance carried by CONTRACTOR or by the amount or type of damages, compensation, or benefits payable by or for the CONTRACTOR or any lower-tier CONTRACTOR under Workers' Compensation Acts, Disability Benefit Acts, or other Employee Benefit Acts.

## 9. COMPLIANCE WITH LAWS

To the extent applicable hereto, CONTRACTOR shall in the performance of this Agreement comply with: The Fair Labor Standards Act of 1939 (29 U.S.C. 201-219); The Walsh-Healey Public Contracts Act (41 U.S.C. 35-45); The Contract Work Hours Standards Act - Overtime Compensation (40 U.S.C. 327-330); Laws restraining the Use of Convict Labor; Utilization of Small Business and Small Disadvantaged Business Concerns (Public Law 95-507); all other federal, state and local laws; and all regulations and orders issued under any applicable law, and the following:

a. The Equal Employment Opportunity clause in Section 202 of Executive Order (E.O.) 11246, as amended, and the implementing rules and regulations (41 CFR, Part 60) which are incorporated herein by reference, unless this order is exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of E.O. 11246 or provisions of any superseding Executive Order superseding E.O. 11246. As used in said clause, "Contractor" means "CONTRACTOR"

## 10. GRATUITIES

CONTRACTOR warrants that neither it nor any of its employees, agents or representatives has offered or given any gratuities to OWNER'S employees, agents, or representatives with a view toward securing this Agreement or securing favorable treatment with respect thereto.

## 11. SAFETY

CONTRACTOR will be solely and completely responsible for conditions at the job site or sites relating to safety of its own employees and property during performance of the work. This requirement will apply continuously and not be limited to normal working hours. Safety provisions will conform to U.S. Department of Labor Occupational Safety and Health Act, and equivalent state law, and all other applicable federal, state, county and local laws, ordinances, codes, and any regulations that may be detailed in other parts of this Agreement. Where any of these are in conflict, the more stringent requirement will be followed. The CONTRACTOR's failure to thoroughly familiarize itself with the aforementioned safety provisions will not relieve it from compliance with the obligations and penalties set forth herein.

## 12. DATA

CONTRACTOR agrees that all data and information, including without limitation, computer software, computer data bases, computer software documentation, specifications, designs, drawings, reports, and blueprints, generated in the performance of this Agreement and data and information which are specified to be delivered or which are, in fact, delivered pursuant to this Agreement shall be and remain the sole property of OWNER. CONTRACTOR understands and agrees that all rights under copyright and patent laws under this Agreement belong to OWNER, unless otherwise stated. CONTRACTOR hereby assigns any and all rights under copyright and patent law to OWNER, and agrees to assist OWNER in perfecting the same. CONTRACTOR shall deliver all data and information to OWNER upon OWNER'S request and in any event upon the completion of all work hereunder or the termination or expiration hereof, whichever shall first occur, and shall be fully responsible for the care and protection thereof until such delivery. Except as otherwise provided in this Agreement, said documents shall be delivered to OWNER without additional cost to OWNER.

## 13. PROPRIETARY INFORMATION

a. CONTRACTOR agrees that it will not disclose any proprietary or confidential information whether seen, heard, or in writing from OWNER or any information marked proprietary or confidential and will maintain the identified proprietary or confidential information in confidence for a period of FIVE YEARS from the effective date of this agreement. During this period CONTRACTOR shall not divulge such information to any third party or use such information without the prior written consent of OWNER.

b. It is understood by the parties that this obligation of confidentiality shall not apply to: (i) information which is or becomes published or otherwise becomes generally available to the public through no breach of this Agreement by CONTRACTOR; or (ii) information which CONTRACTOR can show was properly in its possession prior to receipt of the disclosure from OWNER; or (iii) information which was independently developed by CONTRACTOR as demonstrated by competent documentary evidence; or (iv) information which becomes available CONTRACTOR from an independent source without breach of this Agreement or violation of law.

## 14. PERMITS AND LICENSES

CA-1 (Rev9/94) Rice Creek

CONTRACTOR will obtain and pay for all permits and licenses required by law that are associated with CONTRACTOR's performance of the Scope of Services and will give all necessary notices.

## 15. RECORDS

a. OWNER and, if the services to be performed hereunder relate to a Federal Government Contract, the Comptroller General of the United States and the Department or Agency of the Government having cognizance over said Prime Contract, and any of their duly authorized representatives, shall, until the expiration of 3 years after final payment under this Agreement, have access to and the right to examine any directly pertinent books, documents, papers and records of CONTRACTOR involving transactions related to this Agreement.

b. CONTRACTOR warrants that its accounting books and records are kept on a job cost basis in accordance with generally accepted accounting practices and that its overall accounting system is sufficient to sustain an audit by local, State or Federal Audit Agencies. CONTRACTOR agrees that should a local, State or Federal audit disallow CONTRACTOR's costs based on inadequate or insufficient records, CONTRACTOR will reimburse OWNER all such costs disallowed.

## 16. SUBCONTRACTING

Performance of this Agreement may not be subcontracted in whole or in part without the prior written consent of OWNER

## 17. CONTRACTOR'S GENERAL WARRANTY AND GUARANTEE

a. CONTRACTOR warrants and guarantees to OWNER, that all WORK will be in accordance with this Agreement and will not be defective.

b. CONTRACTOR's obligation to perform and complete the work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of work that is not in accordance with the Contract Documents or a release of CONTRACTOR's obligation to perform the WORK in accordance with the Contract Documents.

1. Observations by ENGINEER

2. Recommendation by ENGINEER or payment by OWNER of any progress or final payment;

3. The issuance of a Certificate of Completion by the OWNER;

4. Use or occupancy of the work or any part thereof by the OWNER;

5. Any acceptance by OWNER or any failure to do so;

6. Any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice or acceptability by ENGINEER

7. Any inspection, test, or approval by others; or

8. Any correction of defective Work by OWNER.

18. **CHANGES**

a. OWNER may, by written order only, make changes, revisions, additions, or deletions (collectively hereinafter called "changes) in the Scope of Services.

b. CONTRACTOR will immediately, upon knowledge of any potential changes (including actions, inactions, and written or oral communications) that do not conform to the authorized method of directing changes specified herein, notify OWNER of such changes and will request written disposition

c. CONTRACTOR will not proceed with any changes unless notified to proceed in writing by OWNER.

d. Nothing herein will be construed as relieving CONTRACTOR of its obligations to perform, including without limitation, the failure of the parties to agree upon CONTRACTOR's entitlement to, or the amount of, any adjustment in time or compensation.

e. Any claim by CONTRACTOR for an adjustment under this paragraph must be asserted in writing fully supported by factual information to OWNER, within 30 days from the date of receipt by CONTRACTOR of the written change authorization from OWNER or within such extension of that 30-day period as OWNER, in its sole discretion, may grant in writing at CONTRACTOR's request prior to expiration of said period.

f. If the Scope of Services is reduced by changes, such action will not constitute a claim for damages based on loss of anticipated profits.

19. **SUSPENSION OF SERVICES**

OWNER may, at any time and with or without cause, suspend the services of CONTRACTOR or any portion thereof for a period of not more than 90 days by notice in writing to CONTRACTOR. CONTRACTOR shall resume the services on receipt from OWNER of a notice of resumption of services. CONTRACTOR may be allowed an increase in fee or an extension of time, or both, if CONTRACTOR makes an approved claim therefor as provided in Paragraph 18, herein.

20. **TERMINATION**

a. Termination for Convenience  
All or part of this Agreement may be terminated by OWNER for its convenience. In such event, CONTRACTOR will be entitled to compensation for Services competently performed up to the date of termination and reasonable termination expenses as determined at the discretion of OWNER. CONTRACTOR will not be entitled to compensation for profit on Services not performed.

b. Termination for Default  
OWNER may, by written notice, terminate the whole or any part of the Agreement for default in the event that CONTRACTOR fails to perform any of the Provisions of this Agreement, or fails to make progress so as to endanger performance of the Agreement in accordance with its terms, or, in the opinion of OWNER, becomes financially or legally incapable of completing

the work and does not correct such to OWNER's reasonable satisfaction within a period of 7 working days after receipt of notice from OWNER specifying such failure. If, after notice of termination, it is determined for any reason that CONTRACTOR was not in default or that the default was excusable, the rights and obligation of the parties will be the same as if the notice of termination had been issued pursuant to Termination for Convenience.

OWNER may withhold any compensation attributable to uncorrected defective work or to offset any other claim of OWNER and recover damages as provided; however, OWNER and CONTRACTOR will evaluate the feasibility of resolving any disputes pursuant to an Alternative Dispute Resolution process.

In the event of termination for default, CONTRACTOR will not be entitled to termination expenses.

Regardless of the cause of termination, the CONTRACTOR shall deliver legible copies of all completed or partially completed work products and instruments of service including, but not limited to, laboratory, field, or other notes, log book pages, technical data, computations, reports, designs, and drawings.

The rights and remedies of OWNER provided in this paragraph will not be exclusive and are in addition to any other rights and remedies provided by law or equity or under this Agreement.

21. **FORCE MAJEURE**

Neither party to this Agreement will be liable to the other party for delays in performing the Scope of Services, or for the direct or indirect cost resulting from such delays, that may result from labor strikes, riots, war, acts of governmental authorities, extraordinary weather conditions, or other natural catastrophe, or any other cause beyond the reasonable control of either party.

22. **NOTICES**

Any notice or order provided for in this Agreement shall be considered as having been given, if mailed by registered mail, postage prepaid to:

OWNER  
Rice Creek Watershed District  
3858 Lexington Avenue N., Suite 330  
Arden Hills, MN 55126-8056  
Attn: Ms. Kate Drewry, Administrator

or,

CONTRACTOR  
BVF Inc.  
3177 369<sup>th</sup> Ave NE  
Cambridge, MN 55008

Attn: Dale & Robin Becklin

23. **CONTROLLING LAW**

This Agreement is to be governed by and interpreted in accordance with the laws of the State of Minnesota.

24. **SUCCESSORS AND ASSIGNS**

This Agreement is to be binding on the heirs, successors, and assignees of the parties hereto but is not to be assigned by either party without first obtaining the written consent of the other

25. **SEVERABILITY**

If any term or provision of this Agreement is declared invalid or unenforceable by any court of lawful jurisdiction, the remaining terms and provisions of the Agreement shall not be affected thereby and shall remain in full force and effect.

26. **WAIVER**

The waiver by OWNER of any breach or violation of any term, covenant, or condition of this Agreement or of any provision, ordinance, or law shall not be deemed to be a waiver of any other term, covenant, condition, ordinance, or law or of any subsequent breach or violation of the same or of any other term, covenant, condition, ordinance, or law. The subsequent payment of any monies or fee by OWNER which may become due hereunder shall not be deemed to be a waiver of any preceding breach or violation by CONTRACTOR of any term, covenant, or

condition of this Agreement or of any applicable law or ordinance.

27. **PUBLICITY**

CONTRACTOR will not disclose the nature of its work on the project or engage in any other publicity or public media disclosures with respect to this project without the prior written consent of OWNER.

28. **ENTIRE AND INTEGRATED AGREEMENT**

This document represents the entire and integrated agreement between OWNER and the CONSULTANT and supersedes all prior negotiations, representations, and agreements, either written or oral, between the parties.

29. **ATTACHMENTS**

The following attachments are hereby made a part of this Agreement:

**CONTRACTOR**

By: Tabin L. Beckler  
Title: President  
Date: 1-31-00

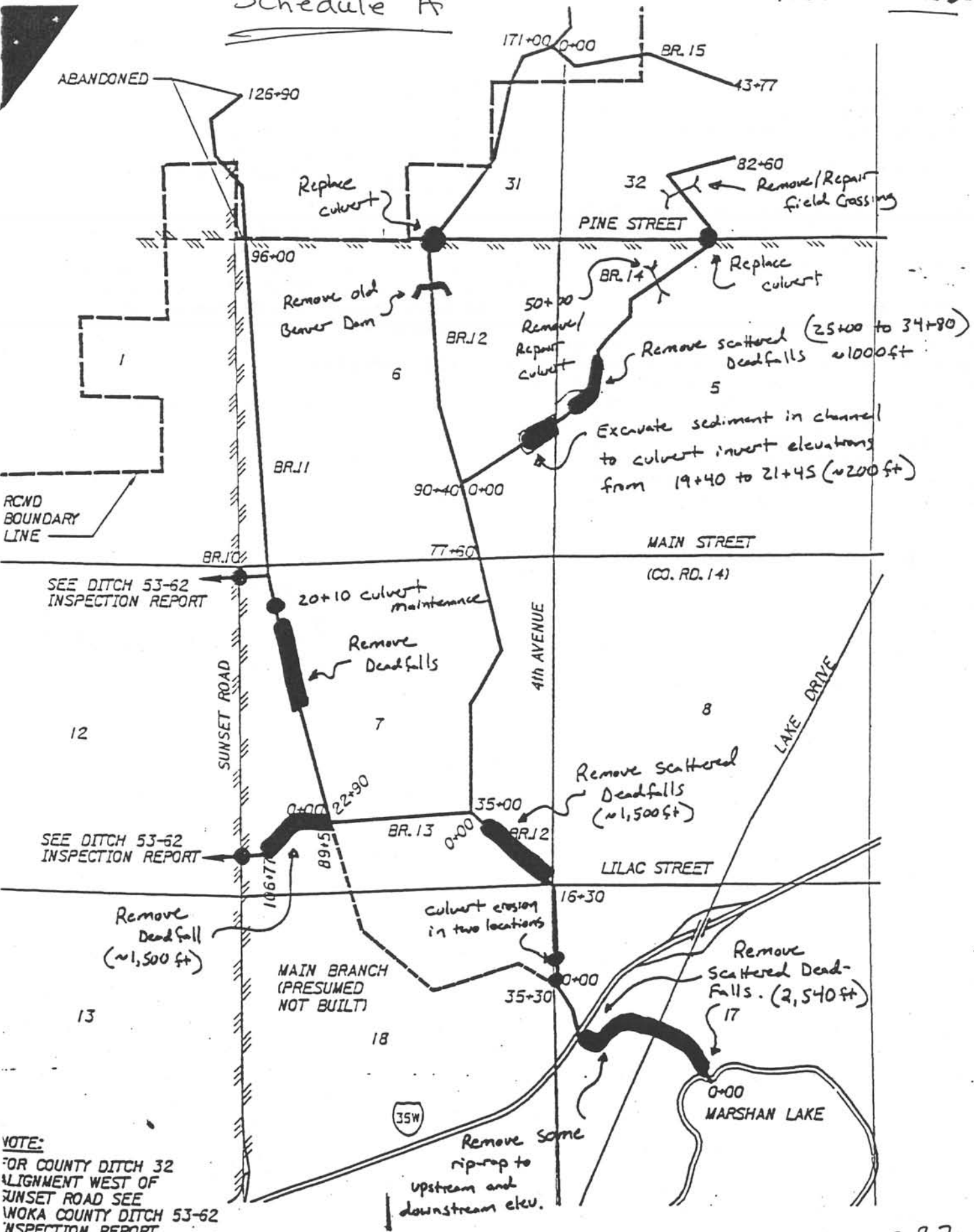
**OWNER**

By: Katey Drewry  
Title: District Administrator  
Date: 1/24/00

# Schedule A

Anoka Co. 10-22-32

pg. 1 of 2



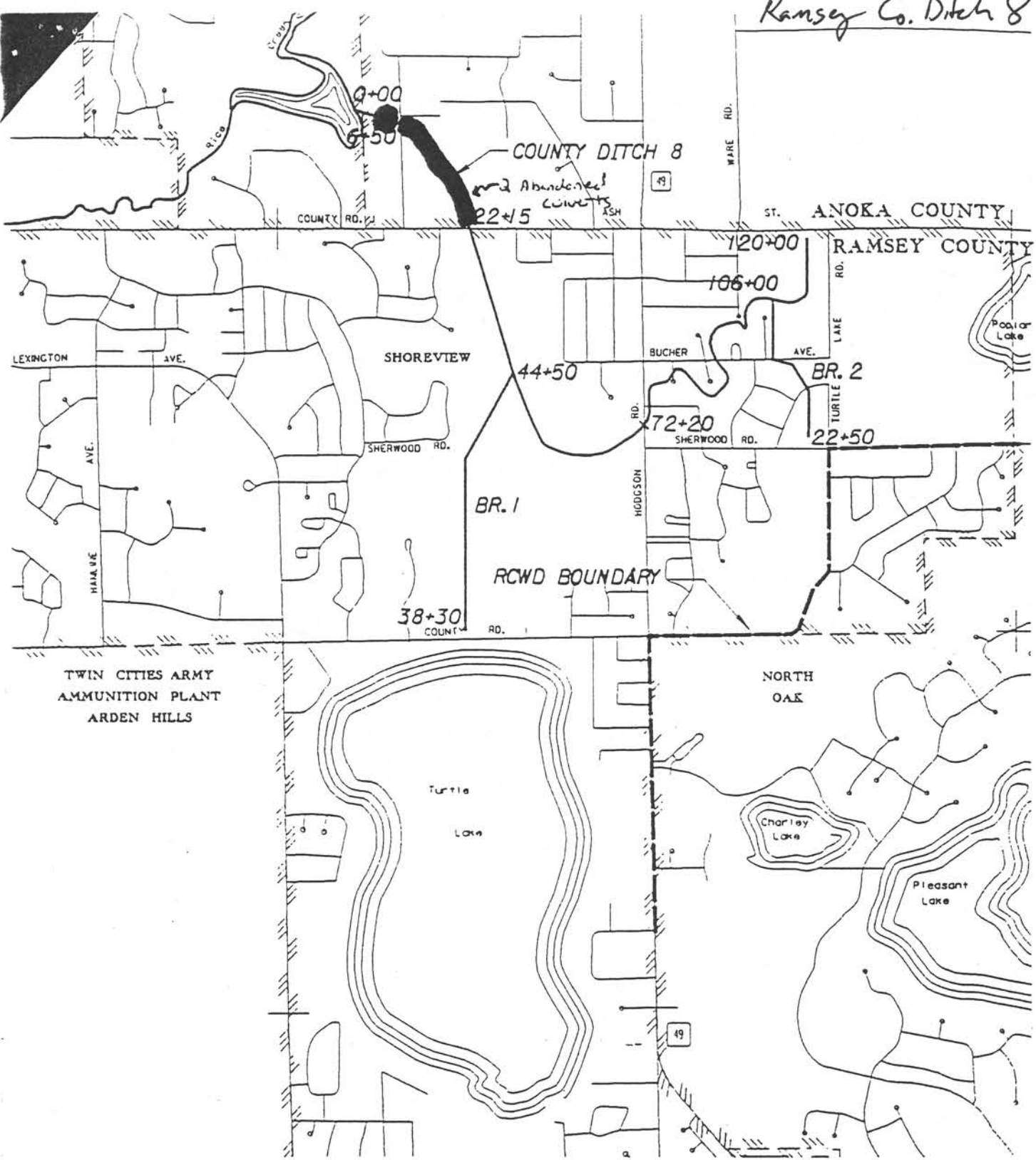
**NOTE:**  
 FOR COUNTY DITCH 32  
 ALIGNMENT WEST OF  
 SUNSET ROAD SEE  
 ANOKA COUNTY DITCH 53-62  
 INSPECTION REPORT.



**FIGURE 5**  
 RICE CREEK WATERSHED DISTRICT  
 COUNTY DITCH 32  
 OFFICIAL ALIGNMENT

10-22-32

Location	Description	Recommendation
Main Channel 0+00 to 25+40	This reach has scattered deadfalls. In one area, kids have moved rip-rap to cross ditch and created an isolated high spot.	Remove the deadfalls from the channel and place out of the high water flow elevation.  Remove the rip-rap high spot.
Branch 12 16+30 to 31+00	Scattered deadfalls are in the channel through this location. A few are large water logged trees.	Remove the deadfalls and place along the back side of the ditch berm.
Main Channel 89+57 to 104+00	Scattered deadfalls and shrubs through this reach.	Remove the deadfalls and place along the back side of the ditch berm
Branch 11 16+00 to 20+10	Scattered deadfalls and shrubs through this reach.	Remove the deadfalls and place along the back side of the ditch berm
Branch 12 127+50	Old beaver dam. A large portion of the dam is mud.	Remove the old beaver dam.
Branch 14 25+00 to 34+80	Scattered deadfalls within the channel.	Remove the dead falls and place outside of ditch channel.
Branch 14 19+40 to 21+45	This Channel is occluded by reed canary grass.	Remove the grass and root zone. Match elevations with the downstream driveway culvert and upstream 4 <sup>th</sup> Ave culvert. Haul spoil off site.



BANK EROSION FROM HORSE PASTURE

DEADFALL AND ABANDONED CULVERT REMOVAL



**MONTGOMERY WATSON**  
Minneapolis, Minnesota  
RICE CREEK WATERSHED DISTRICT  
RAMSEY COUNTY DITCH NO. 8



WASHINGTON COUNTY

R/W JD1

p 9  
4.24

RAMSEY COUNTY

COUNTY

FISH LAKE

**— = Deadfall Removal from Channel**

BALD EAGLE LAKE

MEEHAN DR.

TAYLOR AVE.

BUFFALO ST.

JD-1

500 LINE R. R.

BURLINGTON NORTHERN P. R.

GRAND AVE.

PORTLAND AVE.

WHITE BEAR LAKE

**LEGEND**

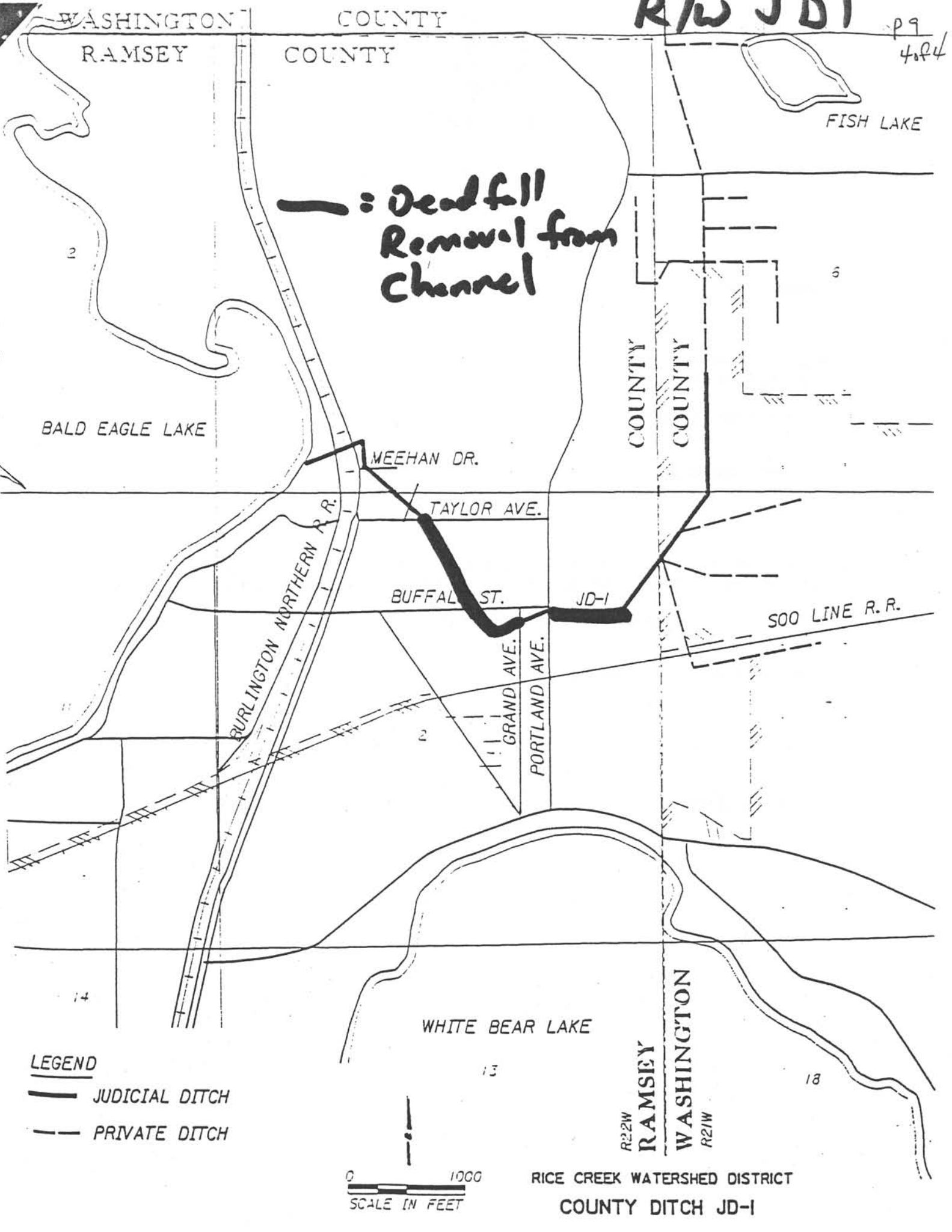
**—** JUDICIAL DITCH

**- - -** PRIVATE DITCH

0 1000  
SCALE IN FEET

RICE CREEK WATERSHED DISTRICT  
COUNTY DITCH JD-1

R22W  
RAMSEY  
WASHINGTON  
R21W





B. V. E., INC.

Schedule B

January 11, 2000

Rice Creek Watershed District  
3585 Lexington Ave  
Suite 330  
Arden Hills, MN 55126-8058

Re: Ditch Maintenance projects

Tony:

We've figured our daily crew rates is \$1,360.00 that is for the Excavator and 2 men with chain saws this is for an 8-hour day. We figure about 5 days work for all that you've given us so far.

Is this within your budget? We plan to start work on these possibly next week. I'll call you prior to starting.

Looking forward to working with you.

Sincerely,

Dale & Robin Becklin

A.C. 10-22-32  
Ramsey Co. Ditch B  
Ramsey/Wash JD1