

AGREEMENT

**LOWER PLATTE SOUTH NATURAL RESOURCES DISTRICT  
CITY OF LINCOLN, NEBRASKA  
BOARD OF REGENTS OF THE UNIVERSITY OF NEBRASKA**

**CHANNEL STABILIZATION ON DEAD MAN'S RUN & TRIBUTARY**

This "Agreement" is made and entered into by and among the **LOWER PLATTE SOUTH NATURAL RESOURCES DISTRICT**, a political subdivision of the State of Nebraska (hereinafter referred to as the "District"); **THE CITY OF LINCOLN, NEBRASKA**, a municipality and governmental subdivision of the state of Nebraska (hereinafter referred to as "City"); and **THE BOARD OF REGENTS OF THE UNIVERSITY OF NEBRASKA**, a public corporate body and agency of the State of Nebraska and governing body of the University of Nebraska, Lincoln, (hereinafter referred to as "UNL"). All parties hereto may collectively be referred to as the "Parties" and individually as a "Party" or "Each Party."

WITNESSETH:

RECITALS

A. The District, City, and UNL, wish to work together to make the most efficient use of their duties, obligations, or responsibilities by cooperating on a basis of mutual advantage to enter into this agreement with one another for joint and cooperative action for any duties, obligations, or responsibilities exercised or capable of being exercised individually by such public agencies.

B. The District has the power and authority to develop and execute plans, facilities, works, and programs relating to, among others, erosion prevention and control, prevention of

damages from flood water and sediment, and drainage improvement and channel rectification, pursuant to Neb. Rev. Stat. §2-3229(1), (2), and (9).

C. The City has the power and authority pursuant to Neb. Rev. Stat. §15-224 to establish, alter, and change the channel of watercourses.

D. UNL has the power and authority to use, improve, alter, and grant interests in real estate and facilities for the benefit of UNL pursuant to Neb. Rev. Stat. 85-101 et seq.

E. The Parties hereto deem it to be in the best interest of the public to jointly exercise powers and authorities as hereinafter described.

F. The Parties participated in a study of the ongoing erosion and bank stabilization needs of Dead Man's Run located on the UNL East Campus generally from North 48<sup>th</sup> Street to near North 42<sup>nd</sup> Street and the Dead Man's Run Tributary, which parallels the west side of North 48<sup>th</sup> Street from the Holdrege Street box culvert to its confluence with Dead Man's Run (the "Project").

G. The Parties have determined that a Natural Channel Design is the best alternative to address erosion and bank stabilization needs and that plan is generally shown on Exhibits A-J.

H. The Parties desire to enter into this Agreement pursuant to which they will cooperate mutually to complete the final design and construct the project for Natural Channel Design for the improvement and stabilization of the channel of Dead Man's Run and Tributary located on the UNL East Campus.

NOW, THEREFORE, in consideration of the above recitals and the mutual promises and covenants contained herein, the parties hereto agree as follows:

1. This Agreement shall become effective and binding by the appropriate legal action of Each Party and execution by all Parties hereto.

2. The term of this Agreement shall be until the project is completed, but shall not extend past ten (10) years from the date of its adoption by the Parties, unless further extended by the mutual agreement of all Parties.

3. The Parties agree that the design contract shall include, among other things, the necessary hydrologic and hydraulic study to demonstrate a no-rise increase in water level, or if necessary, applications for a Conditional Letter of Map Revision (CLOMR) and Letter of Map Revisions (LOMAR).

4. The Parties agree that the total cost estimate for the study, design, and construction for the Project is \$2,218,000, not including right-of-way costs. It is estimated that the City will provide \$1,050,000, the District will provide \$1,168,000 and UNL will provide all of the right-of-way, estimated to be 8.5 acres or 370,000 square feet.

5. The Parties agree that The Study Phase of the Project has been completed and paid for by the City and the District, in the amounts of \$40,000 and \$118,000, respectively.

6. The Parties agree that the estimated cost of the Design Phase (final design) for the Project is \$160,000 with the City agreeing to pay \$60,000 of such amount and District agreeing to pay \$100,000 of such amount. The Parties further agree that in the event that the actual cost of the Design Phase exceeds the cost estimate of \$160,000, then City agrees to pay 37.5% of such additional amount and the District agrees to pay 62.5% of such additional amount.

7. The Parties agree that UNL will provide:

a. The District a perpetual easement over the area generally shown as the construction area on Exhibits A-J adjacent to Dead Man's Run for access, operation, maintenance, repair, replacement, and inspection purposes of the main channel of Dead Man's Run.

b. The District a temporary easement over the area generally shown as the construction area on Exhibits A-J adjacent and between the "existing" and "new" tributary to Dead Man's Run for access and construction purposes only, and

c. The District a perpetual easement over the area including and adjacent to the main channel of Dead Man's Run from 48<sup>th</sup> Street to 42<sup>nd</sup> Street for the preservation of a flood water corridor. The floodwater corridor shall extend on both sides of the centerline of Dead Man's Run for a distance of one-half the channel width plus three times the depth plus thirty feet as measured in 2004. The purpose of the easement shall be to preserve the floodwater corridor and permit uses allowed under the City's floodwater corridor standards.

8. The Parties agree that the "Estimated Construction Phase Costs" for the Project is \$1,900,000, which includes \$1,700,000 for the actual construction of the Project and an estimated cost of \$200,000 for construction observation and administration of the Project. The Parties further agree that the Estimated Construction Phase Costs will be shared equally, on a 50% - 50% basis, between City and District. The Parties further agree that in the event that the actual cost of the Estimated Construction Phase Costs exceed the cost estimates, then District and City shall share equally, on a 50% - 50%, the actual cost of these items.

9. The Parties agree that they intend for the design phase of the Project to commence during calendar year 2004 and the construction phase to commence in the fall of 2005.

10. The Parties agree that the funding for the construction phase of the Project is subject to appropriation and financing by the City and District, as follows:

(a) City intends to fund its share of the actual cost of the construction from its FY 2002-2003 and FY 2004-2005 Bond Issues.

(b) District intends to fund its share of the cost of the construction from funds received through its budget and approval process.

11. The Parties agree that UNL's contributions to the Project will include all the necessary landrights required for the project, the cost of removing any trees required to be removed by the project and desired to be transplanted by UNL, and the removal and replacement of all UNL owned utilities (i.e. private irrigation system) in the construction area.

12. The Parties agree that the City, District and UNL shall have joint approval authority on design plans.

13. The Parties agree that Each Party will designate a person to be its representative for coordinating the Project.

14. The Parties agree that District will serve as Project Manager and have the responsibility for providing:

(a) the necessary surveys, investigations, engineering, plans and specifications, and permits for construction of the Project;

(b) the necessary contracts for the construction of the Project and the public letting of construction contracts;

(c) the construction supervision from commencement through completion of the Project; and

d) the payment of all costs incurred as a result of the construction and completion of the Project, subject to reimbursement by the City and UNL if any, for their share of such costs as provided for in this Agreement.

15. The Parties agree that District shall prepare an itemized statement including all costs that have been incurred as a result of the construction and completion of the Project. The Parties further agree that the District shall prepare such statements on a monthly basis which statements shall include the pro rata share of costs to be paid by City, District, and UNL if any. Such monthly statements shall be submitted by the District to Each Party promptly after each statement has been prepared. City and UNL agree to pay their share of each statement within 30 days after receipt, unless City or UNL gives notice to the District in writing that it disputes the amount on such statement. In the event of a dispute, City and UNL shall pay the portion of the statement that is not disputed, and the disputed portion shall be resolved in accordance with paragraph 22 below.

16. The Parties agree that after the Project has been completed, UNL shall release City and the District from any obligation to maintain the tributary of Dead Man's Run that is a part of this project and UNL shall permanently operate, maintain, repair, replace, and inspect that portion of the completed project to meet the purpose of the project.

17. The Parties agree that a low-water-crossing will be constructed as part of this project on the tributary to accommodate access to land east of the tributary. UNL shall permanently operate, maintain, repair, and inspect that portion of the completed project to meet the purpose of the project.

18. The Parties agree that the District shall permanently operate, maintain, repair, replace, and inspect the Dead Man's Run portion of the project to meet the purpose of the project.

19. The Parties agree that UNL may install landscaping in addition to the landscaping provided for in the final plans at UNL's sole cost and expense, provided however, that UNL first obtains the approval of District and City, which will not be unreasonably withheld.

20. The Parties agree that UNL may install at its sole cost and expense improvements in the Project area not funded by the Project, provided however that UNL first obtains the approval of District and City, which will not be unreasonably withheld.

21. Any Party may propose an amendment to this Agreement by submitting it in writing to the other Parties, who shall immediately consider in good faith the proposed amendment; provided, however, that no such amendment shall, directly or indirectly, affect or impair any written contracts or agreements entered into prior to the effective date of such amendment.

22. No amendment or other modification to this Agreement shall be effective unless it is in writing and approved by all Parties. Such amendment shall become effective after all three (3) parties have approved and executed the same.

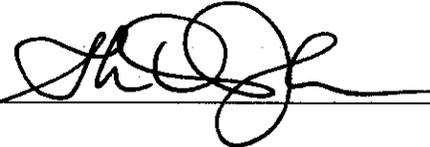
23. If any Party to this Agreement believes that any other party is in default under the terms and provisions of this Agreement, said Party shall send a written Notice of Default to such defaulting party or parties, which Notice shall specify the default and the actions believed to be necessary in order to cure the default. Failure of the defaulting Party or Parties to cure a default under this Agreement as soon as reasonably practicable but not later than thirty (30) days after receipt of written notice thereof, shall entitle the other Party or Parties to proceed to take actions necessary to cure the default and bill the defaulting party or parties for any and all costs associated

with such cure. A default which cannot be cured within thirty (30) days shall not give rise to a right to terminate this Agreement provided that cure is commenced within thirty (30) days and diligently pursued to completion.

24. In the event any dispute or controversy arising out of or relating to this Agreement occurs, the Parties agree to exercise their best efforts to resolve the dispute as soon as possible. The Parties shall without delay continue to perform their respective obligations under this Agreement which are not affected by the dispute. Any Party may invoke the dispute resolution process set forth in this paragraph by giving to the other Party or Parties written notice of its intent to do so, including a description of the issues subject to the dispute and a proposed resolution thereof. Each Party shall designate, within five (5) working days of the notice, a representative who shall attempt to resolve the dispute. If the designated representatives of the Parties cannot resolve the dispute, the Parties shall meet within twenty (20) days thereafter, or such longer time as may be agreed upon, and attempt to resolve the dispute. If the dispute is not resolved within ten (10) business days after such meeting, the dispute shall be referred to arbitration pursuant to the Nebraska Uniform Arbitration Act, Neb. Rev. Stat. §§ 25-2601 to 25-2622.

**IN WITNESS WHEREOF**, each party has caused this Agreement to be executed by its duly authorized officer as of the date and year shown below.

**LOWER PLATTE SOUTH NATURAL RESOURCES DISTRICT,**

By:  \_\_\_\_\_

Title: General Manager

Signed: October 22, 2004

**THE CITY OF LINCOLN, NEBRASKA**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Signed: \_\_\_\_\_, 2004

**THE BOARD OF REGENTS OF THE UNIVERSITY OF NEBRASKA**

By: Christine A. Jackson

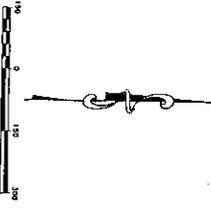
**Vice Chancellor for  
Business & Finance**

Title: \_\_\_\_\_

Signed: Nov 3, 2004



Embankment "A"



PRELIMINARY  
 NOT FOR  
 CONSTRUCTION  
 631  
 1 of 5

**DEAD MAN'S RUN  
RE-MEANDER TRIBUTARY  
OPTION**

Designed by: SCHEMMER & LOGG  
 Checked by: [Name]  
 Date: [Date]



Lower Platte South  
 Natural Resources District



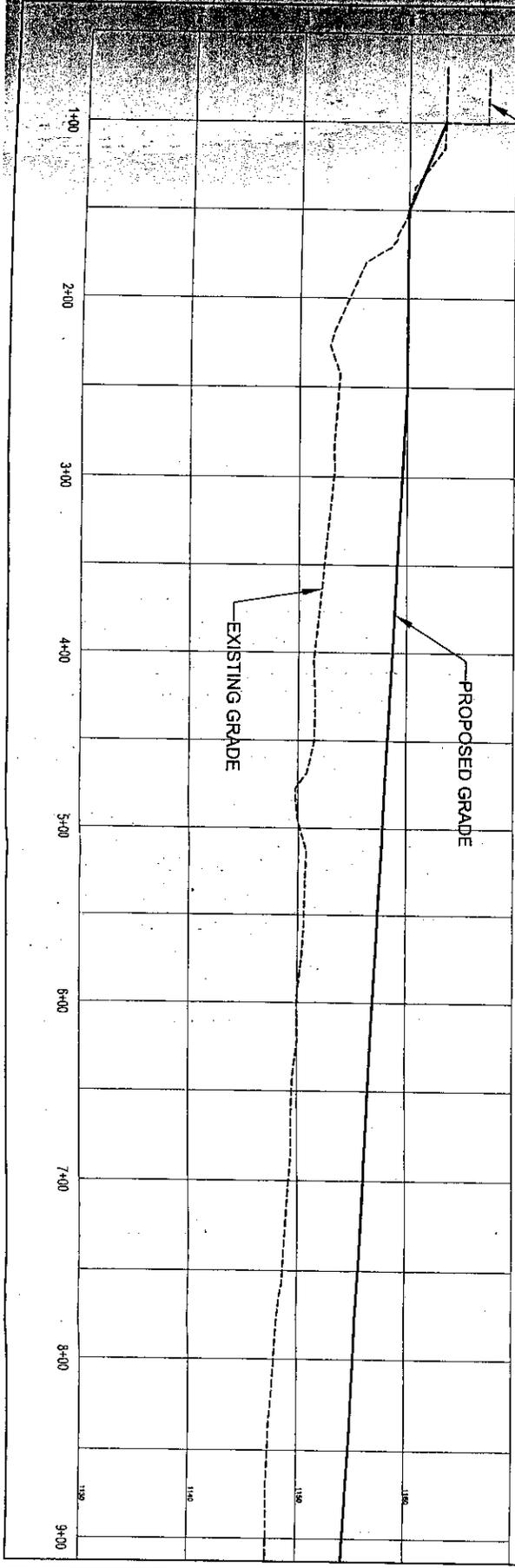
**SCHEMMER**

Intuition & Logic  
 Phone: (970) 647-1101  
 Fax: (970) 647-1293



EXISTING TWIN 4' X 8' W CULVERT

Exhibit "B"



**PRELIMINARY NOT FOR CONSTRUCTION**

**DEAD MAN'S RUN RE-MEANDER TRIBUTARY OPTION**

Designed: [ ] Drawn: [ ] Checked: [ ] Approved: [ ]

File: [ ] Date: [ ] Description: [ ]

Lower Platte South  
Natural Resources District

**SCHEMMER ASSOCIATES**

Intuition & Logic

Phone: (314) 647-1161  
Fax: (314) 647-1233

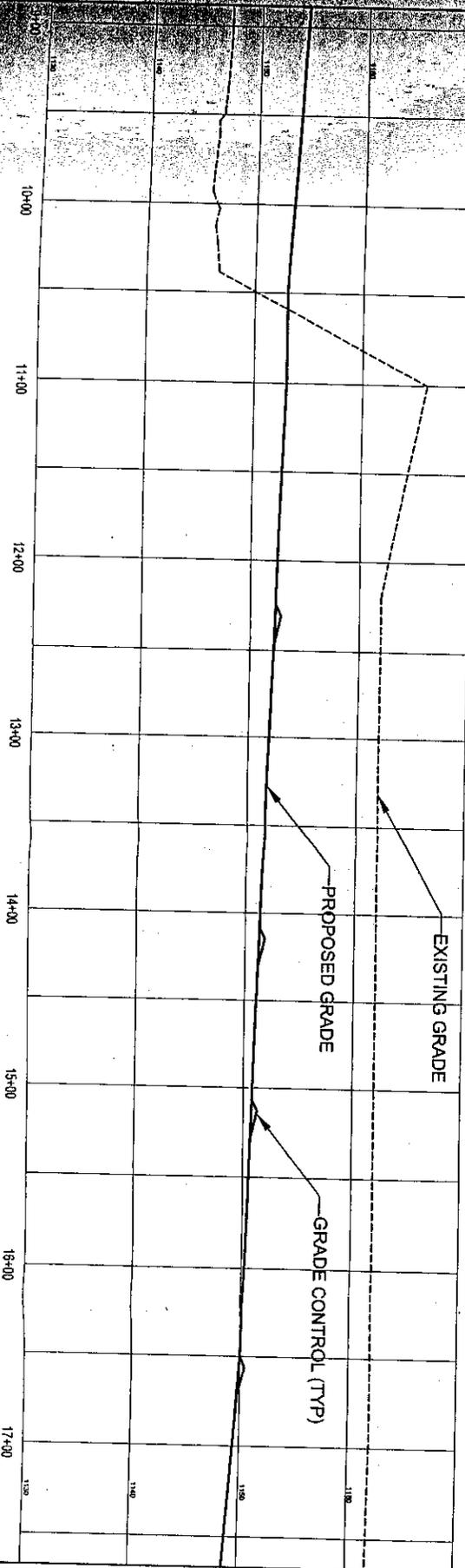


Exhibit "C"



PRELIMINARY  
NOT FOR  
CONSTRUCTION

**DEAD MAN'S RUN  
RE-MEANDER TRIBUTARY  
OPTION**

Designed by: [ ] Drawn by: [ ] Checked by: [ ] Approved by: [ ]  
 Date: [ ] Description: [ ]



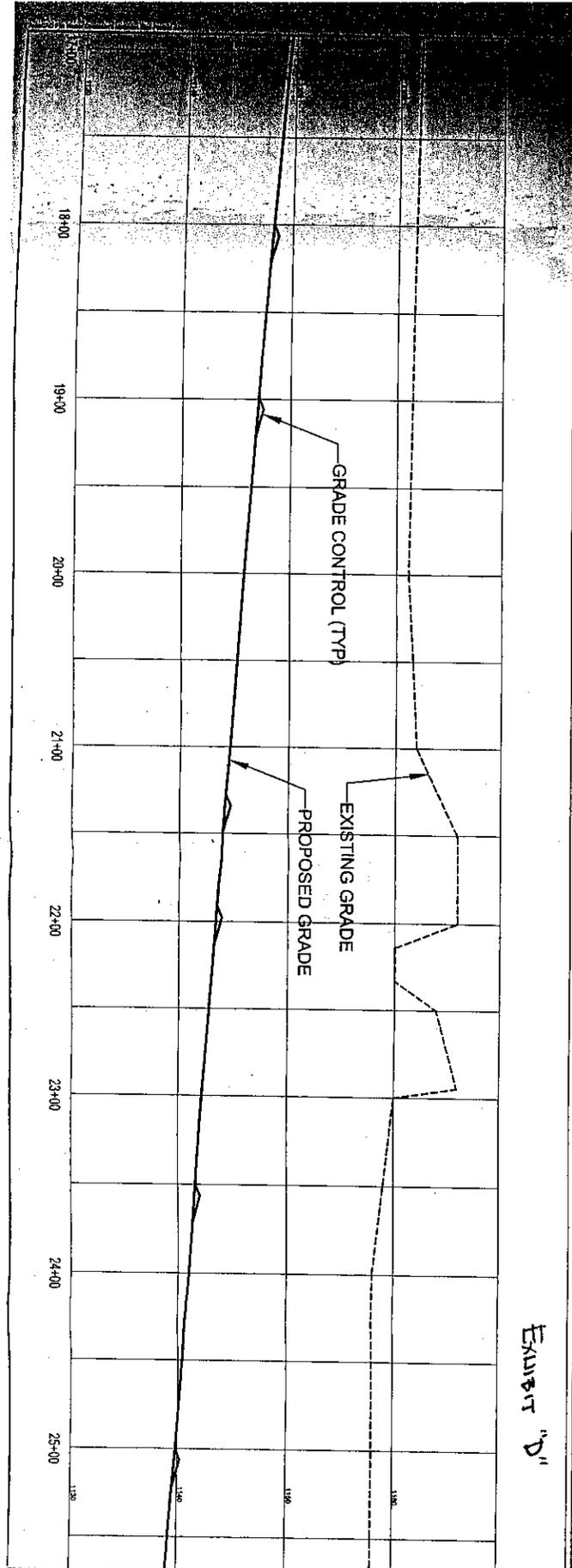


EXHIBIT "D"



PRELIMINARY  
NOT FOR  
CONSTRUCTION

**DEAD MAN'S RUN  
RE-MEANDER TRIBUTARY  
OPTION**

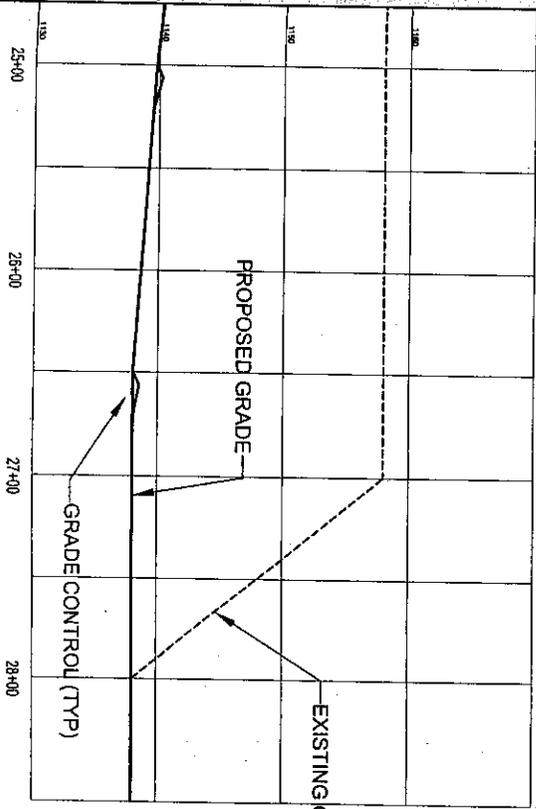
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Date: [ ] Description: [ ]





EXHIBIT "E"



**PRELIMINARY NOT FOR CONSTRUCTION**

**DEAD MAN'S RUN RE-MEANDER TRIBUTARY OPTION**

DESIGNED BY: [ ] DRAWN BY: [ ] CHECKED BY: [ ] APPROVED BY: [ ]

DATE: [ ]

Lower Platte South  
Natural Resources District



**THE SCHEMMER ASSOCIATES**

**Intuition & Logic**

Phone: (314) 647-1161  
Fax: (314) 647-1233

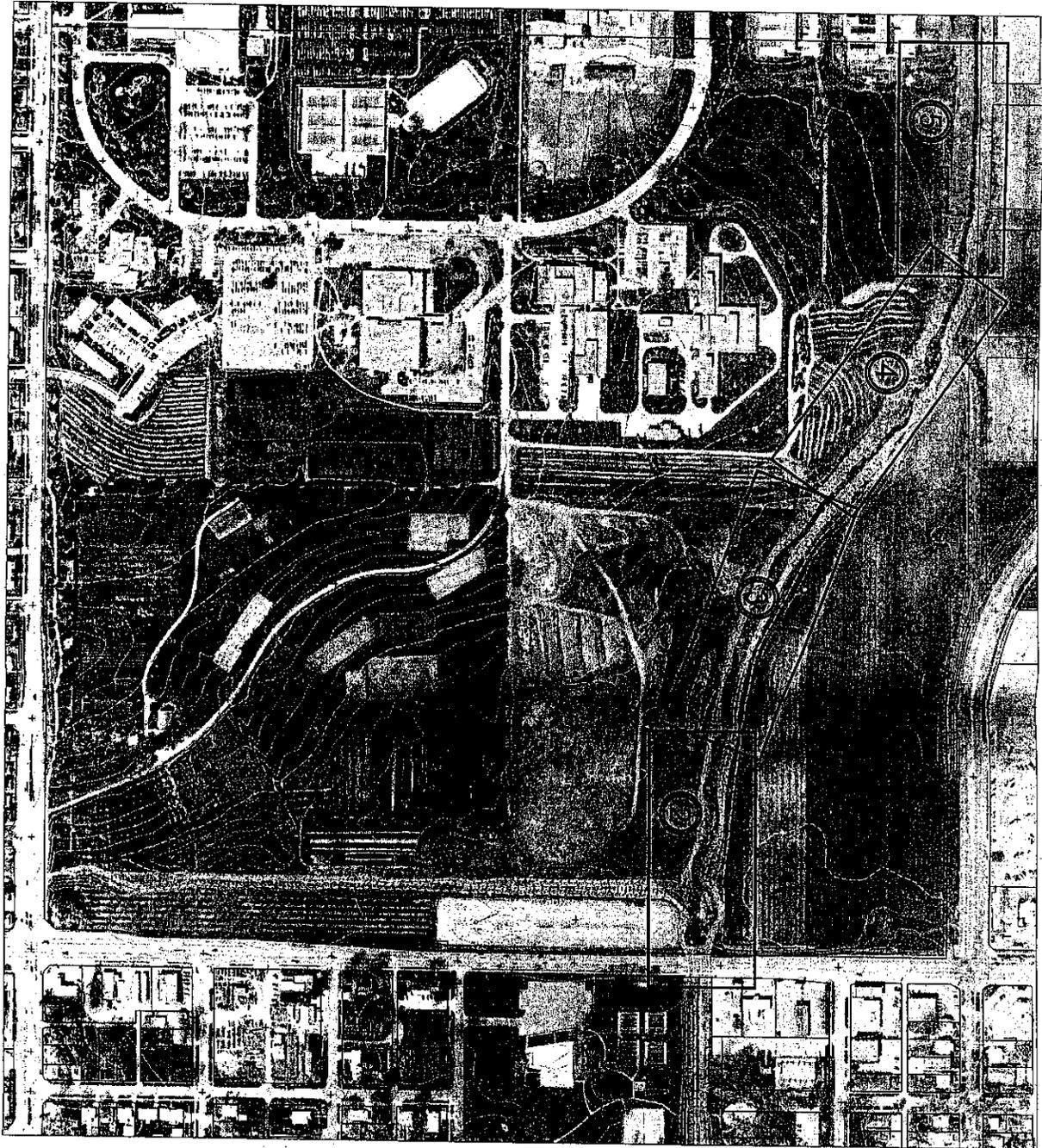
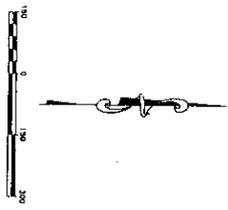


EXHIBIT "F"



**PRELIMINARY  
NOT FOR  
CONSTRUCTION**

**DEAD MAN'S RUN  
NATURAL CHANNEL DESIGN  
OPTION**

Designed BY: [Name] Drawn BY: [Name] Checked BY: [Name] Approved BY: [Name]

Date: [Date] Description: [Description]

Lower Platte South  
Natural Resources District



**SCHEMMER  
ASSOCIATES**

Intuitive & Logical

Phone: (314) 647-1164  
Fax: (314) 647-1233



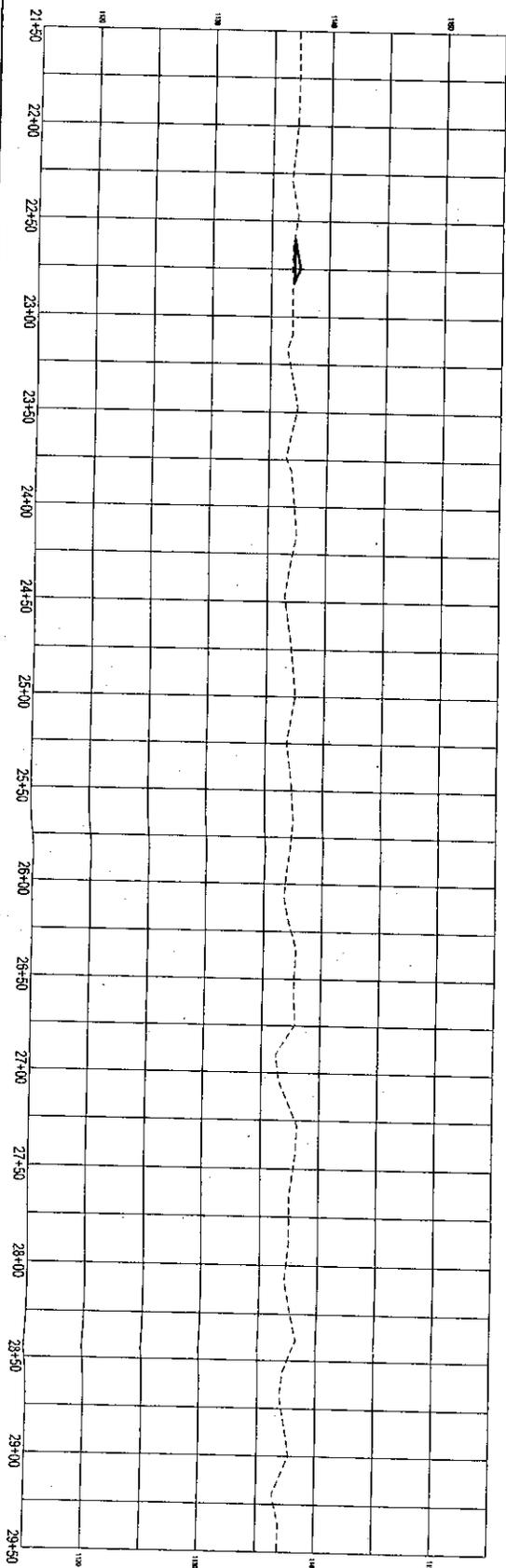
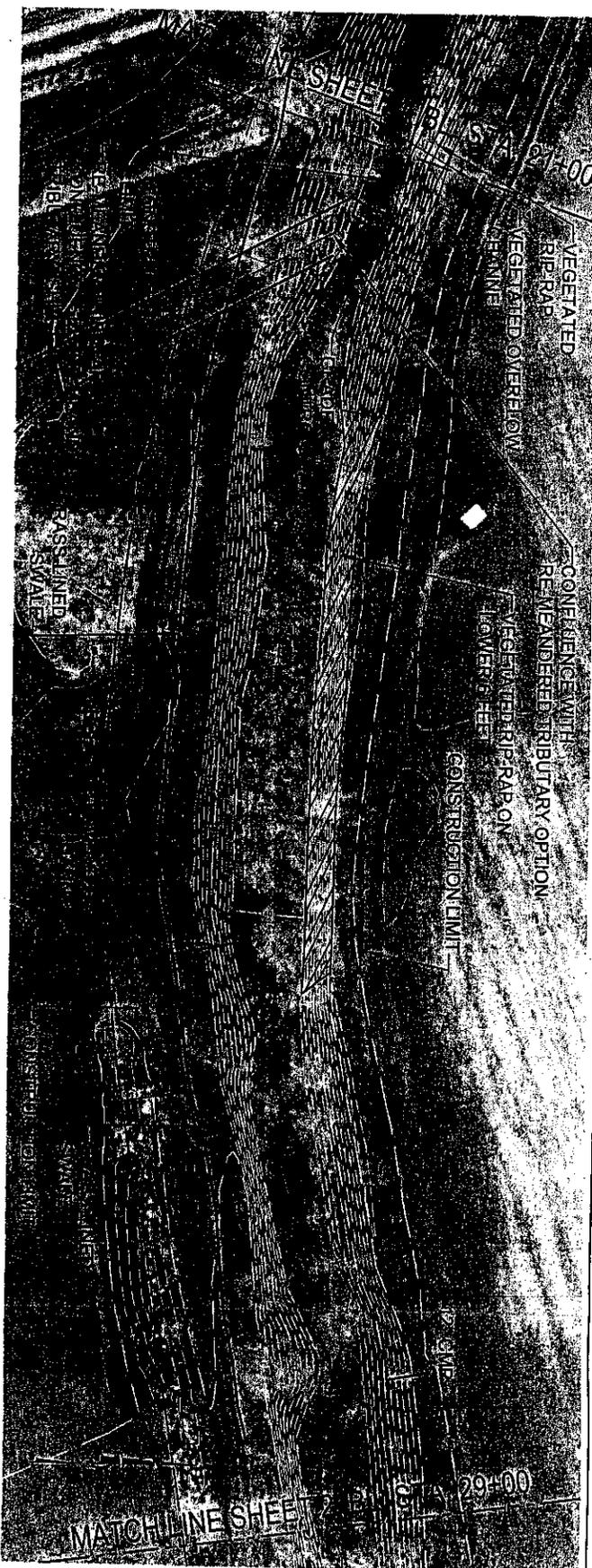
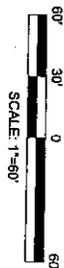


Exhibit "H"



**PRELIMINARY NOT FOR CONSTRUCTION**

**DEAD MAN'S RUN NATURAL CHANNEL DESIGN OPTION**

Checked	DESIGNED	Checked	APPROVED
Rev.	Date	Description	

Lower Platte South  
Natural Resources District



**SCHEMMER ASSOCIATES**

**Intuitive Engineering**

Phone: (813) 647-1161  
Fax: (813) 647-1253

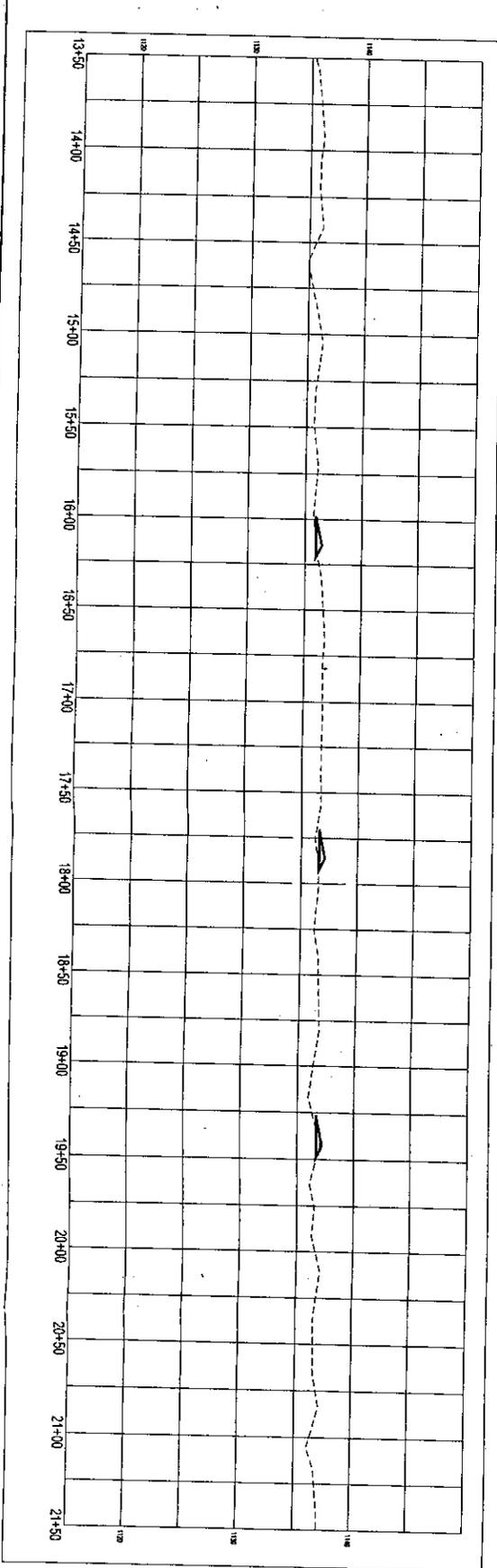
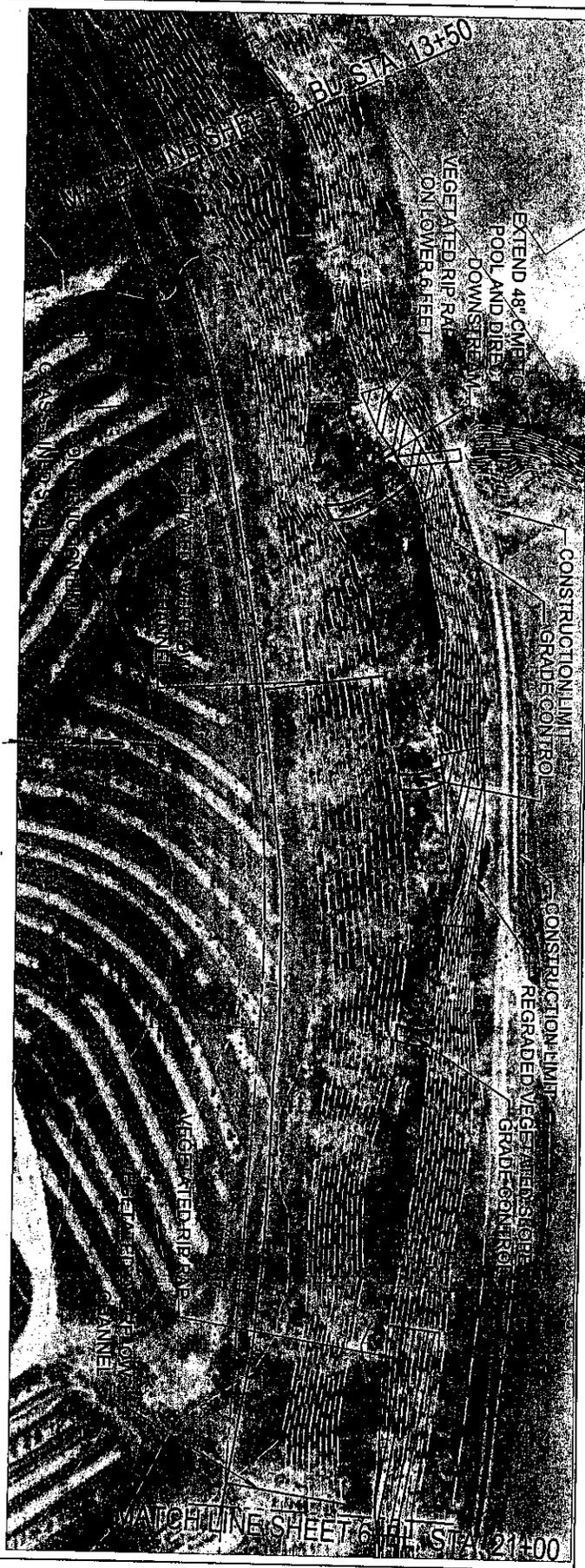


Exhibit "I"



**PRELIMINARY NOT FOR CONSTRUCTION**

**DEAD MAN'S RUN NATURAL CHANNEL DESIGN OPTION**

Checked:  SUPERVISOR'S DESK DWG/SCALE/Checked:  SUPERVISOR'S DESK APPROVED/NOT/SCALE

Rev:  Date:  Description:

Lower Platte South  
Natural Resources District

**SCHEMMER**

Intuition & Design

Phone: (314) 647-1161  
Fax: (314) 647-1255

