

## INTERGOVERNMENTAL AGREEMENT FOR RIGHT-OF-WAY USE

This Intergovernmental Agreement for Right-of-Way Use (this "Agreement") is dated June 25, 2019, but made effective for all purposes as of the Effective Date (as defined below), between City of John Day ("City"), an Oregon municipal corporation, whose address is 450 East Main Street, John Day, Oregon 97845, and Grant County ("County"), a political subdivision of the State of Oregon, whose address is 201 South Humbolt, Suite 290, Canyon City, Oregon 97820.

### RECITALS:

A. City received funding from Oregon Department of Transportation ("ODOT") for the Charolais Heights intersection improvement project in City (the "Project"), which Project is generally depicted on the plans attached as Exhibit A. The Project includes improvement of a portion of the right-of-way commonly known as Davis Creek Road and/or as County Road 50 (the "Road"). As of the Effective Date, the Road is a county road subject to County's jurisdiction under ORS 368.016.

B. As a condition to the funding, ODOT is requiring that City and County enter into this Agreement to, among other things, provide the terms and conditions under which County will provide City (and ODOT) permission and authority to access, occupy, and work on that portion of the Road as it exists as of the Effective Date and as generally depicted on the attached Exhibit B.

C. This Agreement is made by the parties pursuant to ORS 190.010, which statute provides that units of local government may enter into agreements for the performance of any functions and activities that any party to the agreement, or its officers or agents, has the authority to perform.

### AGREEMENT:

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

#### 1. Permission; Work.

1.1 Permission. County hereby grants City and each present and future City employee, officer, agent, contractor, and representative (individually and collectively, "City Representative(s)") permission to enter, access, and use the Work Area (as defined below) for purposes of performing the Construction Work (as defined below) and completing the Project (including, without limitation, connecting the Project to that portion of the Road to the north of the Project). County authorizes City each City Representative to take such actions necessary or appropriate to connect the Road to the Project. Without otherwise limiting the generality of the immediately preceding sentence, County grants City and each City Representative the right to enter onto, remain on, and occupy the Work Area, including, without limitation, crossing under and over the Work Area, for purposes of completing the Project. The right granted herein will include, without limitation, the right to access the Road and Work Area and to stage construction supplies, materials, tools, and equipment. For purposes of this Agreement, the term "Work Area" includes (a) that portion of the Road depicted on Exhibit B as of the Effective Date, and (b) the Road's proposed right-of-way to be improved in connection with the Project (the "New Road"), as depicted on Exhibit A; the term "Construction Work" means certain construction activity in, on, over, and/or under the Work Area and the Project area (as depicted on the attached Exhibit A and Exhibit B), including, without limitation, any excavation, maintenance, improvement, repair, extension, cutting, paving, and/or relocation work concerning the Project.

1.2 County Obligations. During the term of this Agreement, County may continue to use the Road for any purpose provided such use does not interfere with City's use of the Work Area, the Project, and/or the Construction Work. County will not disrupt, damage, and/or interfere with City's use of the Work Area and/or

Construction Work. County will not construct, maintain, and/or allow any permanent building or structure in, on, under, or over the Work Area. County will indemnify and hold City (and each City Representative) harmless for, from, and against all claims, actions, damages, losses, and expenses resulting from County's breach and/or failure to perform its obligations under this Agreement.

2. Maintenance; Road Transfer. Upon commencement of the Construction Work and continuing thereafter during the term of this Agreement, City will be responsible for the Project, including maintaining the Work Area. Notwithstanding anything contained in this Agreement to the contrary, County will retain jurisdiction, including, without limitation, all maintenance, repair, and improvement obligations, over the Road except that City will repair and maintain that portion of the Road included in the Work Area. Upon completion of the Project, the parties will commence procedures under ORS 373.270 to transfer jurisdiction of the New Road from County to City. Without otherwise limiting the generality of the immediately preceding sentence, County will, at County's cost and expense, initiate a transfer of jurisdiction of the New Road in accordance with ORS 373.270 and take such actions and process such documents, instrument, orders, and/or agreements necessary to effectuate the transfer. City will accept a transfer of jurisdiction of the New Road through appropriate municipal legislation in accordance with ORS 373.270. Transfer of the New Road will be subject to any existing utilities located therein. Upon transfer of jurisdiction and City's acceptance of jurisdiction over the New Road, full and absolute jurisdiction over the New Road for purposes of repair, construction, improvement, and the levying and collection of assessments will vest in City. City will have the same jurisdiction over the New Road as by its charter and the laws of the State of Oregon given or granted it over any of the public streets and alleys of City.

3. Authority. County has full power and authority to sign and deliver this Agreement and to perform all County's obligations under this Agreement. County has full jurisdiction and authority over the Road, including, without limitation, full power and authority to transfer jurisdiction over the New Road under ORS 373.270. The execution, delivery, and performance of this Agreement, and any agreement contemplated herein, constitute a valid and binding agreement of County, enforceable in accordance with its terms. County's execution, delivery, and performance of this Agreement, and any agreement contemplated herein, will not result in a breach or violation of, nor constitute a default under, any agreement, law, judgment, or order, or require the consent, authorization, or approval of any person, including, without limitation, any governmental body.

4. Term; Termination; ODOT Funds.

4.1 Term; Termination. The term of this Agreement will commence on the Effective Date and will continue thereafter until completion of the road transfer procedures (i.e., the procedures under ORS 373.270) under Section 2 of this Agreement, unless sooner terminated in accordance with this Agreement. This Agreement may be terminated (a) at any time by the mutual written agreement of City and County, or (b) by City for any reason or no reason by providing County ninety (90) days' prior written notice. Notwithstanding anything contained in this Agreement to the contrary, City may terminate this Agreement immediately upon notice to County if County breaches and/or otherwise fails to perform any County representation, warranty, covenant, and/or obligation contained in this Agreement. If a party breaches and/or otherwise fails to perform any of its terms, covenants, conditions, and/or obligations under this Agreement, the other party may, in addition to any other remedy provided to the party under this Agreement, pursue all remedies available to the party at law or in equity. All available remedies are cumulative and may be exercised singularly or concurrently.

4.2 ODOT Funds. Notwithstanding anything contained in this Agreement to the contrary, City's obligation to perform under this Agreement is conditioned on City receiving funding in the amount of \$100,000 from ODOT for purposes of completing the Project (the "Funds"). If City does not receive the Funds (and/or any portion thereof) and/or if at any time during the term of this Agreement City determines that the Funds (and/or other City funding) will be insufficient to complete the Project, City may terminate this Agreement immediately upon notice to County. Upon termination under this Section 4.2, neither party thereafter will have any further rights and/or obligations with respect to the other party (except as otherwise provided under this Agreement).

5. Miscellaneous.

5.1 Coordination; Severability; Assignment; Binding Effect. The parties will maintain adequate levels of communication to ensure maximum cooperation between the parties. This Agreement does not create an agency relationship between City and County and does not establish a joint venture or partnership between City and County. Each provision contained in this Agreement will be treated as a separate and independent provision. The unenforceability of any one provision will in no way impair the enforceability of any other provision contained herein. Any reading of a provision causing unenforceability will yield to a construction permitting enforcement to the maximum extent permitted by applicable law. No party may assign any of the party's rights and/or obligations under this Agreement to any person without the prior written consent of the other party. Subject to the immediately preceding sentence, this Agreement will be binding on the parties and their respective heirs, executors, administrators, successors, and permitted assigns and will inure to their benefit. This Agreement will be deemed binding and effective for all purposes as of the date this Agreement is fully executed by the parties (the "Effective Date").

5.2 Applicable Law; Attorney Fees. This Agreement will be construed, applied, and enforced in accordance with the laws of the State of Oregon. Any action or proceeding arising out of this Agreement will be litigated in courts located in Grant County, Oregon. Each party consents and submits to the jurisdiction of any local, state, or federal court located in Grant County, Oregon. With respect to any dispute relating to this Agreement, or if a suit, action, arbitration, or other proceeding of any nature whatsoever is instituted to interpret or enforce the provisions of this Agreement, including, without limitation, any proceeding under the U.S. Bankruptcy Code and involving issues peculiar to federal bankruptcy law or any action, suit, arbitration, or proceeding seeking a declaration of rights or rescission, the prevailing party will be entitled to recover from the losing party its reasonable attorney fees, paralegal fees, expert fees, and all other fees, costs, and expenses incurred in connection therewith, as determined by the judge or arbitrator at trial, arbitration, or other proceeding, or on any appeal or review, in addition to all other amounts provided by law.

5.3 Attachments; Further Assurances; Notices. All exhibits, schedules, instruments, documents, and other attachments referenced in this Agreement are part of this Agreement. If any provisions contained in an attached exhibit, schedule, instrument, document, and/or other attachment conflicts with this Agreement, the provisions of this Agreement will control. The parties will execute all documents or instruments and will perform all lawful acts necessary or appropriate to secure their rights hereunder and to carry out the intent of this Agreement. All notices or other communications required or permitted by this Agreement must be in writing, must be delivered to the parties at the addresses first set forth above, or any other address that a party may designate by notice to the other party, and are considered delivered upon actual receipt if delivered personally, by fax or email transmission (with electronic confirmation or delivery), or by a nationally recognized overnight delivery service, or at the end of the third business day after the date of deposit if deposited in the United States mail, postage pre-paid, certified, return receipt requested.

5.4 Waiver; Entire Agreement. No provision of this Agreement may be modified, waived, and/or discharged unless such waiver, modification, and/or discharge is agreed to in writing by the parties. No waiver by a party at any time of the breach of, or lack of compliance with, any conditions or provisions of this Agreement will be deemed a waiver of other provisions or conditions hereof. This Agreement contains the entire agreement and understanding between parties with respect to the subject matter of this Agreement and contains all the terms and conditions of the parties' agreement and supersedes any other oral or written negotiations, discussions, representations, and/or agreements. This Agreement may be amended only by a written agreement signed by each party.

5.5 Person; Interpretation; Signatures. For purposes of this Agreement, the term "person" means any natural person, corporation, limited liability company, partnership, joint venture, firm, association, trust, unincorporated organization, government or governmental agency or political subdivision, or any other entity. All pronouns contained herein and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural

and the plural includes the singular. The word "or" is not exclusive. The words "include," "includes," and "including" are not limiting. This Agreement may be signed in counterparts. A fax or email transmission of a signature page will be considered an original signature page. At the request of a party, the other party or parties will confirm a fax or email transmitted signature page by delivering an original signature page to the requesting party.

IN WITNESS WHEREOF, the parties have caused this Agreement to be binding and effective for all purposes as of the Effective Date.

CITY:  
City of John Day,  
an Oregon municipal corporation

COUNTY:  
Grant County,  
a political subdivision of the State of Oregon

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

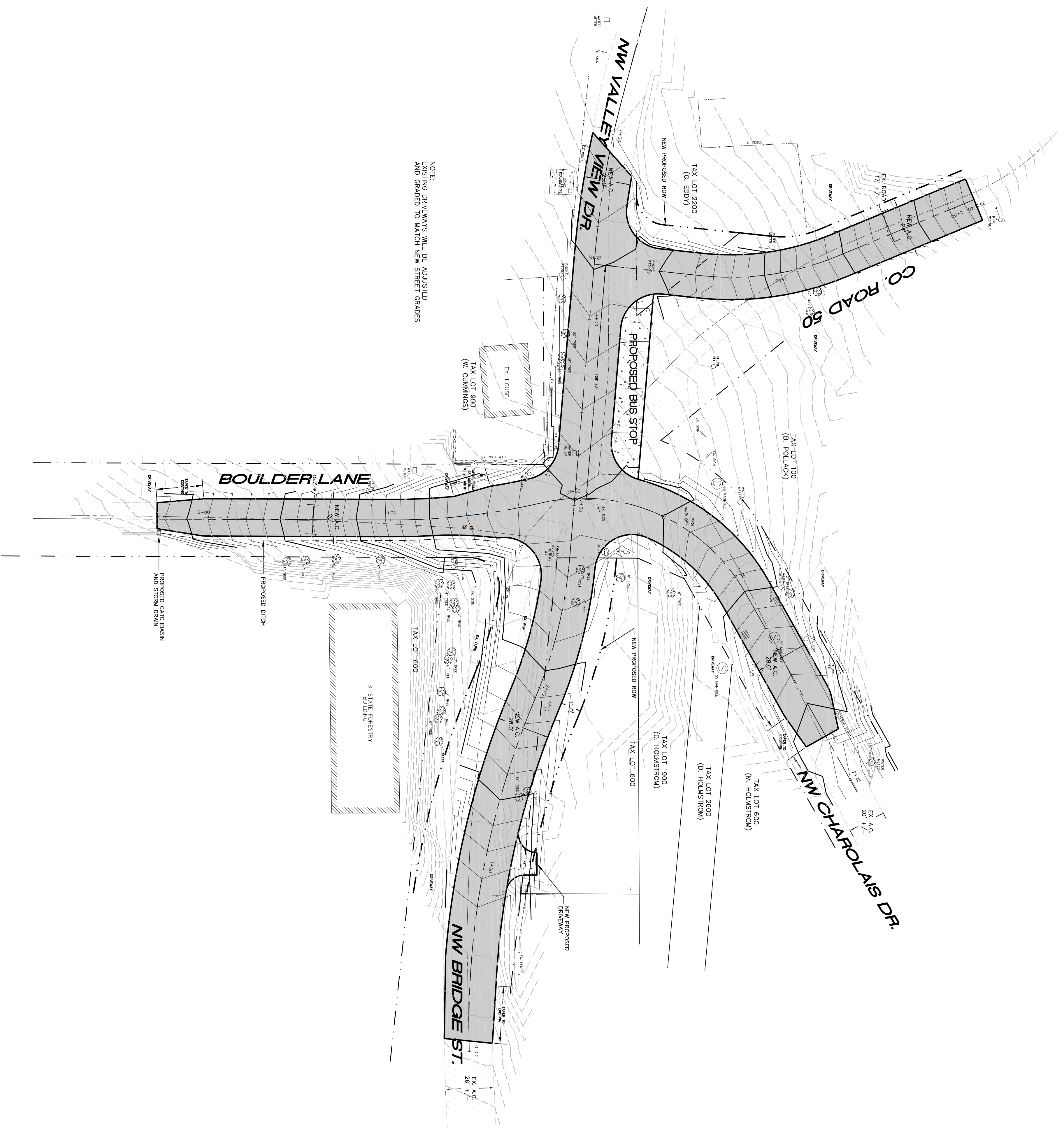
\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

Dated: \_\_\_\_\_

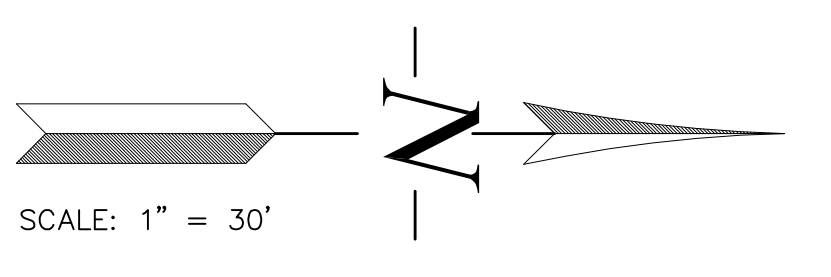
Dated: \_\_\_\_\_

Exhibit A  
Depiction of Project

[attached]



NOTE:  
EXISTING DRIVEWAYS WILL BE ADJUSTED  
AND GRADED TO MATCH NEW STREET GRADES



PRELIMINARY

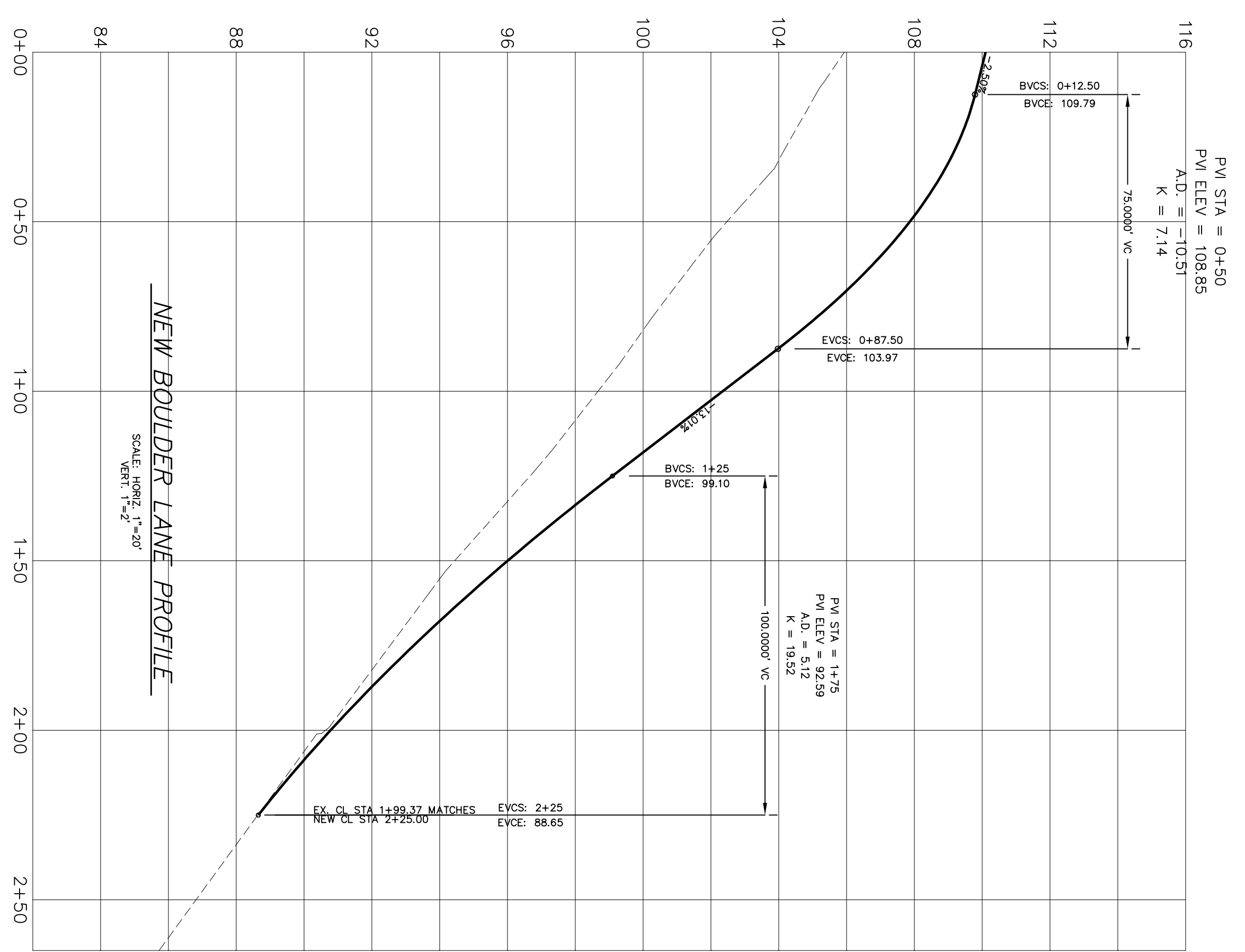
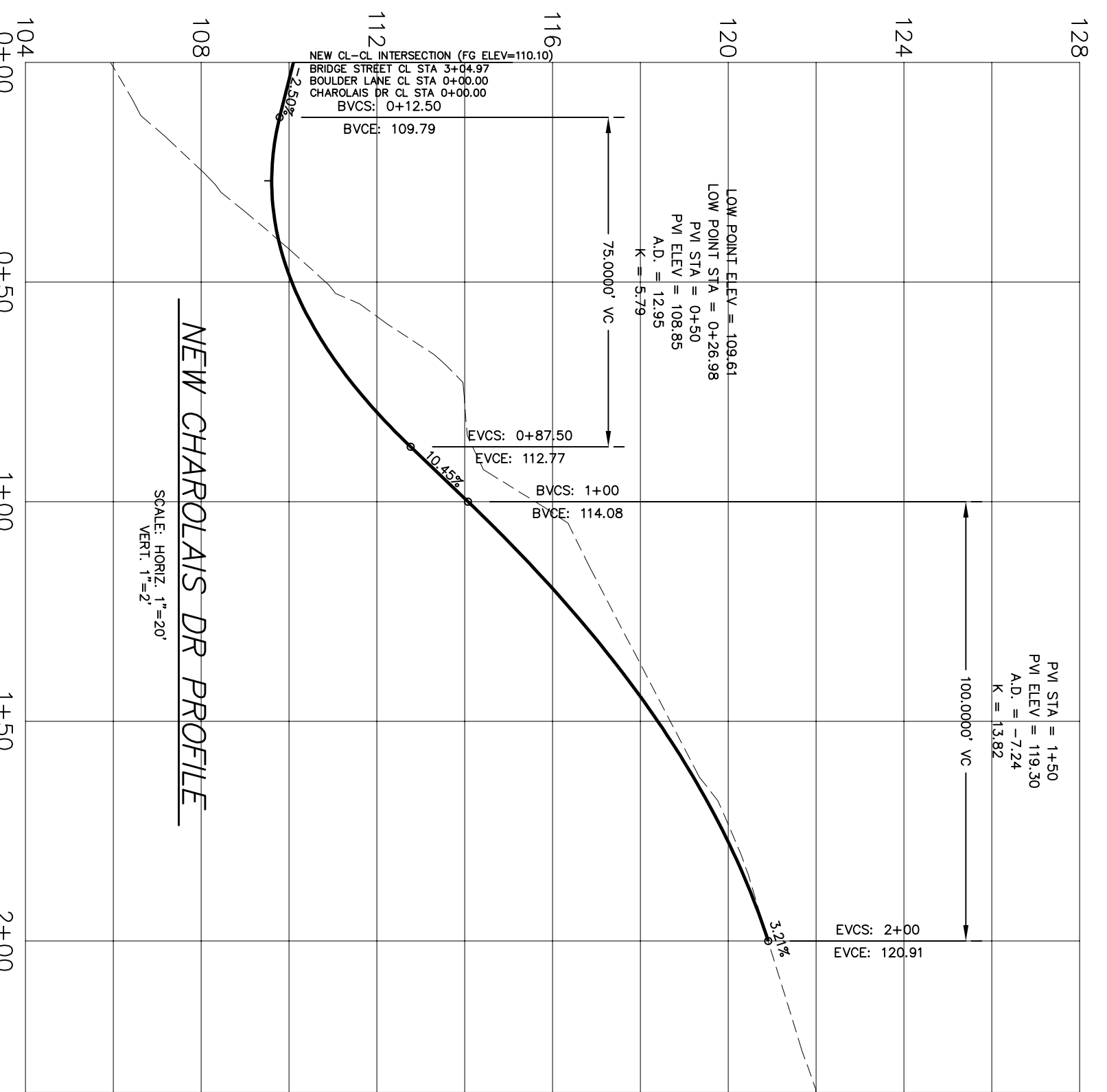
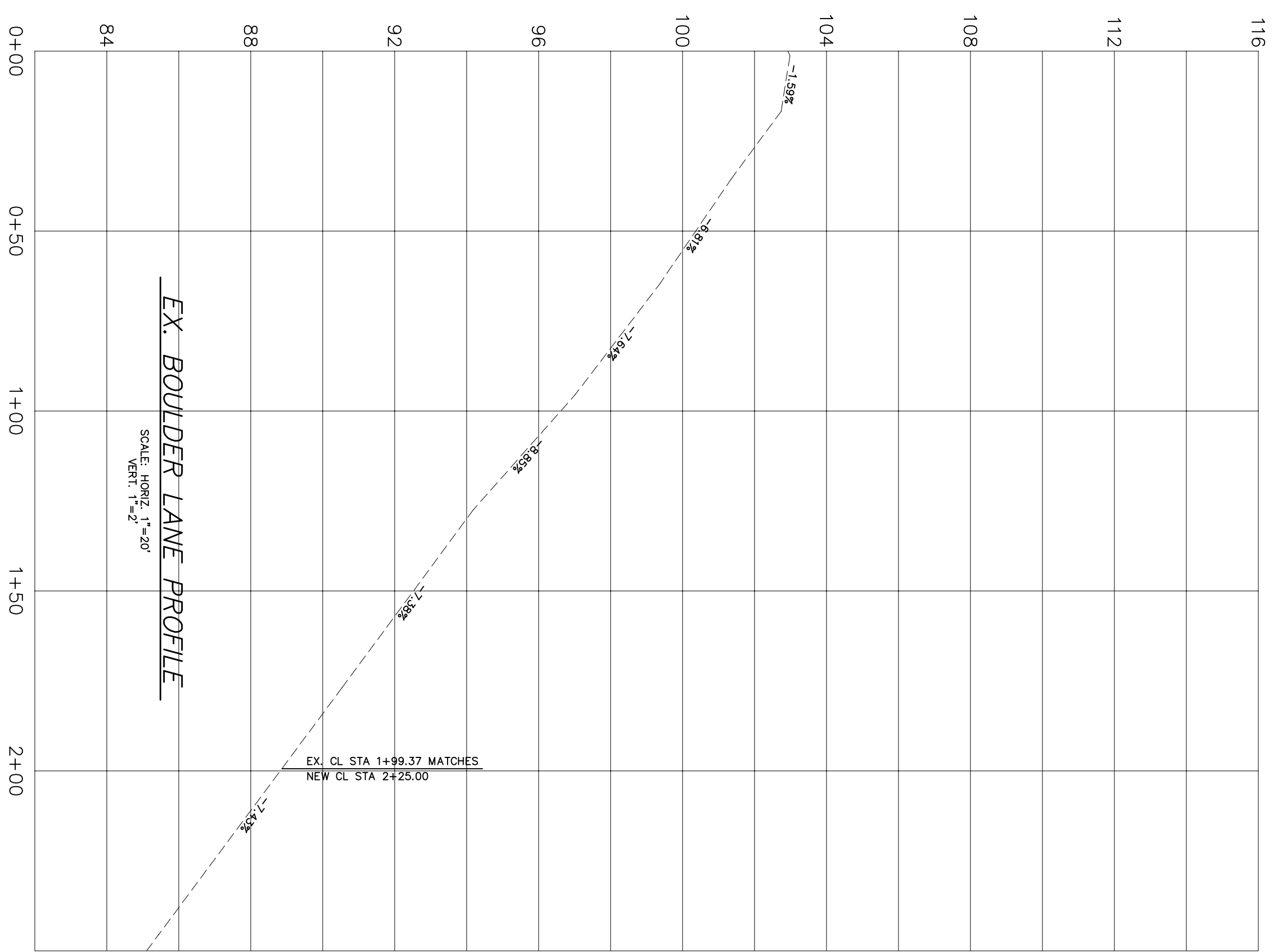
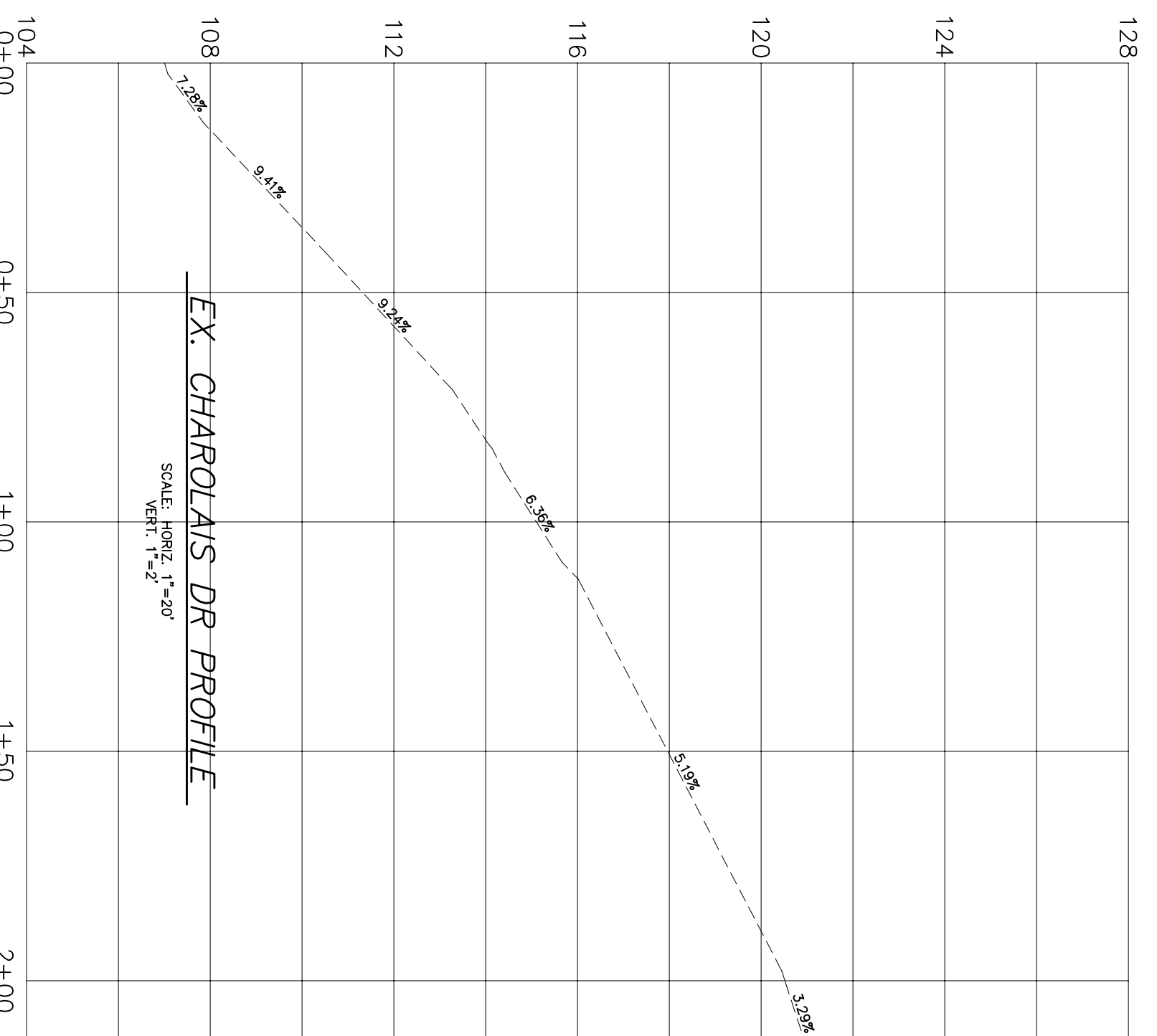
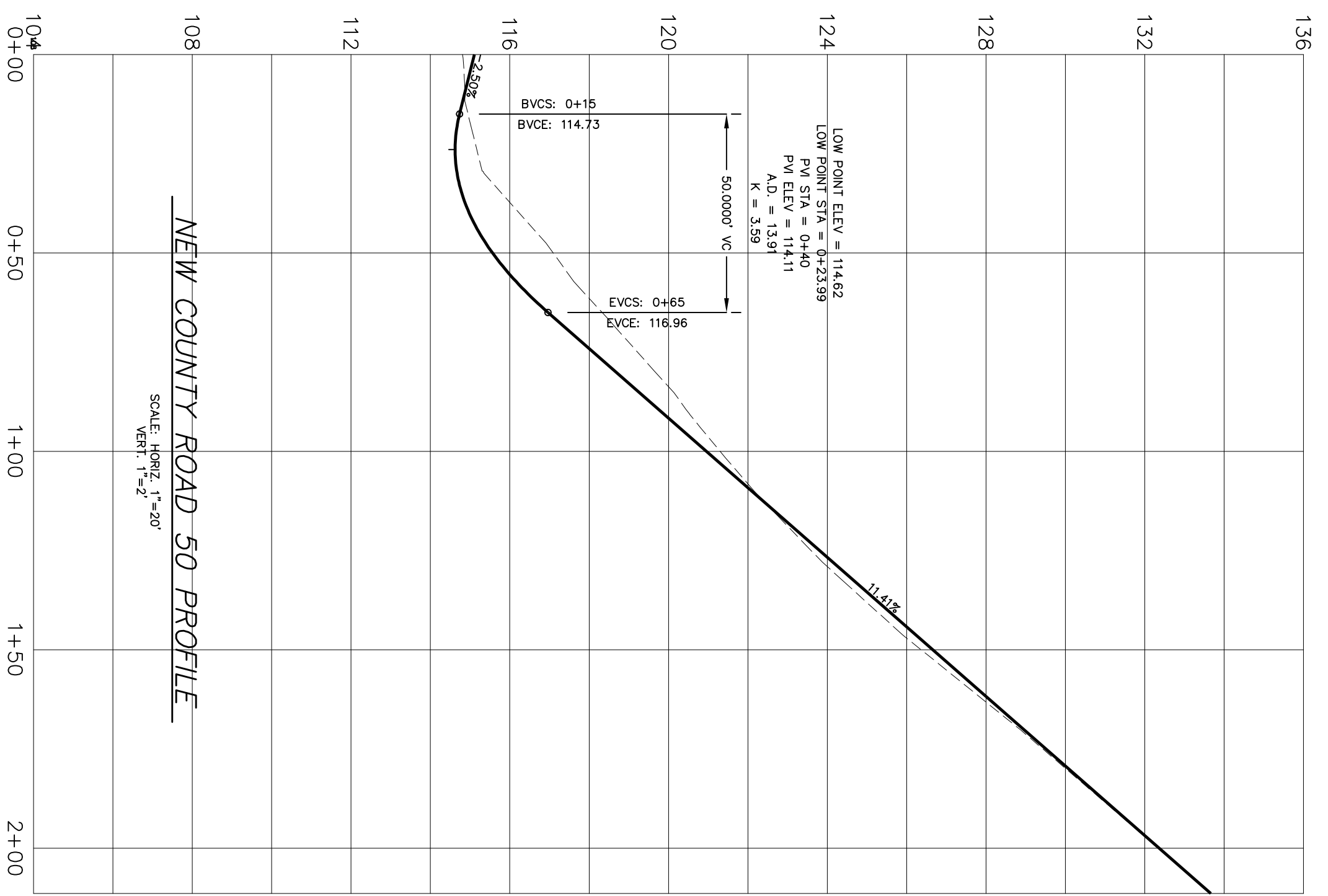
**SISUL ENGINEERING**  
158 E. MAIN STREET  
JOHN DAY, OREGON 97845  
(541) 575-3777  
DRAWING: 06-09 PRELIMINARY XX.dwg

INTERSECTION PLAN VIEW

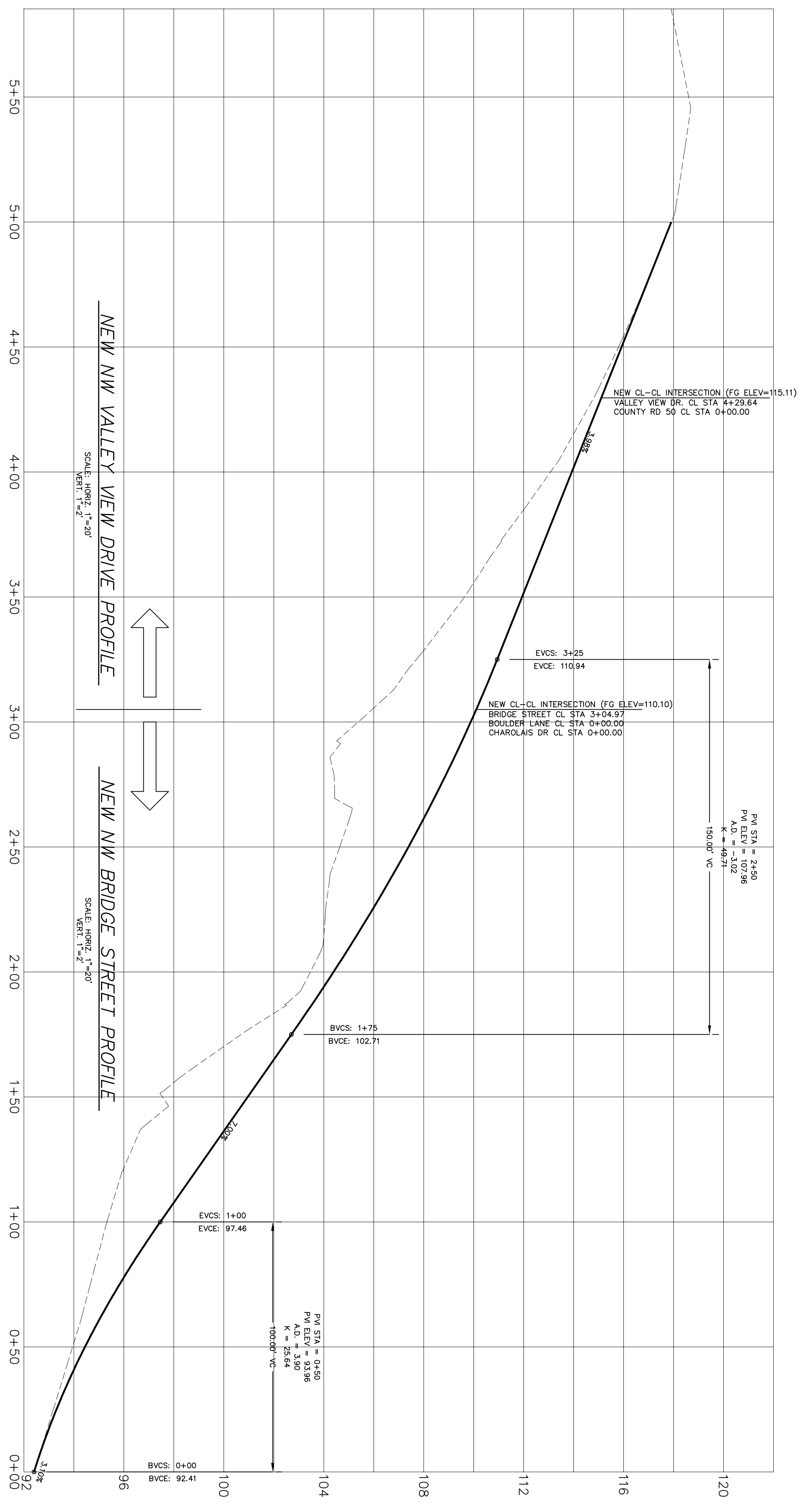
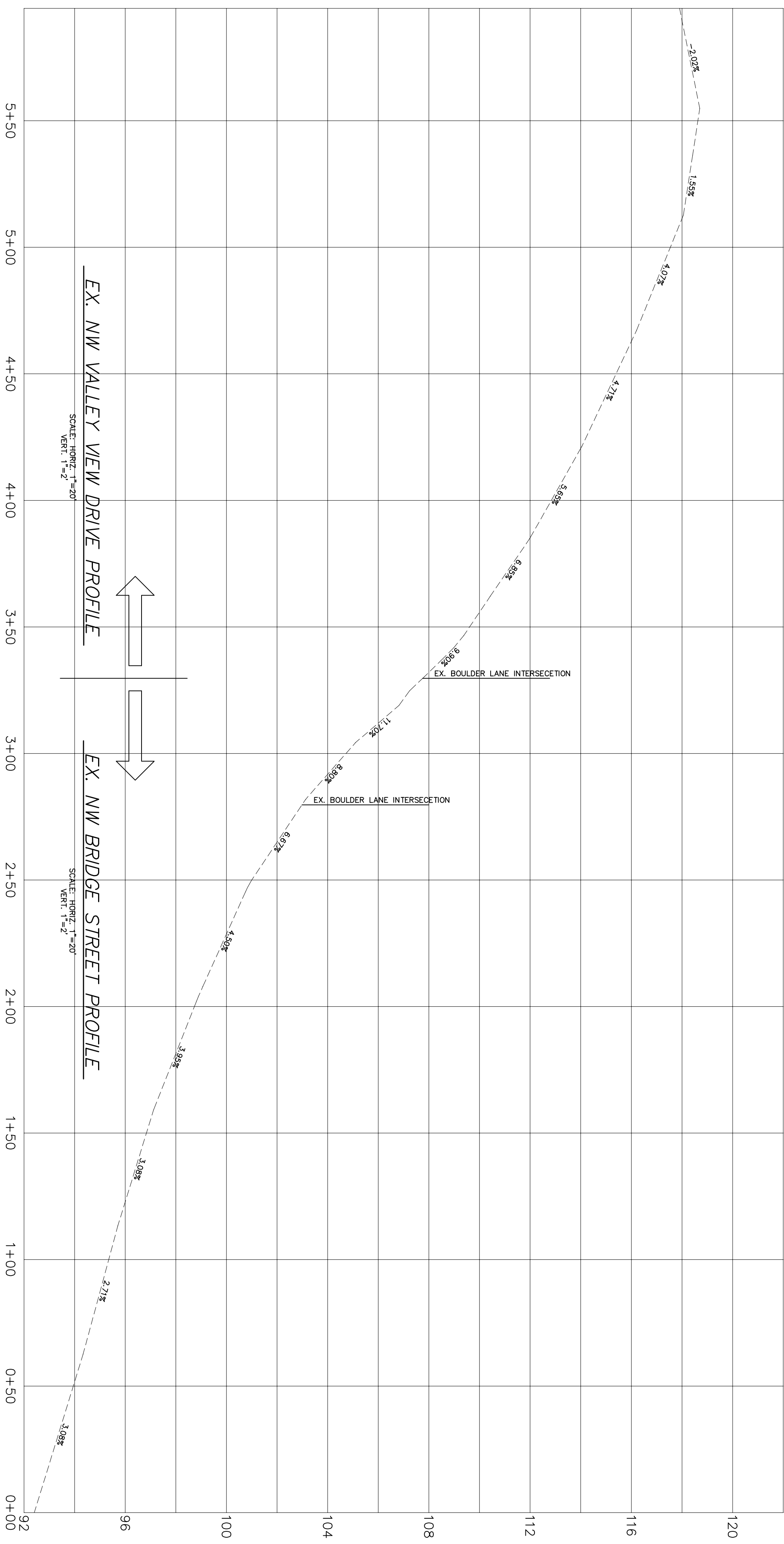
INTERSECTION  
IMPROVEMENT PROJECT  
City of John Day

NO.	REVISIONS	BY

DATE: MAY 2006  
SCALE: NOTED  
DRAWN: JH  
JOB: 02-071A  
SHEET: 1  
JOB: 3 SHEETS



PRELIMINARY



PRELIMINARY





Exhibit B

Depiction of Charolais Heights Intersection as of the Effective Date

[attached]

