



**MEMORANDUM**

**Highway  
Department**

Jason Benson, P.E.  
County Engineer

Thomas B. Soucy, P.E.  
Deputy County Engineer

Blaine Laaveg  
Superintendent

TO: Cass County Commission

FROM: Jason Benson, County Engineer *JBS*

DATE: February 27, 2023

SUBJECT: Agenda topic for March 6, 2023 Commission Meeting:  
Agreement for 36<sup>th</sup> Street between Cass County Government, the  
Maple River Water Resource District, and North Dakota Soybean  
Processors, LLC

Cass County Highway Department, the Maple River Water Resource District, and North Dakota Soybean Processors, LLC have developed Memorandum of Understandings (MOU) for 36<sup>th</sup> St. The MOU outlines the ownership, maintenance, and control of 36<sup>th</sup> St. 36<sup>th</sup> St is the primary road that will be used to access the North Dakota Soybean Processors (NDSP) plant site. This allows Cass County to take over access, right of way control, and utility control, along with general maintenance such as snow plowing, striping, signs.

Access to and from the NDSP Property will require road improvements to portions of 36th Street in Section 33 of Everest Township and in Section 34 of Casselton Township to accommodate construction of NDSP's soybean processing plant as well as future plant operations; 36th Street is adjacent to the Drain.

The County will pay for up to \$3,000,000 of the design, engineering, installation, construction, and other costs associated with the road improvement project through County, State and/or federal funding or grant monies. NDSP will reimburse the County for all design, engineering, installation and construction costs associated with the Projects in excess of \$3,000,000,

**SUGGESTED MOTION:**

Authorize the Commission Chair to sign the Memorandum of Understanding for 36<sup>th</sup> Street between Cass County Government, the Maple River Water Resource District, and North Dakota Soybean Processors, LLC.

1201 Main Avenue West  
West Fargo, North Dakota  
58078-1301

701-298-2370  
Fax: 701-298-2395



**CONTRACT APPROVAL**

**REQUIRED BY DEPARTMENT:**

DEPARTMENT: Highway DATE OF REQUEST: 03-01-2023

COMPANY REQUESTING CONTRACT: North Dakota Soybean Processors and  
Maple River Water Resource District

BRIEF PROJECT DESCRIPTION: MOU for 36th Street

  x   NEW CONTRACT OR        CONTRACT RENEWAL

**REQUIRED BY STATE'S ATTORNEY OFFICE:**

STATE'S ATTORNEY SIGNATURE: \_\_\_\_\_ DATE \_\_\_\_\_

STATE'S ATTORNEY COMMENTS:

---

---

---

## AGREEMENT

THIS AGREEMENT is made as of \_\_\_\_\_, 2023, by and among the Maple River Water Resource District, a North Dakota political subdivision (the “**District**”) with a post office address of 1201 Main Avenue West, West Fargo, North Dakota 58078-1301; the County of Cass, North Dakota, a North Dakota political subdivision (the “**County**”) with a post office address of 211 - 9th Street South, Fargo, North Dakota 58103; and North Dakota Soybean Processors, LLC, a Delaware limited liability company, with a post office address of 2701 Bluff Road, Mount Vernon, Indiana 47620-8521 (“**NDSP**”).

## RECITALS

A. The District owns, operates, and maintains the CASSELTON TOWNSHIP IMPROVEMENT DISTRICT NO. 62 PROJECT (the “**Drain**”), a legal assessment drain, depicted as Drain 62 in the map of the projects contemplated under this Agreement attached as **Exhibit A** (the “**District Property**”).

B. NDSP is in the process of developing a soybean processing plant in Section 34 of Casselton Township, Cass County, North Dakota, adjacent to portions of the Drain and the District Property, on the real property legally described on **Exhibit B** (the “**NDSP Property**”).

C. Access to and from the NDSP Property will require road improvements to portions of 36th Street in Sections 33 and 34 of Casselton Township and in Section 4 of Everest Township to accommodate construction of NDSP’s soybean processing plant as well as future plant operations; 36th Street is adjacent to the Drain.

D. The road improvements to 36th Street required removal and replacement of existing intercept culverts and installation of three 24” RCPs and a single 58” x 36” RCPA (“**NDSP’s Utilities**”), on the District’s Drain right of way, as depicted on the plans attached as **Exhibit C**; the road improvements will also require modifications to the Drain.

E. In coordination with the Board of Township Supervisors of Casselton Township and the Board of Township Supervisors of Everest Township, the County is taking over

*Maple River Water Resource District  
Cass County  
North Dakota Soybean Processors, LLC  
Agreement  
Drain 62 Relocation*

Page 2

responsibility and jurisdiction of that portion of 36th Street in Section 4 of Everest Township and Sections 33 and 34 of Casselton Township beginning at Cass County Road Hwy 23 to a point 1100' feet east of 154th Avenue SE (the "**County Road**"), which will include taking over responsibility and jurisdiction of NDSP's Utilities.

F. In addition, NDSP has requested the District's permission to install, construct, maintain, repair and replace (as necessary) certain permanent driveway improvements (the "**NDSP Driveway Improvements**") for ingress and egress purposes on, over, and across a portion of the Drain and the District Property to accommodate NDSP's access to and from the County Road for the benefit of the NDSP Property, which NDSP Driveway Improvements are depicted in the map attached as **Exhibit D**.

G. The District, the County, and NDSP wish to enter into this Agreement to identify the parties' various rights and obligations regarding the improvements to the County Road, NDSP's Utilities, modifications to the Drain, and the NDSP Driveway Improvements, to accommodate the construction of NDSP's soybean processing plant as well as future plant operations, subject to the terms and conditions contained in this Agreement.

In consideration of the parties' mutual covenants contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties agree as follows:

**AGREEMENT**

1. **The Projects.** In connection with taking over responsibility and jurisdiction of the County Road, the County agrees that (i) the County will design, engineer, install and construct the improvements to the County Road, as depicted in the map attached as **Exhibit E** (the "**County Road Project**"), and the NDSP Driveway Improvements, to accommodate NDSP's access to and from the County Road for the benefit of the NDSP Property; and (ii) the County will pay for up to \$3,000,000 of the design, engineering, installation, construction and other costs associated with the Projects (as such term is defined below) through County, State and/or federal funding or grant monies. NDSP will reimburse the County for all design, engineering, installation and construction costs associated with the Projects in excess of \$3,000,000, as further provided in Section 4 of this Agreement. For the avoidance of doubt, all costs and expenses associated with the ownership, operation, maintenance and repair, or replacement of the road improvements, the NDSP Driveway Improvements or the modification and partial relocation of the Drain following construction of the Projects are excluded from NDSP's reimbursement obligations under Section 4 and are not subject to reimbursement by NDSP. The installation, construction, operation, and maintenance and repair of both the County Road Project and the NDSP Driveway Improvements will also require certain modifications and a partial relocation of the Drain, as depicted in the map attached as **Exhibit F** (the "**Drain Project**"). The County Road Project, the NDSP Driveway Improvements, and the

*Maple River Water Resource District  
Cass County  
North Dakota Soybean Processors, LLC  
Agreement  
Drain 62 Relocation*

**Page 3**

Drain Project are, collectively, the “**Projects.**” The parties agree the County could more efficiently construct the Projects and, with that in mind, the County will be responsible for all requisite engineering, design, bidding, contract administration, and construction of the Projects. The County, the District, and NDSP will cooperate regarding the design of the Projects to accommodate construction of NDSP’s soybean processing plant as well as future plant operations, and to accommodate the efficient operation of the Drain; the District and NDSP will have the opportunity to review and make comments on the design of the Projects prior to final design approval. The County will not proceed with construction until the District approves the final design of each of the Projects. With regard to the County Road Project and the NDSP Driveway Improvements, the County will acquire all rights of way necessary and will acquire all permits and approvals necessary to construct the County Road Project and the NDSP Driveway Improvements.

Following construction of the County Road Project and the NDSP Driveway Improvements, the County will own, operate, maintain, repair and replace such improvements, at the County’s sole cost and expense, subject to, with respect to the NDSP Driveway Improvements only, NDSP’s right to maintain, repair and replace the NDSP Driveway Improvements, including snow and debris removal and driveway patching, at NDSP’s cost and expense, in the event the County’s operation, maintenance, repair or replacement of the NDSP Driveway Improvements is unreasonably delayed or withheld, and such delay in or withholding of the performance of the County’s obligations with respect thereto is preventing the normal operation of NDSP’s soybean processing plant.

Notwithstanding the County’s ownership of and assumption of full responsibility and obligation to operate, maintain, repair and replace the NDSP Driveway Improvements, the County hereby consents to, and the District will grant to NDSP and its successors and assigns a perpetual easement to own, operate, utilize, maintain, repair and replace the NDSP Driveway Improvements for the purposes of ingress to and egress from, and for the benefit of, the NDSP Property, provided NDSP’s use of the NDSP Driveway Improvements and the easement property may not unreasonably interfere with or adversely affect the District’s operation or maintenance and repair of the Drain; as set forth in, and upon recordation of, that certain Access Easement between the District and NDSP, and which the District and NDSP hereby agree to execute promptly after completion of the Projects by the County and record in the real property records of Cass County, North Dakota.

With regard to the Drain Project, the District will acquire all rights of way necessary, will acquire all permits and approvals necessary, and, following construction, will own, maintain, and operate such improvements to the Drain.

With respect to all of the Projects, the County shall ensure that its bid specifications and contracts with its engineers, contractors, subcontractors, sub-subcontractors, suppliers, or any other parties to design, procure, construct, install, perform, or provide any portions of the Projects, inclusive of

*Maple River Water Resource District  
Cass County  
North Dakota Soybean Processors, LLC  
Agreement  
Drain 62 Relocation*

**Page 4**

the bid specifications and contracts for the Projects: (1) are in compliance with the requirements, terms and conditions of this Agreement; (2) contain representations, warranties, “make-right” obligations, indemnities granted to the County, and remedies for breach of contract to complete the work and deliver the Projects in compliance with the contract; (3) contain firm deadlines in order for the Projects to meet the proposed construction timeline attached as **Exhibit G**, with commercially reasonable liquidated damages for unexcused delays, set-off rights, etc. and obligations to proceed with the work on a time is of the essence basis and in a diligent and expeditious manner, provided, for clarity, the County does not warrant or guarantee completion of construction of the Projects by a date certain; and (4) contain customary and commercially reasonable change order provisions for construction contracts of this type, including a requirement that all parties to the contract must sign any change order for it to be effective and disputed change order procedures; and the County shall be responsible for exercising all rights and pursuing all remedies available to the County under such contracts, including without limitation the pursuit of available liquidated damages and disputing any change order in good-faith if there is a good-faith basis to dispute the change order. For purposes of the foregoing provisions, the County agrees to consult with the District and NDSP in good faith on the final form of any construction contracts for the Projects for review and comment by the District and NDSP, prior to entering into any construction contracts for the Projects. The County will require its contractors and consultants to secure Commercial General Liability, Auto, and Excess or Umbrella Policies in connection with the Projects, and will require that those policies name the County, the District and NDSP as additional insured parties; the policies must be primary and noncontributory regarding any other insurance available to the County, the District and NDSP, and the policies must each contain a “waiver of subrogation” that waives any right to recovery any of those contractors’ or consultants’ insurance companies might have against the County, the District or NDSP.

2. **Rights of Way.** To the extent any of the Projects require any additional rights of way from NDSP, NDSP will convey the requisite right of way or easements on, over, under and across the NDSP Property as necessary and reasonably determined by NDSP, the County and the District, at no cost to the County or the District.

3. **Installation, Operation, Maintenance, Repair and Replacement of NDSP’s Utilities.** The parties acknowledge that the road improvements to portions of 36th Street in Section 4 of Everest Township and Sections 33 and 34 of Casselton Township to accommodate construction of NDSP’s soybean processing plant as well as future plant operations required removal and replacement of existing intercept culverts and installation of three 24” RCPs and a single 58” x 36” RCPA, on the District’s Drain right of way, in the late Summer and Fall of 2022 by NDSP, as depicted on the plans attached as **Exhibit C** (“**NDSP’s Utilities**”); NDSP constructed the NDSP Utilities in accordance with a Utility Permit approved by the District on August 4, 2022 (the “**Utility Permit**”). In connection with taking over responsibility and jurisdiction of the County Road, the County hereby agrees to take over full responsibility and jurisdiction of NDSP’s Utilities and agrees to operate, maintain, repair and replace NDSP’s Utilities at the County’s sole cost and expense. Upon completion of the installation and construction of NDSP’s Utilities in

**Maple River Water Resource District  
Cass County  
North Dakota Soybean Processors, LLC  
Agreement  
Drain 62 Relocation**

**Page 5**

accordance the Utility Permit, (i) the County will own, operate, maintain, repair and replace NDSP's Utilities and assume full responsibility therefor, at the County's sole cost and expense, and (ii) NDSP and the District will proceed with customary and ordinary procedures to terminate the Utility Permit and all of NDSP's responsibilities and obligations with respect to NDSP's Utilities thereunder. The County's operation, maintenance, repair, and replacement of NDSP's Utilities may not unreasonably interfere with or adversely affect the District's operation or maintenance and repair of the Drain.

4. **County Reimbursements.** In connection with taking over responsibility and jurisdiction of the County Road, the County will pay for up to \$3,000,000 of the design, engineering, installation, construction and other costs associated with the Projects, including all third party engineering and consultant costs and fees, and all third party costs for design, bidding, equipment, materials, environmental services, permit acquisition, right of way acquisition, surveying, construction, construction inspection, interim financing costs, temporary maintenance costs prior to completion of construction, and labor costs associated with construction of the Projects, and other such related costs of the Projects, prior to and through completion of construction of the Projects. NDSP will reimburse the County for all such costs and expenses associated with and regarding the Projects prior to and through completion of construction of the Projects in excess of \$3,000,000, and the County shall direct invoice NDSP for any and all such excess costs associated with and regarding the Projects prior to and through completion of construction of the Projects. Reimbursable expenses include reasonable attorneys' costs and fees, engineering and consultant costs and fees, and costs for design, bidding, equipment, materials, environmental services, permit acquisition, right of way acquisition, surveying, construction, construction inspection, interim financing costs, and labor costs associated with construction of the Projects, and other such related costs of the Projects, prior to and through completion of construction of the Projects.

No more frequently than monthly and no less frequently than quarterly prior to completion of construction of the Projects, the County will provide NDSP with written notice of all design, engineering, installation, construction and other costs associated with the Projects, along with all supporting documentation and copies of all bills and invoices received for the costs and expenses related to the Projects. When payment by the County of such costs exceeds \$3,000,000, the County shall direct bill and invoice NDSP for such excess costs, with supporting documentation of such excess costs. For the avoidance of doubt, all costs and expenses associated with the ownership, operation, maintenance and repair, or replacement of the road improvements, NDSP's Utilities, the NDSP Driveway Improvements or the modification and partial relocation of the Drain, following construction of the Projects and NDSP's Utilities, are excluded from NDSP's reimbursement obligations under this Section 4 and are not subject to reimbursement by NDSP. NDSP will provide full payment to the County of all such reimbursable excess costs and expenses within sixty (60) days from the date of each direct bill invoice. If NDSP fails to provide payment within sixty (60) days, interest will accrue in the amount of one and one-half percent (1.50%) per month on all outstanding principal until paid in full.

*Maple River Water Resource District  
Cass County  
North Dakota Soybean Processors, LLC  
Agreement  
Drain 62 Relocation*

Page 6

5. **District Reimbursements.** NDSP will reimburse the District for all costs and expenses associated with and regarding the Projects, regarding any Utility Permits issued by the District to accommodate NDSP's improvements on the NDSP Property, and regarding any easements or access agreements the District will convey to NDSP. Reimbursable expenses include attorneys' costs and fees, engineering and consultant costs and fees, litigation costs incurred regarding any of the Projects, design, right of way acquisition, permit acquisition, surveying, construction inspection, interim financing costs, and labor costs incurred by the District associated with the Projects, and other project-related costs. No more than monthly, the District will provide NDSP with written notice of all costs and expenses, along with copies of all bills and invoices received for those Project costs. NDSP will provide full payment to the District of all costs and expenses within sixty (60) days from the date of each written notice. If NDSP fails to provide payment within sixty (60) days, interest will accrue in the amount of one and one-half percent (1.50%) per month on all outstanding principal until paid in full.

6. **Default; Remedies.** If NDSP fails to perform any of its obligations under this Agreement and such failure continues for a period of thirty (30) days following written request or demand or notice from the District and/or the County, then NDSP will be in default and the District and the County shall have the right to suspend the performance of their obligations under this Agreement until such time as NDSP cures such default; provided, however, that if NDSP's failure to perform is non-monetary in nature and cannot be cured within such thirty (30) day period and NDSP commences to cure such failure within such thirty (30) day period and thereafter diligently pursues such cure to completion, then the District and the County shall not be entitled to suspend their performance under this Agreement for such default, unless the cure of such default is required for the commencement of their performance (e.g., NDSP must grant a right of way or easement to the District and/or the County). Any suspension of performance of obligations by the County and the District under this Agreement will be without prejudice to any obligations or liabilities accrued prior to such suspension. Upon the occurrence of any default by NDSP beyond any applicable periods, the District and the County may, in addition to suspending performance hereunder, but upon at least ten (10) days prior written notice to NDSP, enforce the provisions of this Agreement and may take any and all other actions necessary, in law or in equity, to collect all amounts due under this Agreement or to enforce any of NDSP's other obligations under this Agreement. If NDSP fails to make timely payment as required under this Agreement, the District and the County may recover their respective costs incurred by assessing the costs against the NDSP Property, including any reasonable attorneys' fees incurred in attempting to collect the amounts due, or by other legal means of collection. The remedies provided for in this Agreement are cumulative and not exclusive, and are in addition to any and all other remedies available to the District and the County under North Dakota law. NDSP will be responsible for all of the District's and the County's costs and expenses, including reasonable attorneys' fees, incurred in collecting, or attempting to collect from NDSP for monies owing by NDSP under this Agreement. In connection with any litigation arising out of this Agreement, the prevailing party shall be awarded all costs incurred in relation to such litigation, including reasonable attorneys' fees and expenses.



*Maple River Water Resource District  
Cass County  
North Dakota Soybean Processors, LLC  
Agreement  
Drain 62 Relocation*

Page 7

7. **Access; Indemnity.** The County, and the County's employees, contractors, consultants, agents and representatives, may enter upon and access the NDSP Property and the District Property for purposes of the Projects. The County, and the County's employees, contractors, consultants, agents, and representatives, accept any and all risk regarding entry upon the NDSP Property and the District Property. The County will release, defend, indemnify, protect, and hold harmless NDSP, the District and their respective officers, agents, representatives, employees, consultants, and contractors from and against any and all claims, actions, administrative proceedings, judgments, damages, penalties, fines, costs, liabilities, interests, or losses, including costs, expenses, and reasonable attorneys' fees, to the extent arising out of or resulting from its installation, construction, operation, maintenance, repair and replacement of the Projects, including any entry upon, use of, or access in, on, over, across, and through the NDSP Property or the District Property, respectively, by the County or any of its employees, contractors, agents and representatives, including any failure to perform under this Agreement.

8. **Forbearance and Remedies.** The failure or delay of the parties hereto to insist on the timely performance of any of the terms of this Agreement, or the waiver of any particular breach of any of the terms of this Agreement, at any time, will not be construed as a continuing waiver of those terms or any subsequent breach, and all terms will continue and remain in full force and effect as if no forbearance or waiver had occurred. .

9. **Compliance with Laws.** The County will comply and will cause its contractors to comply with all applicable laws, ordinances, rules, and regulations of all federal, state, county, and municipal governments, and any other applicable governmental entities or political subdivisions, and their appropriate departments, commissions, boards, and officers, which may be applicable to the Projects. In addition, the County and its contractors will obtain all other necessary and requisite licenses, permits, registrations, and/or approvals from all applicable federal, state, county, and municipal governments, and any other applicable governmental entities.

10. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties regarding the Projects and all other matters described in this Agreement; this Agreement supersedes any previous oral or written agreements between the parties.

11. **Modifications.** Any modifications or amendments of this Agreement must be in writing and signed by both parties to this Agreement.

12. **Binding Effect.** The covenants, terms, conditions, provisions, and undertakings in this Agreement, or in any amendment, will be binding upon the parties' successors and assigns.

*Maple River Water Resource District  
Cass County  
North Dakota Soybean Processors, LLC  
Agreement  
Drain 62 Relocation*

Page 8

13. **Representation.** The parties, having been represented by counsel or having waived the right to counsel, have carefully read and understand the contents of this Agreement, and agree they have not been influenced by any representations or statements made by any other parties.

14. **Survival of Agreement.** If any court of competent jurisdiction finds any provision or part of this Agreement is invalid, illegal, or unenforceable, that portion will be deemed severed from this Agreement, and all remaining terms and provisions of this Agreement will remain binding and enforceable; the parties will reconvene negotiations to arrive, in good faith, at an agreement as to matters remaining undetermined as a result of any finding by a court of competent jurisdiction that any provision or part of this Agreement is invalid, illegal, or unenforceable.

15. **Governing Law.** This Agreement will be construed and enforced in accordance with North Dakota law. The parties agree the venue for any litigation arising out of this Agreement will be in District Court in Cass County, North Dakota, and the parties waive any objection to personal jurisdiction.

16. **Assignment.** None of the parties will transfer or assign this Agreement, nor any rights or obligations under this Agreement, without the express written consent of the other parties.

17. **Headings.** Headings in this Agreement are for convenience only and will not be used to interpret or construe its provisions.

18. **Effective Date.** This Agreement will become effective as of the date first set forth above.

19. **Notices.** All notices or other communications required or permitted by this Agreement shall be in writing and shall be deemed given when personally delivered to the other party, or in lieu of such personal service, five (5) days after deposit in the United States mail, first class, postage prepaid, certified; or the next business day if sent by reputable overnight courier, provided receipt is obtained and charges are prepaid by the delivering party. Any notice shall be addressed as follows:

If to NDSP: North Dakota Soybean Processors, LLC  
2701 Bluff Rd.  
Mount Vernon, IN 47620-8521  
Attn.: President

With Copy to: Dorsey & Whitney LLP  
50 South Sixth Street, Suite 1500  
Minneapolis, MN 55402  
Attn.: Michael Weaver

***Maple River Water Resource District  
Cass County  
North Dakota Soybean Processors, LLC  
Agreement  
Drain 62 Relocation***

**Page 9**

If to the District: Maple River Water Resource District  
Cass County Highway Dept.  
1201 Main Ave. W.  
West Fargo, ND 58708  
Attn: Carol Harbeke Lewis

With Copy to: Ohnstad Twichell, P.C.  
444 Sheyenne Street  
P.O. Box 458  
West Fargo, ND 58078-0458  
Attn.: Sean M. Fredricks

If to County: Cass County  
211 9<sup>th</sup> St S  
Fargo, ND 58103  
Attn.: Robert Wilson

With Copy to: Cass County Highway Department  
1201 Main Ave W  
West Fargo, ND 58078  
Attn.: Jason Benson

Any Party may change its address for purposes of this Section by giving written notice of such change to the other party in the manner provided in this Section.

[Signature Pages Follow]







THARALDSON ETHANOL

**LEGEND**

- PROJECT 1 - GRADING AND GRAVEL SURFACING (2022)
- PROJECT 2 - GRADING AND GRAVEL SURFACING, DRIVEWAY CROSSING OF DRAIN 62 (2023)
- PROJECT 3 - COUNTY ROAD 23 TURN LANE IMPROVEMENTS, BOX CULVERT EXTENSION, CONCRETE PAVING (2024)

BEGIN PROJECT STA 0+26.00

DRAIN 62

36th St SE

COUNTY ROAD 23

**PRELIMINARY**  
NOT FOR CONSTRUCTION

THARALDSON ETHANOL

**LEGEND**

- PROJECT 1 - GRADING AND GRAVEL SURFACING (2022)
- PROJECT 2 - GRADING AND GRAVEL SURFACING, DRIVEWAY CROSSING OF DRAIN 62 (2023)
- PROJECT 3 - COUNTY ROAD 23 TURN LANE IMPROVEMENTS, BOX CULVERT EXTENSION, CONCRETE PAVING (2024)

DRAIN 62

36th St SE

154th Ave SE

END PROJECT STA 53+50.00

H:\JBN\6000\6006\6006\_0148\CAD\Exhibits\Scope of Work Exhibit\_2\_9-9-22.dwg-Exhibit (1)-9/13/2022 1:14 PM-(jremer)

No.	Revision	Date	By



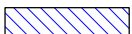
Drawn by JER	Date 9/08/22
Checked by AMR	Scale AS SHOWN


36TH ST. SE/COUNTY ROAD 23 (EXHIBITS)  
NORTH DAKOTA SOYBEAN PROCESSORS, LLC  
CASSELTON, ND


EXHIBIT A -  
36TH ST SE  
PROJECT NO. 6006-0148

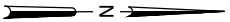
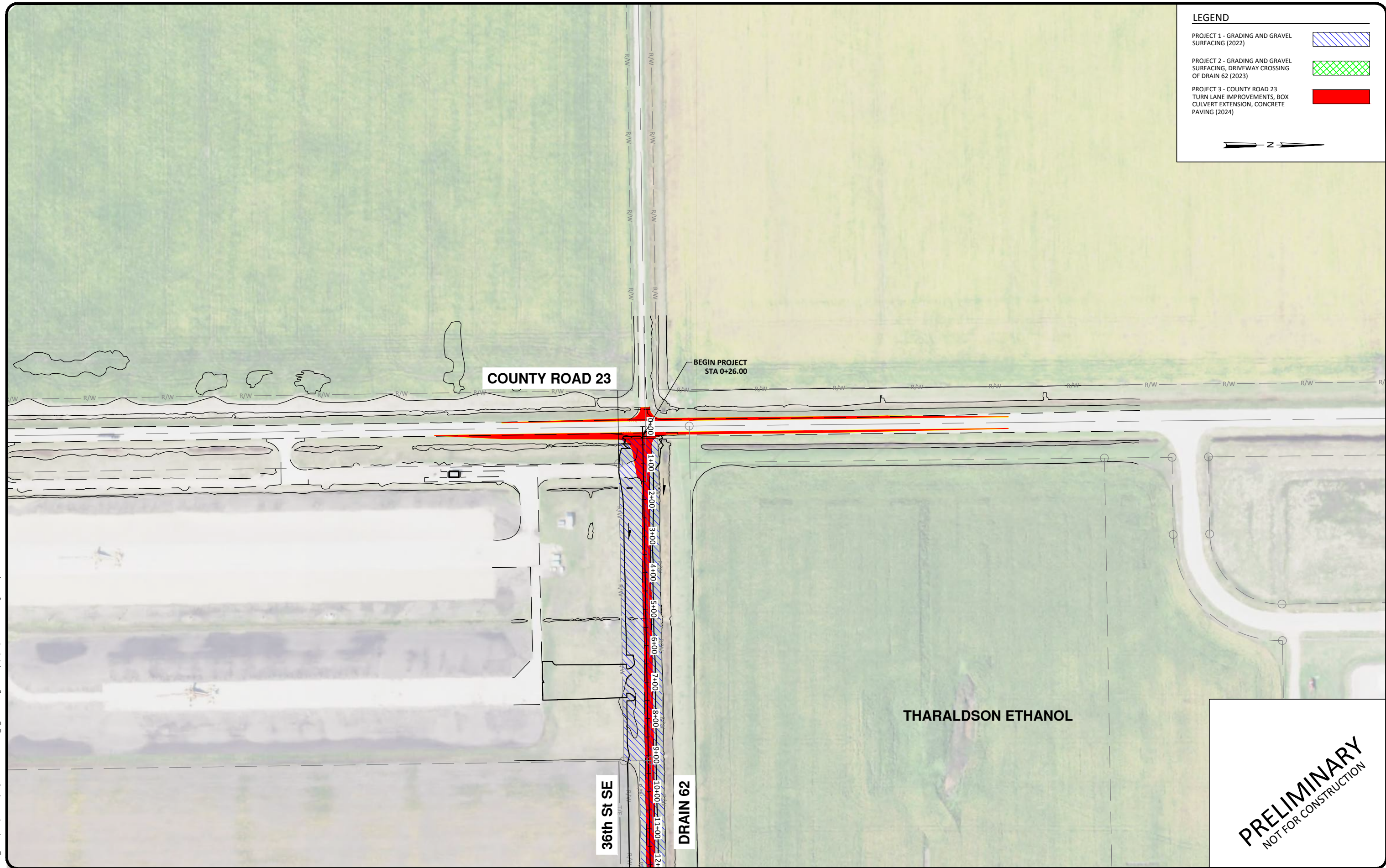
SHEET  
1

**LEGEND**

PROJECT 1 - GRADING AND GRAVEL SURFACING (2022) 

PROJECT 2 - GRADING AND GRAVEL SURFACING, DRIVEWAY CROSSING OF DRAIN 62 (2023) 

PROJECT 3 - COUNTY ROAD 23 TURN LANE IMPROVEMENTS, BOX CULVERT EXTENSION, CONCRETE PAVING (2024) 

**COUNTY ROAD 23**

BEGIN PROJECT  
STA 0+26.00

**36th St SE**

**DRAIN 62**

**THARALDSON ETHANOL**

**PRELIMINARY**  
NOT FOR CONSTRUCTION

H:\JBN\6000\6006\6006\_0148\CAD\Exhibits\Scope of Work Exhibit\_2\_9-9-22.dwg-Exhibit (2)-9/13/2022 1:14 PM-(jremmer)

No.	Revision	Date	By



Drawn by JER	Date 9/08/22
Checked by AMR	Scale AS SHOWN

36TH ST. SE/COUNTY ROAD 23 (EXHIBITS)  
NORTH DAKOTA SOYBEAN PROCESSORS, LLC  
CASSELTON, ND

EXHIBIT A -  
COUNTY ROAD 23  
PROJECT NO. 6006-0148

SHEET  
2



*Maple River Water Resource District  
Cass County  
North Dakota Soybean Processors, LLC  
Agreement  
Drain 62 Relocation*

**Page 14**

**EXHIBIT B**

Legal Description of NDSP Property

Lot 1, Block 1;  
Lot 1, Block 2; and  
Lot 1, Block 3;  
all in NDSP FIRST SUBDIVISION, according to the recorded plat thereof, in Section 34,  
Township 140, Range 52 West of the Fifth Principal Meridian, Extra Territorial District of the  
City of Casselton, Cass County, North Dakota.

MAPLE RIVER WATER RESOURCE DISTRICT  
UTILITY PERMIT

North Dakota Soybean Processors, LLC, a Delaware limited liability company, with a post office address of 2701 Bluff Road, Mount Vernon, Indiana 47620-8521 (“Applicant”), is in the process of developing a soybean crushing plant in Section 34 of Casselton Township, Cass County, North Dakota, adjacent to portions of CASSELTON TOWNSHIP IMPROVEMENT DISTRICT NO. 62 PROJECT (the “Drain”), a legal assessment drain owned and operated by the Maple River Water Resource District (the “District”). Applicant, in cooperation with the Casselton Township Board of Township Supervisors, the Everest Township Board of Township Supervisors, and the Cass County Highway Department, plans to construct certain improvements to 36th Street SE in Section 33 of Casselton Township to accommodate construction of Applicant’s plant as well as future plant operations; 36th Street is adjacent to the Drain and Applicant’s road improvements will include modification of intercept culverts. More specifically, Applicant’s project will require removal and replacement of existing intercept culverts, and installation of three 24” RCPs and a single 58”x 36” RCPA, as depicted on the plans attached as **Exhibit A** (“Applicant’s Utilities”); Applicant applies for this Permit to make those intercept culvert modifications, on the District’s Drain right of way. The parties agree this Permit amends, replaces, and supersedes the UTILITY PERMIT approved by the District for Applicant on June 2, 2022.

Applicant may install Applicant’s Utilities into and upon the Drain as specifically shown on **Exhibit A**. Installation, operation, and maintenance of Applicant’s Utilities on the District’s right of way will conform to the following provisions:

1. Applicant will complete construction and maintenance at Applicant’s sole expense.

2. Applicant will place Applicant's Utilities at the designated depth below the original design grade as set forth in the plans attached as **Exhibit A**.
3. Within 30 days after construction, maintenance, relocation, or removal of Applicant's Utilities, Applicant will remove any right of way scars; Applicant will restore any disturbed areas to original condition; and Applicant will re-seed the vicinity disturbed by Applicant's activities. Applicant will maintain any disturbed areas for a period of one year from the date of completion.
4. Applicant will install marker posts at all Drain crossings on the right of way line, or at any other point as designated by the District.
5. Applicant will complete installation, maintenance, relocation, and/or removal of Applicant's Utilities on the District's right of way in a manner that does not interfere with the Drain or the District's use of the Drain.
6. The District will not be liable for any damages to Applicant's Utilities resulting from reconstruction or maintenance of the Drain or any of the District's other facilities or right of way. Applicant will release, defend, indemnify, and hold harmless the District, and all of the District's employees, officers, agents, and representatives, from and against any and all claims, demands, causes of action, or demands for relief, including costs, expenses, and attorneys' fees, that may arise out of or result from any acts or omissions regarding Applicant's activities under this Permit; Applicant's installation or maintenance of Applicant's Utilities; or any accident, injury, or damage to person, property, or equipment as a result of Applicant's entry upon or use of the District's right of way or property.
7. Applicant, at Applicant's own cost, will repair or replace the District's structures, facilities, right of way, or any other property owned by the District which may be damaged as a result of Applicant's installation and maintenance of Applicant's Utilities on the District's right of way, or otherwise as a result of Applicant's entry upon or use of the District's right of way.
8. Applicant will promptly remove Applicant's Utilities from the District's right of way, or will relocate or adjust Applicant's Utilities, all at Applicant's sole cost and expense upon notice from the District, as necessary for purposes of constructing, cleaning, inspecting, reconstructing, modifying, operating, maintaining, repairing, or improving the Drain.
9. Applicant will be solely responsible for promptly complying with all present and future laws, ordinances, rules, and regulations of any other federal, state, county, or local governments or governmental entities which may be applicable regarding Applicant's Utilities or Applicant's activities. Further, Applicant will be solely responsible for obtaining all applicable licenses, permits, or other approvals necessary, if any, regarding Applicant's Utilities or Applicant's activities under this Permit.

10. Applicant will be solely responsible for all costs and expenses associated with complying with Applicant's obligations under this Permit.
11. Applicant will not transfer or assign this Permit, nor any of Applicant's rights or obligations under this Permit, without the express written consent of the District. However, the parties recognize and agree that, at some point following Applicant's installation and completion of Applicant's Utilities, the Cass County Highway Department will take ownership of Applicant's Utilities; in that case, Applicant need not obtain the District's consent prior to conveyance of ownership of Applicant's Utilities to the Cass County Highway Department.
12. Applicant will provide reasonable notice to the District in advance of Applicant's commencement of installation of Applicant's Utilities.
13. Applicant will complete construction within one year from the date of the District's approval or this Permit is void.
14. Upon Applicant's completion of installation of Applicant's Utilities, Applicant will promptly notify the District. Within 60 days of Applicant's completion, Applicant will provide the District with as-built drawings of Applicant's Utilities. The District, in its discretion, may require an inspection of Applicant's Utilities to ensure compliance with this Permit. Applicant will be responsible for the District's costs associated with the inspection; following an inspection, the District will provide Applicant with notice of costs incurred and Applicant will reimburse the District within 60 days.
15. If Applicant fails to perform any of Applicant's obligations under this Permit within a reasonable time following request or demand from the District, the District may perform Applicant's obligations and may recover its costs incurred by assessing the costs against any property owned by Applicant in North Dakota, including any attorneys' fees incurred in attempting to collect the amounts due, or by other legal means of collection.
16. The failure or delay of the District to insist on the timely performance of any of the terms of this Permit, or the waiver of any particular breach of any of the terms of this Permit, at any time, will not be construed as a continuing waiver of those terms or any subsequent breach, and all terms will continue and remain in full force and effect as if no forbearance or waiver had occurred. Upon the occurrence of any default by Applicant, the District may, immediately and without the need for any prior notice, declare this Permit void and may otherwise enforce the provisions of this Permit and take any and all other actions necessary, in law or in equity, to collect all amounts due under this Permit or to enforce any of Applicant's other obligations under this Permit. The remedies provided for in this Permit are cumulative and not exclusive, and are in addition to any and all

other remedies available to the District under North Dakota law. Applicant will be responsible for all of the District's costs and expenses, including reasonable attorneys' fees, incurred in enforcing, collecting, or attempting to collect under this Permit, or incurred in litigating the terms or validity of this Permit.

17. Special Conditions: See conditions attached as **Exhibit B**.

Applicant agrees to the above terms and conditions. This application will become effective as a Permit upon execution by both Applicant and the District.

**APPLICANT:**

**North Dakota Soybean Processors, LLC**

By: *Doug Vanmeter*  
Doug Vanmeter

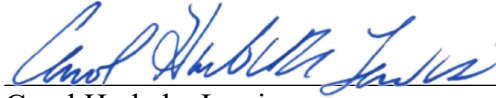
Contact Information for Applicant:

Mailing Address: PO Box 289  
2701 Bluff Road  
Mount Vernon, IN 47620

Phone Number: 812-781-9130

Email Address: douglas.vanmeter@cgb.com

**MAPLE RIVER WATER  
RESOURCE DISTRICT**



---

Carol Harbeke Lewis  
Secretary-Treasurer

Date Approved: August 4, 2022

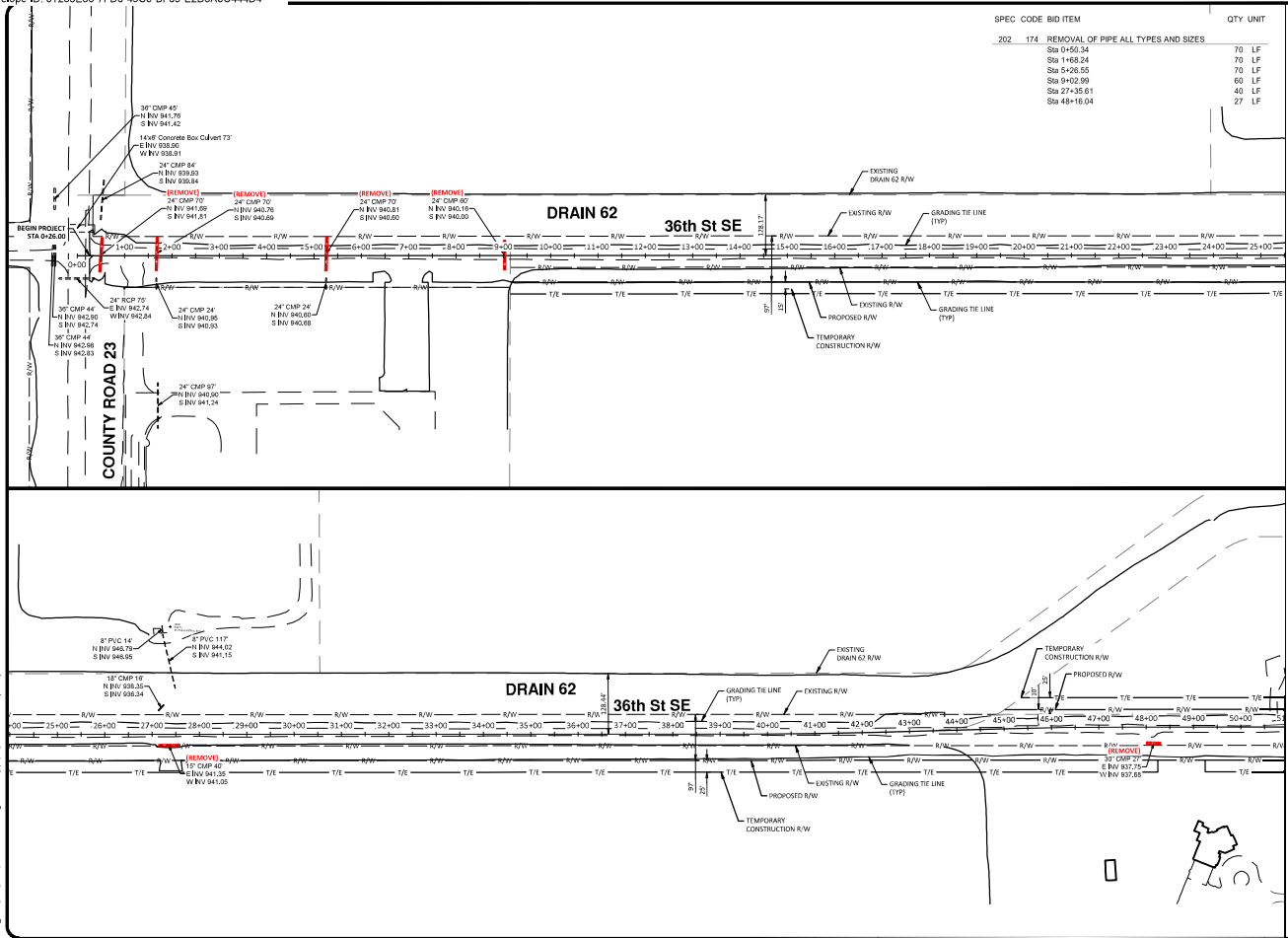
Contact Information for the District:

Carol Harbeke Lewis  
Secretary-Treasurer  
Cass County Water Resource Districts  
1201 Main Avenue West  
West Fargo, ND 58078-1301  
Phone: 701-298-2381  
Lewisc@casscountynd.gov

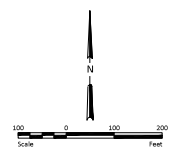
**EXHIBIT A**

**Applicant's Plans**





SPEC CODE	BID ITEM	QTY	UNIT
202	174	REMOVAL OF PIPE ALL TYPES AND SIZES	
	Sta 0+50.34	70	LF
	Sta 1+68.24	70	LF
	Sta 9+26.55	70	LF
	Sta 9+02.99	60	LF
	Sta 27+35.51	40	LF
	Sta 48+16.04	27	LF



**LEGEND**  
REMOVAL OF CULVERT

No.	Revision	Date	By

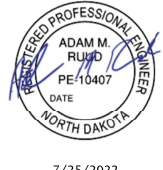


Drawn by  
**JER**  
Checked by  
**AMR**  
Date  
**7/22/22**  
Scale  
**AS SHOWN**

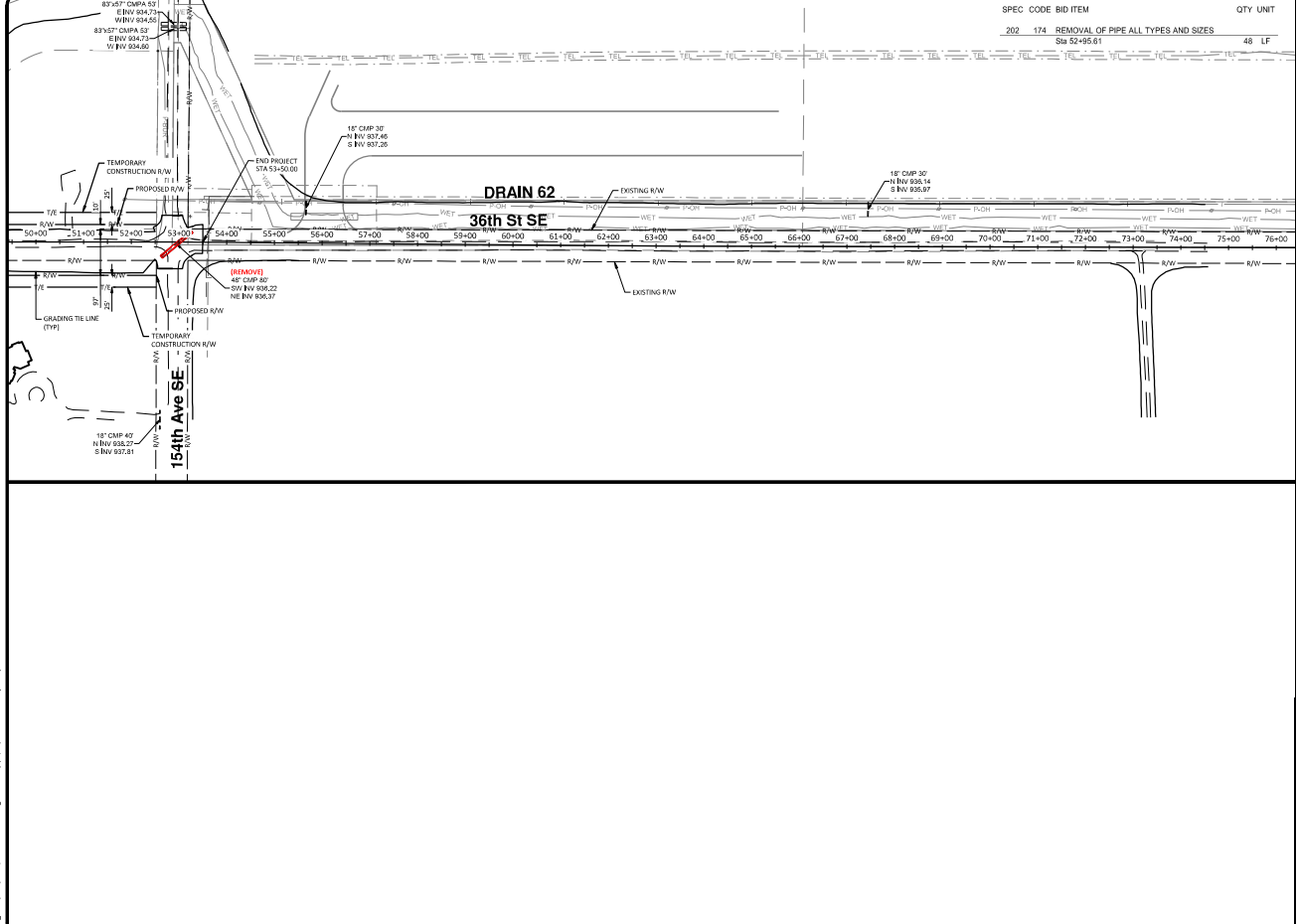
36TH ST. SE (POTENTIAL FUTURE COUNTY ROAD)  
NORTH DAKOTA SOYBEAN PROCESSORS, LLC  
CASSELLTON, ND

REMOVALS  
PROJECT NO. 6006-0148

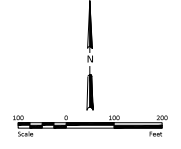
SHEET  
**12**



7/25/2022



SPEC CODE	BID ITEM	QTY	UNIT
202	174 REMOVAL OF PIPE ALL TYPES AND SIZES	48	LF
Sta 52+95.61			



**LEGEND**  
REMOVAL OF CULVERT



7/25/2022

No.	Revision	Date	By



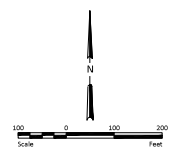
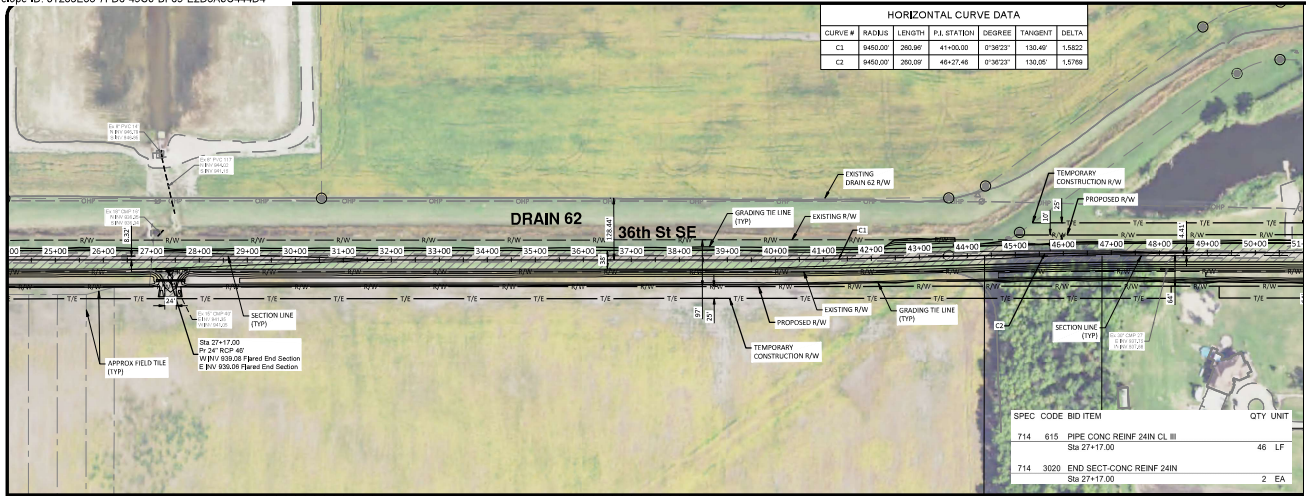
Drawn by: JER Date: 7/22/22  
Checked by: AMR Scale: AS SHOWN

36TH ST. SE (POTENTIAL FUTURE COUNTY ROAD)  
NORTH DAKOTA SOYBEAN PROCESSORS, LLC  
CASSELTON, ND

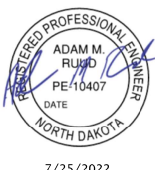
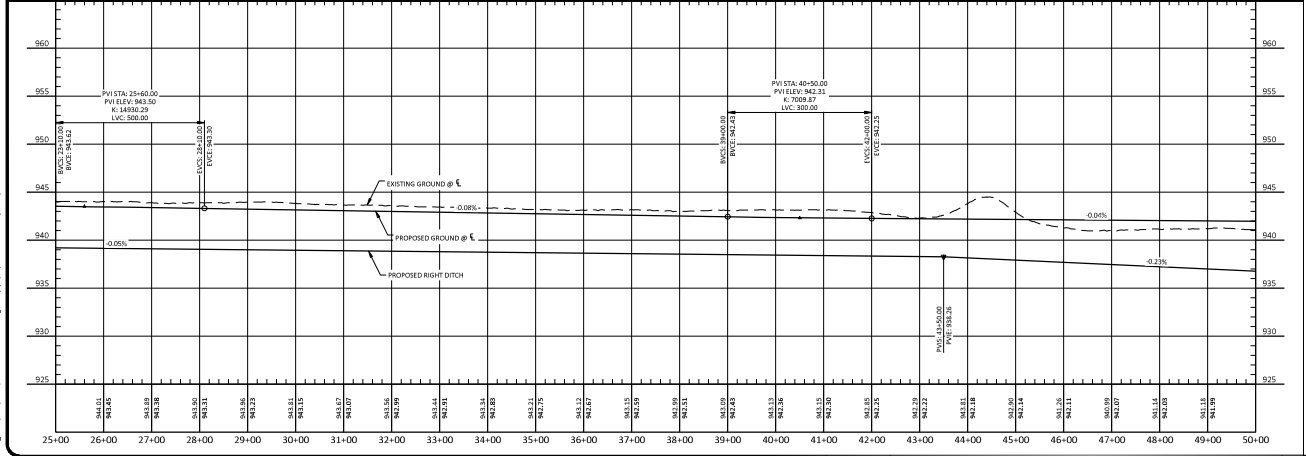
REMOVALS  
PROJECT NO. 6006-0148

SHEET  
13





SPEC	CODE	BID ITEM	QTY	UNIT
714	615	PIPE CONC REINF 24IN CL III Sta 27+17.00	46	LF
714	3020	END SECT CONC REINF 24IN Sta 27+17.00	2	EA



7/25/2022

No.	Revision	Date	By

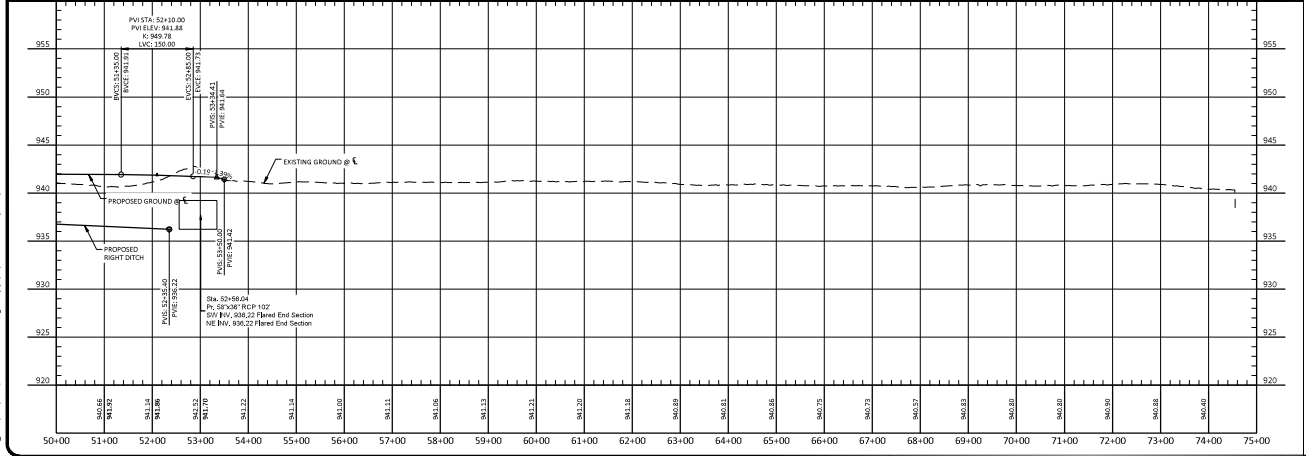
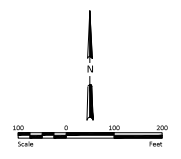
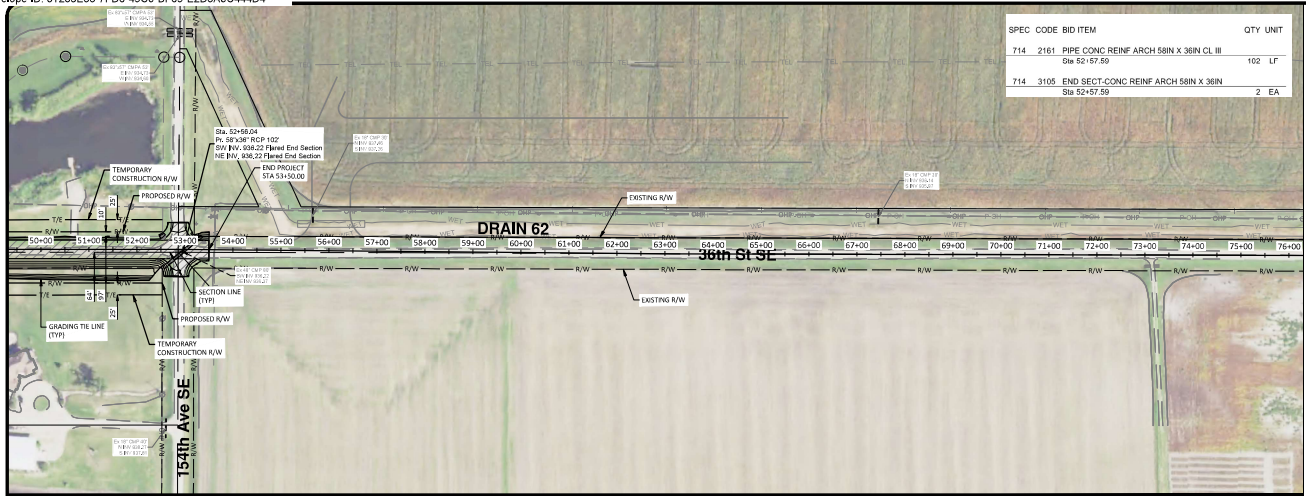



Drawn by: JER  
Checked by: AMR  
Date: 7/22/22  
Scale: AS SHOWN

36TH ST. SE (POTENTIAL FUTURE COUNTY ROAD)  
NORTH DAKOTA SOYBEAN PROCESSORS, LLC  
CASSELTON, ND

PLAN & PROFILE  
PROJECT NO. 6006-0148

SHEET  
15



  
 REGISTERED PROFESSIONAL ENGINEER  
 ADAM M. RUED  
 PE 10407  
 DATE  
 NORTH DAKOTA  
 7/25/2022

No.	Revision	Date	By


**HOUSTON**  
 engineering, inc.

Drawn by: JER  
 Date: 7/22/22  
 Checked by: AMR  
 Scale: AS SHOWN

36TH ST. SE (POTENTIAL FUTURE COUNTY ROAD)  
 NORTH DAKOTA SOYBEAN PROCESSORS, LLC  
 CASSELTON, ND

PLAN & PROFILE  
 PROJECT NO. 6006-0148

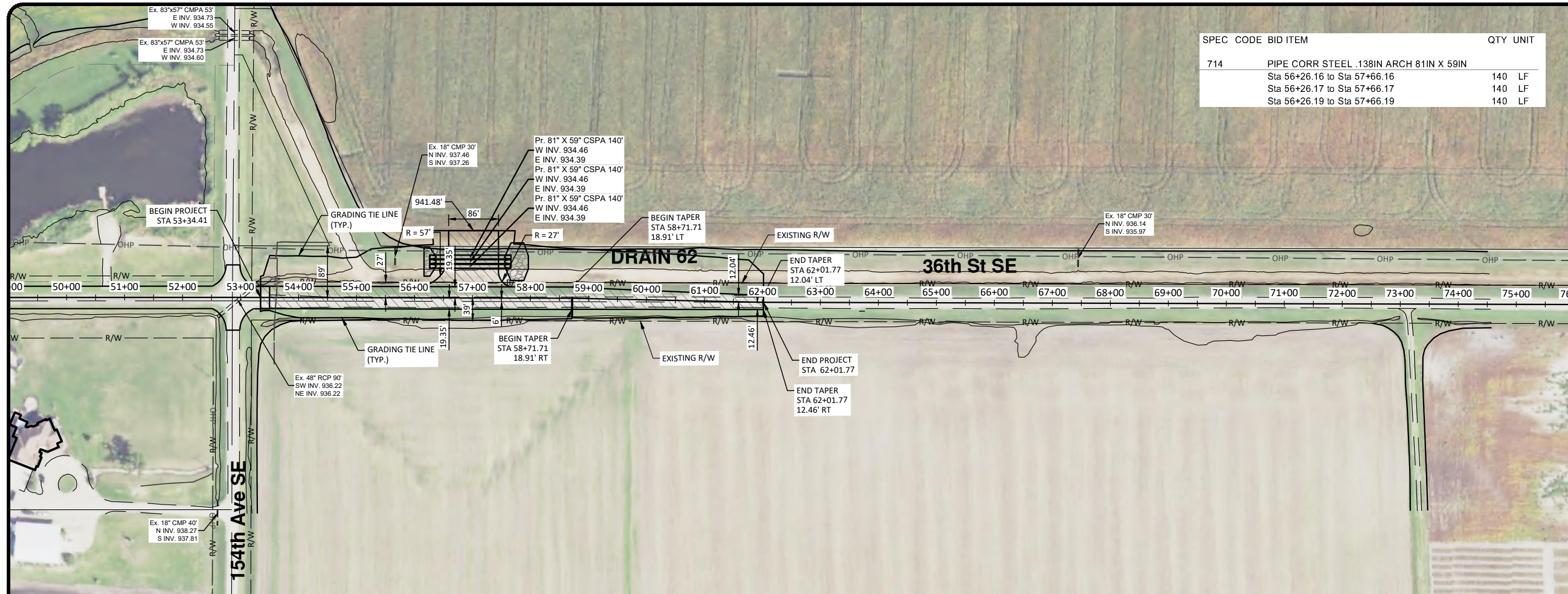
SHEET  
 16

## **EXHIBIT B**

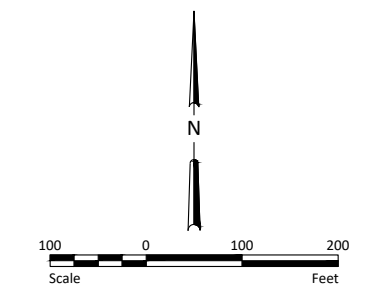
### **Special Conditions**

1. Applicant will install and maintain erosion protection matching the typical details in the original Drain 62 plan unless the District's engineer approves an alternative plan.
2. Any excavation that occurs within the drain right-of-way, including the channel side-slope, will be graded to reestablish the existing channel section and seeded at the conclusion of the installation. Applicant is responsible for the establishment of vegetation after seeding.
3. Applicant will allow passage of storm water through the construction area during runoff events and will not disrupt the designed function of the Drain.
4. In accordance with Section 7 of this Permit, Applicant is responsible for any side-slope failures or slumping that occurs because of Applicant's Utilities and Applicant is responsible for the costs of repairing damages that result from improper or poor pipe installation, from pipe separation, or from failed erosion protection.
5. Applicant will replace any excavated material using a method of compacted horizontal lifts. Replacement of material in layers will not exceed 9 inches in thickness between compaction. Applicant will utilize appropriate mechanical compaction methods such as a sheepsfoot.
6. Applicant will install cast iron flap gates at culvert outlets; specifically, Applicant will install Waterman F-10 or Fresno Valves & Castings Series 6000 Model 10C unless the District's engineer approves an alternative.

# EXHIBIT D

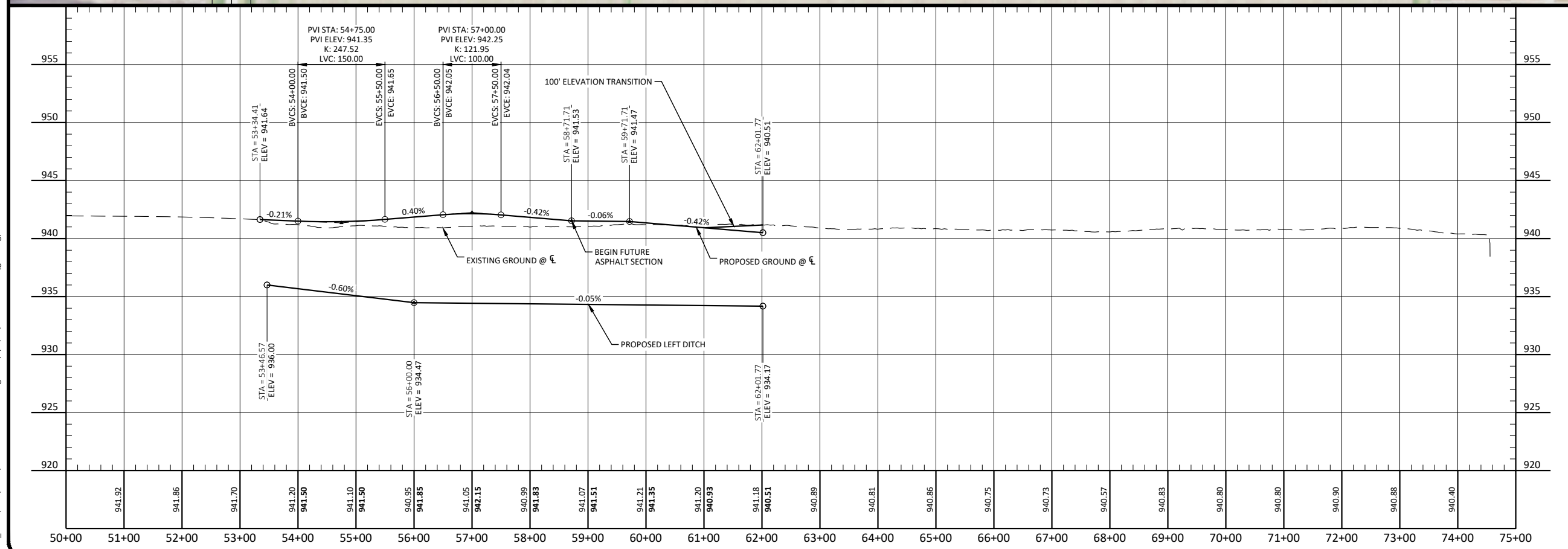


SPEC CODE	BID ITEM	QTY	UNIT
714	PIPE CORR STEEL .138IN ARCH 81IN X 59IN	140	LF
	Sta 56+26.16 to Sta 57+66.16	140	LF
	Sta 56+26.17 to Sta 57+66.17	140	LF
	Sta 56+26.19 to Sta 57+66.19	140	LF



**LEGEND**

3" AGGREGATE BASE COURSE	
CL 5 & 7" CRUSHED CONCRETE	



REGISTERED PROFESSIONAL ENGINEER  
 ADAM M. RUDD  
 PE-10407  
 DATE  
 NORTH DAKOTA  
 1/24/2023

H:\JBN\6000\6006\6006\_0152\CAD\Plans\60 - Plan & Profile.dwg-P&P (1)-1/24/2023 8:18 AM (gcowling)

No.	Revision	Date	By



Drawn by  
JER  
Date  
1/24/23  
Checked by  
AMR  
Scale  
AS SHOWN

36TH ST. SE (POTENTIAL FUTURE COUNTY ROAD)  
 CASS COUNTY HIGHWAY DEPARTMENT  
 CASSELTON, ND

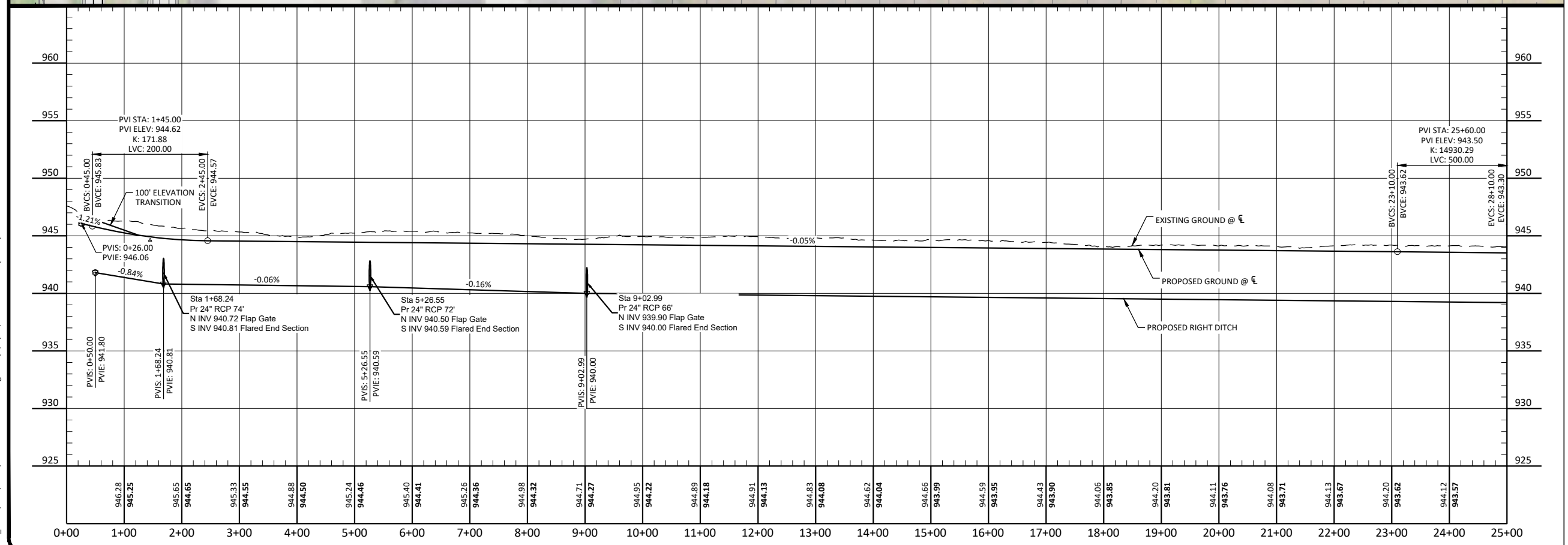
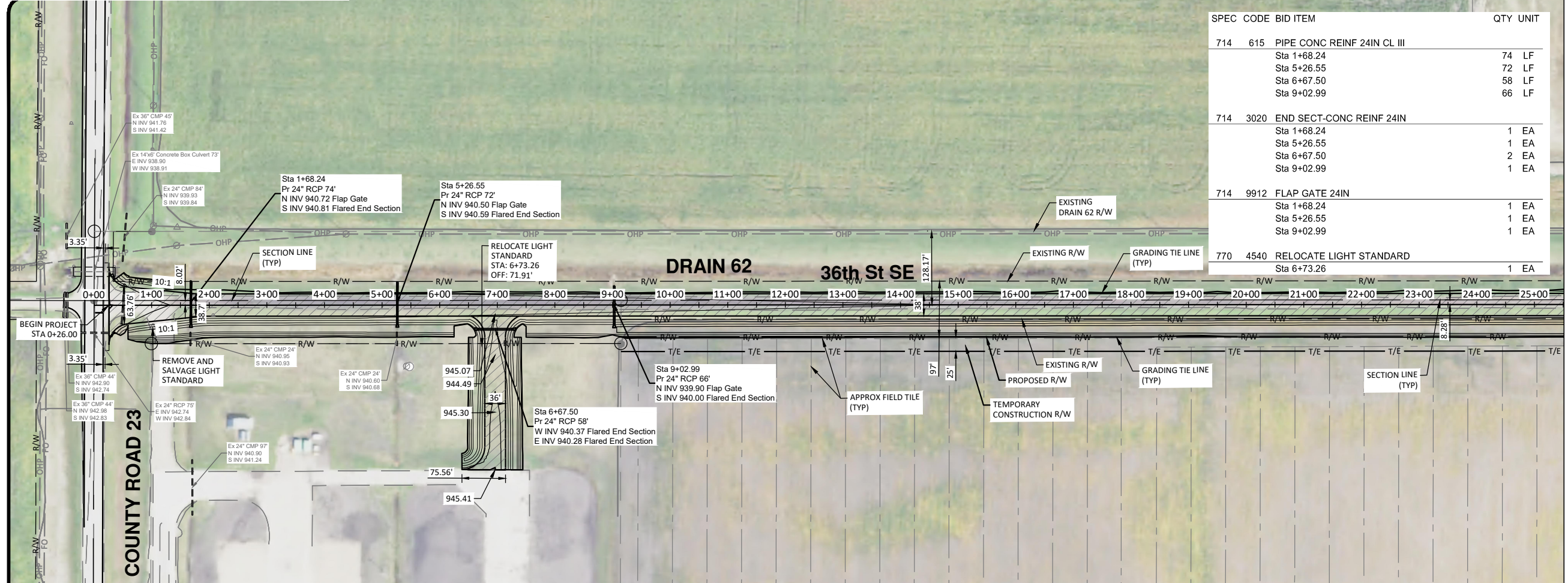
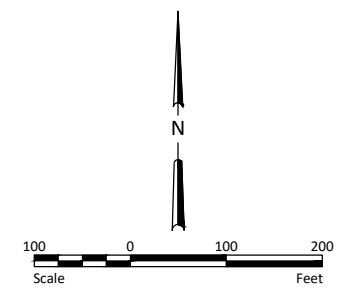
PLAN & PROFILE  
 PROJECT NO. CB2308

SHEET  
16



# EXHIBIT E

SPEC	CODE	BID ITEM	QTY	UNIT
714	615	PIPE CONC REINF 24IN CL III		
		Sta 1+68.24	74	LF
		Sta 5+26.55	72	LF
		Sta 6+67.50	58	LF
		Sta 9+02.99	66	LF
714	3020	END SECT-CONC REINF 24IN		
		Sta 1+68.24	1	EA
		Sta 5+26.55	1	EA
		Sta 6+67.50	2	EA
		Sta 9+02.99	1	EA
714	9912	FLAP GATE 24IN		
		Sta 1+68.24	1	EA
		Sta 5+26.55	1	EA
		Sta 9+02.99	1	EA
770	4540	RELOCATE LIGHT STANDARD		
		Sta 6+73.26	1	EA

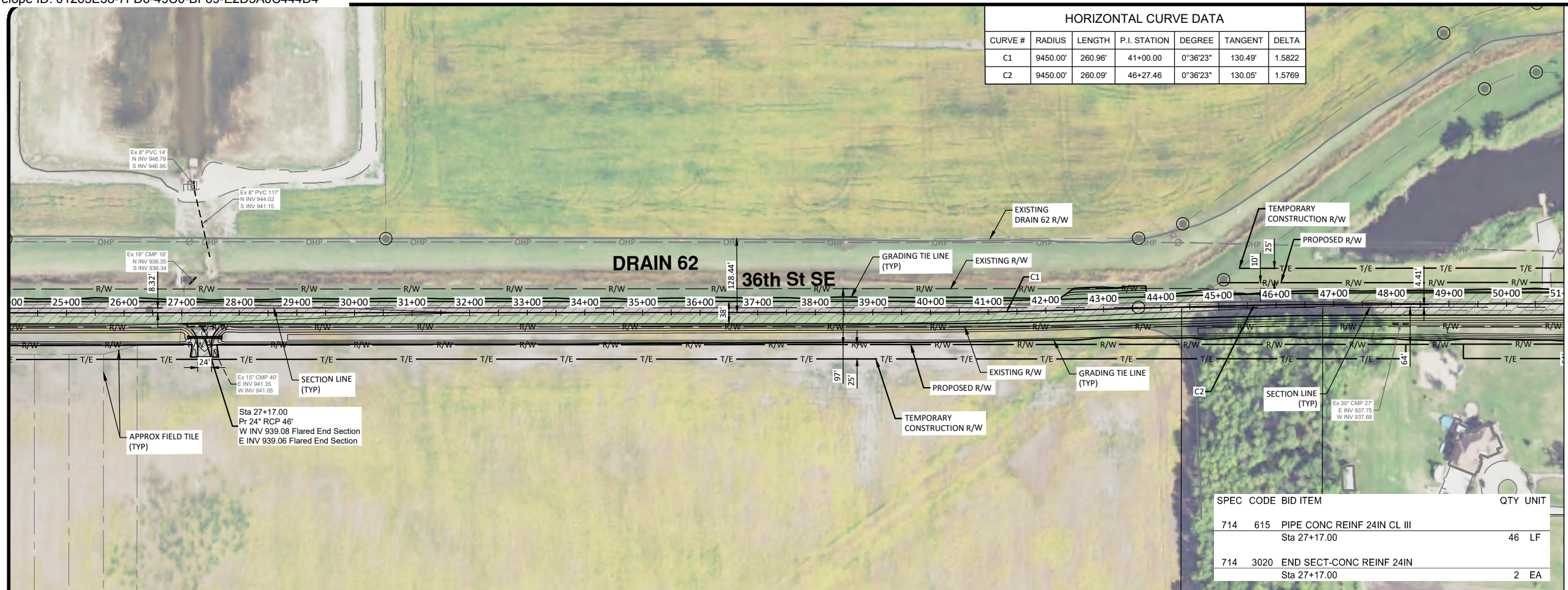
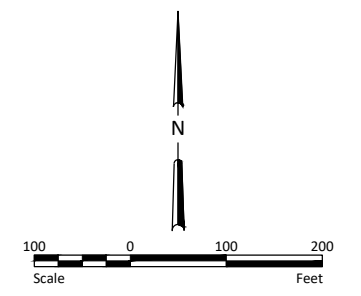


7/25/2022

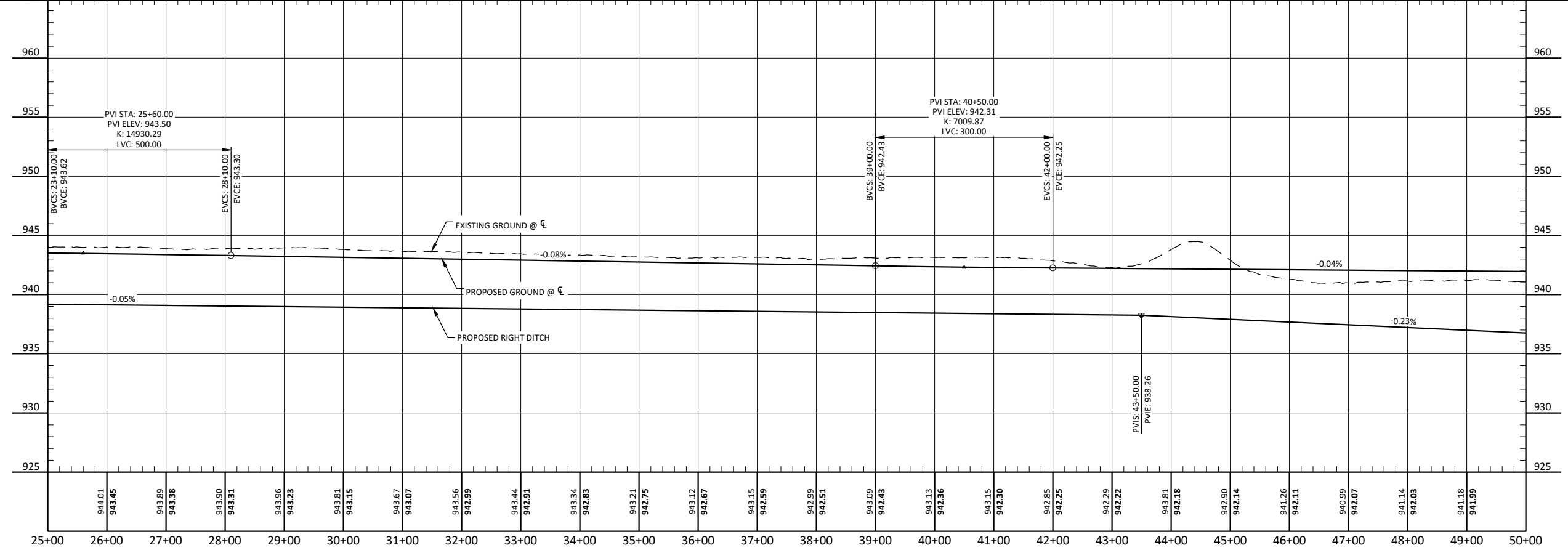
H:\JBN\6000\6006\6006\_0148\CAD\Plans\600 - Plan & Profile.dwg-P&P (1)-7/25/2022 11:41 AM-(aroud)

<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th>No.</th> <th>Revision</th> <th>Date</th> <th>By</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>	No.	Revision	Date	By						<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td>Drawn by</td> <td>Date</td> </tr> <tr> <td>JER</td> <td>7/22/22</td> </tr> <tr> <td>Checked by</td> <td>Scale</td> </tr> <tr> <td>AMR</td> <td>AS SHOWN</td> </tr> </table>	Drawn by	Date	JER	7/22/22	Checked by	Scale	AMR	AS SHOWN	<p><b>36TH ST. SE (POTENTIAL FUTURE COUNTY ROAD)</b>                  NORTH DAKOTA SOYBEAN PROCESSORS, LLC                  CASSELTON, ND</p>	<p>PLAN &amp; PROFILE                  PROJECT NO. 6006-0148</p>	<p>SHEET                  14</p>
No.	Revision	Date	By																		
Drawn by	Date																				
JER	7/22/22																				
Checked by	Scale																				
AMR	AS SHOWN																				

HORIZONTAL CURVE DATA						
CURVE #	RADIUS	LENGTH	P.I. STATION	DEGREE	TANGENT	DELTA
C1	9450.00'	260.96'	41+00.00	0°36'23"	130.49'	1.5822
C2	9450.00'	260.09'	46+27.46	0°36'23"	130.05'	1.5769



SPEC	CODE	BID ITEM	QTY	UNIT
714	615	PIPE CONC REINF 24IN CL III Sta 27+17.00	46	LF
714	3020	END SECT-CONC REINF 24IN Sta 27+17.00	2	EA



REGISTERED PROFESSIONAL ENGINEER  
 ADAM M. RUID  
 PE-10407  
 DATE  
 NORTH DAKOTA

7/25/2022



Drawn by: JER  
 Checked by: AMR  
 Date: 7/22/22  
 Scale: AS SHOWN

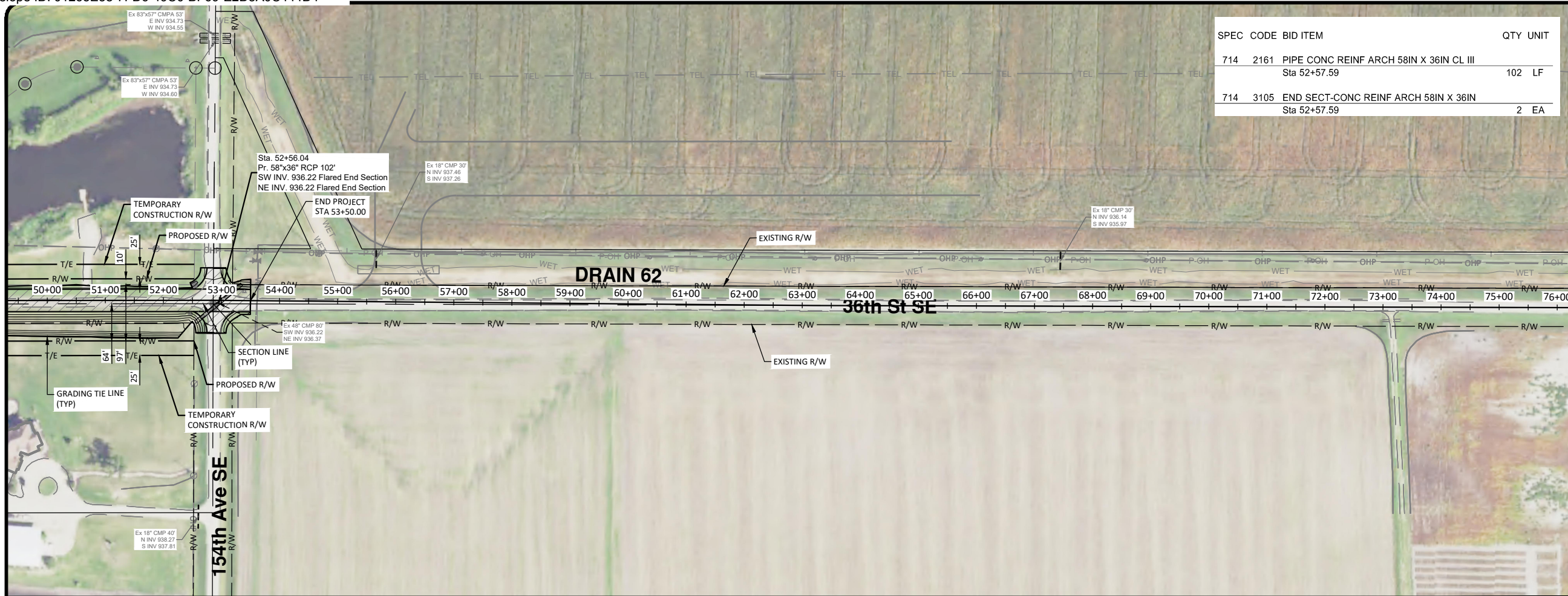
36TH ST. SE (POTENTIAL FUTURE COUNTY ROAD)  
 NORTH DAKOTA SOYBEAN PROCESSORS, LLC  
 CASSELTON, ND

PLAN & PROFILE  
 PROJECT NO. 6006-0148

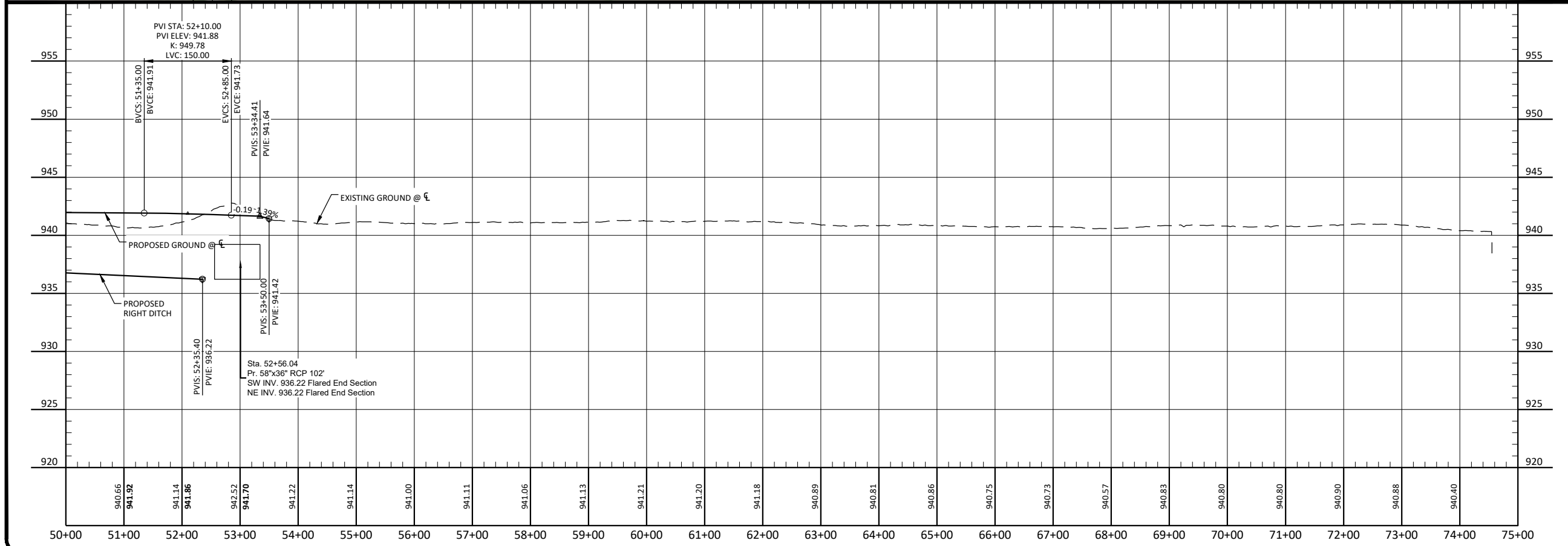
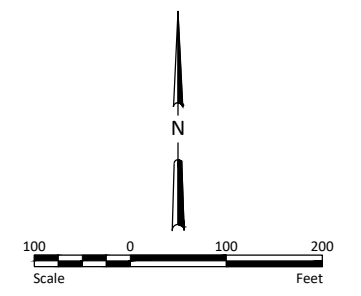
SHEET  
 15

H:\JBN\6000\6006\6006\_0148\CAD\Plans\600 - Plan & Profile.dwg: P&P (2) - 7/25/2022 11:41 AM (aroud)

No.	Revision	Date	By



SPEC	CODE	BID ITEM	QTY	UNIT
714	2161	PIPE CONC REINF ARCH 58IN X 36IN CL III Sta 52+57.59	102	LF
714	3105	END SECT-CONC REINF ARCH 58IN X 36IN Sta 52+57.59	2	EA



7/25/2022



Drawn by  
JER  
Date  
7/22/22  
Checked by  
AMR  
Scale  
AS SHOWN

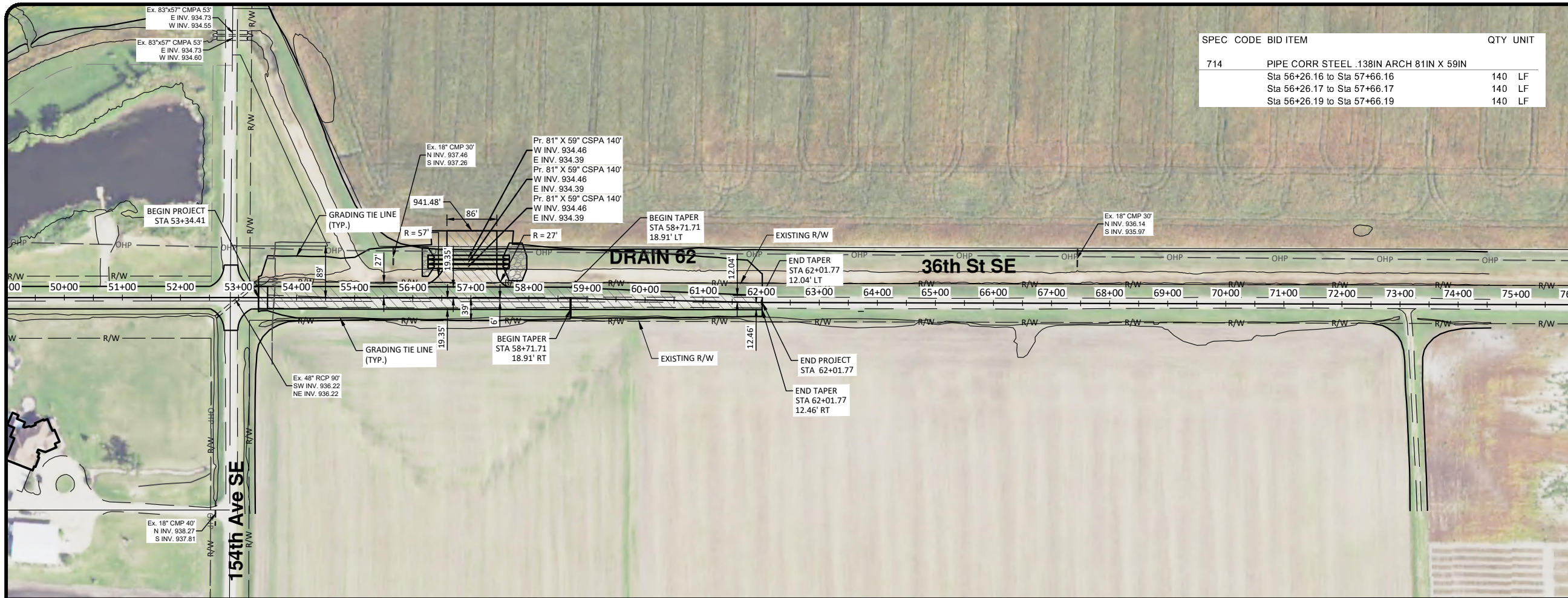
36TH ST. SE (POTENTIAL FUTURE COUNTY ROAD)  
NORTH DAKOTA SOYBEAN PROCESSORS, LLC  
CASSELTON, ND

PLAN & PROFILE  
PROJECT NO. 6006-0148

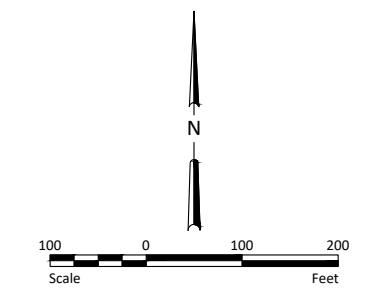
SHEET  
16

H:\JBN\6000\6006\6006\_0148\CAD\Plans\600 - Plan & Profile.dwg-P&P (3)-7/25/2022 11:41 AM-(aroud)

No.	Revision	Date	By

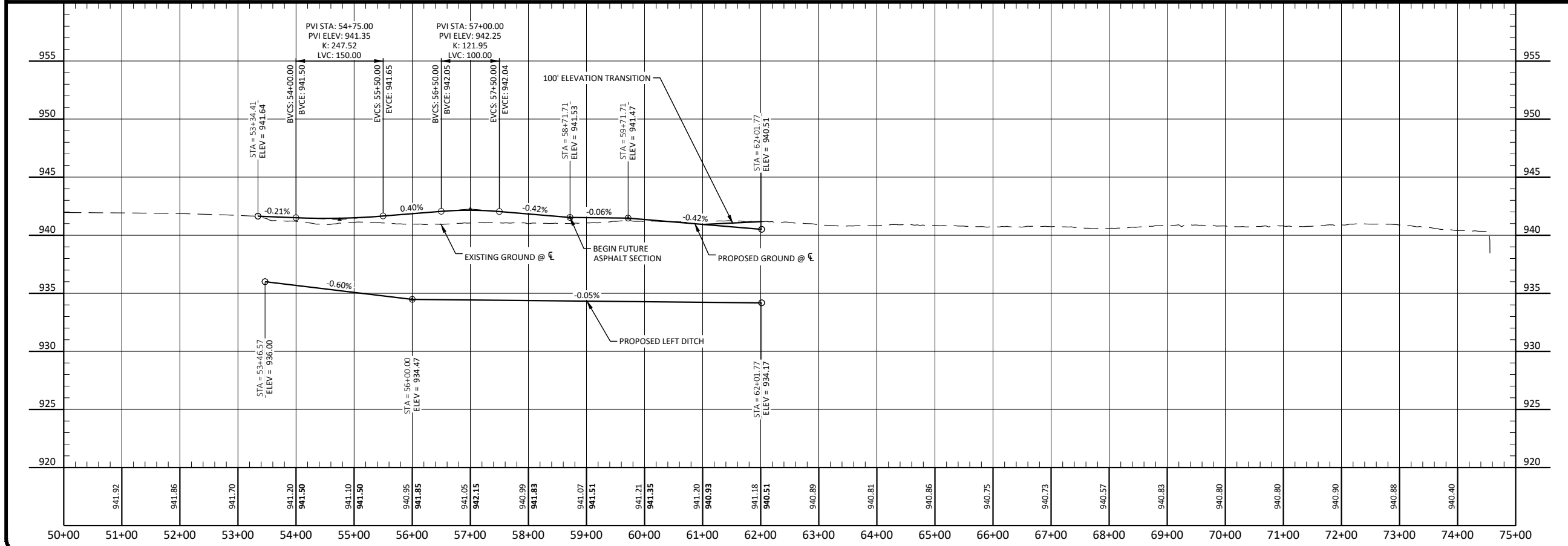


SPEC CODE	BID ITEM	QTY	UNIT
714	PIPE CORR STEEL .138IN ARCH 81IN X 59IN	140	LF
	Sta 56+26.16 to Sta 57+66.16	140	LF
	Sta 56+26.17 to Sta 57+66.17	140	LF
	Sta 56+26.19 to Sta 57+66.19	140	LF



**LEGEND**

3" AGGREGATE BASE COURSE	
CL 5 & 7" CRUSHED CONCRETE	



REGISTERED PROFESSIONAL ENGINEER  
 ADAM M. RUUD  
 PE-10407  
 DATE  
 NORTH DAKOTA  
 1/24/2023

H:\JBN\6000\6006\6006\_0152\CAD\Plans\60 - Plan & Profile.dwg-P&P (1)-1/24/2023 8:18 AM (gcowling)

No.	Revision	Date	By



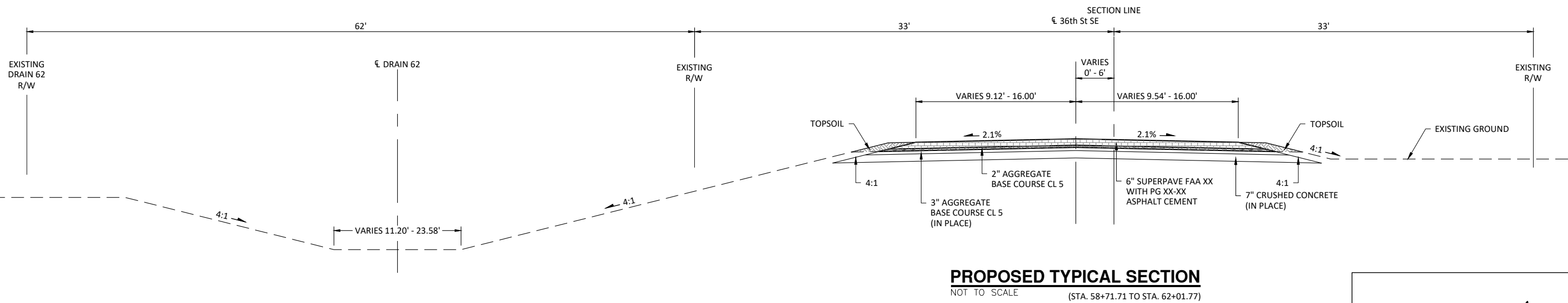
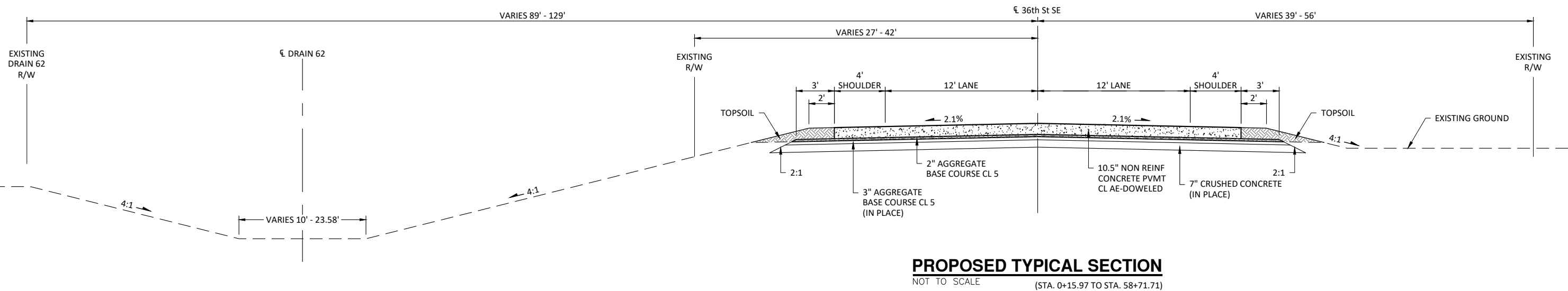
Drawn by JER Date 1/24/23  
 Checked by AMR Scale AS SHOWN

36TH ST. SE (POTENTIAL FUTURE COUNTY ROAD)  
 CASS COUNTY HIGHWAY DEPARTMENT  
 CASSELTON, ND

PLAN & PROFILE  
 PROJECT NO. CB2308

SHEET  
 16

H:\JBN\6000\6006\6006\_0152\Phase 3 - Turn Lanes and Concrete\CAD\Exhibits\Typical Sections.dwg-Typical Sections 1-2/15/2023 2:51 PM-(jcowling)



PRELIMINARY  
NOT FOR CONSTRUCTION

No.	Revision	Date	By

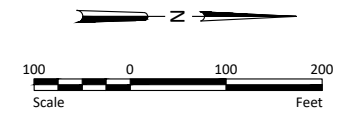
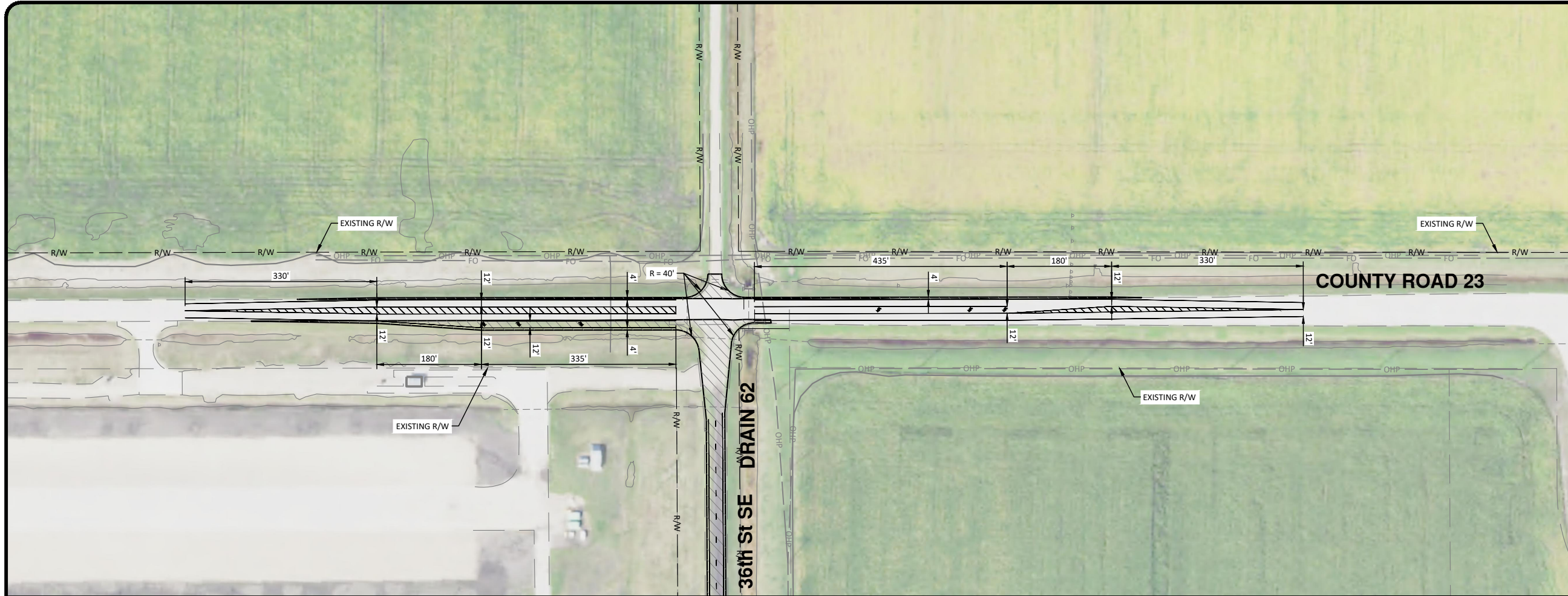


Drawn by JER	Date 2/15/23
Checked by AMR	Scale AS SHOWN

36TH ST. SE (POTENTIAL FUTURE COUNTY ROAD)  
CASS COUNTY HIGHWAY DEPARTMENT  
CASSELTON, ND

TYPICAL SECTIONS  
PROJECT NO. CBXXXX

SHEET  
X



**LEGEND**  
 10.5" NON REINF CONCRETE PVMT  
 CL AE-DOWELED &  
 2" AGGREGATE BASE COURSE



**PRELIMINARY**  
 NOT FOR CONSTRUCTION

H:\JBN\6000\6006\6006\_0152\Phase 3 - Turn Lanes and Concrete\CAD\Exhibits\CR 23 Improvements.dwg-Plan & Profile 1-2/15/2023 2:50 PM-(growing)

No.	Revision	Date	By



Drawn by  
JER  
Date  
2/15/23  
Checked by  
AMR  
Scale  
AS SHOWN

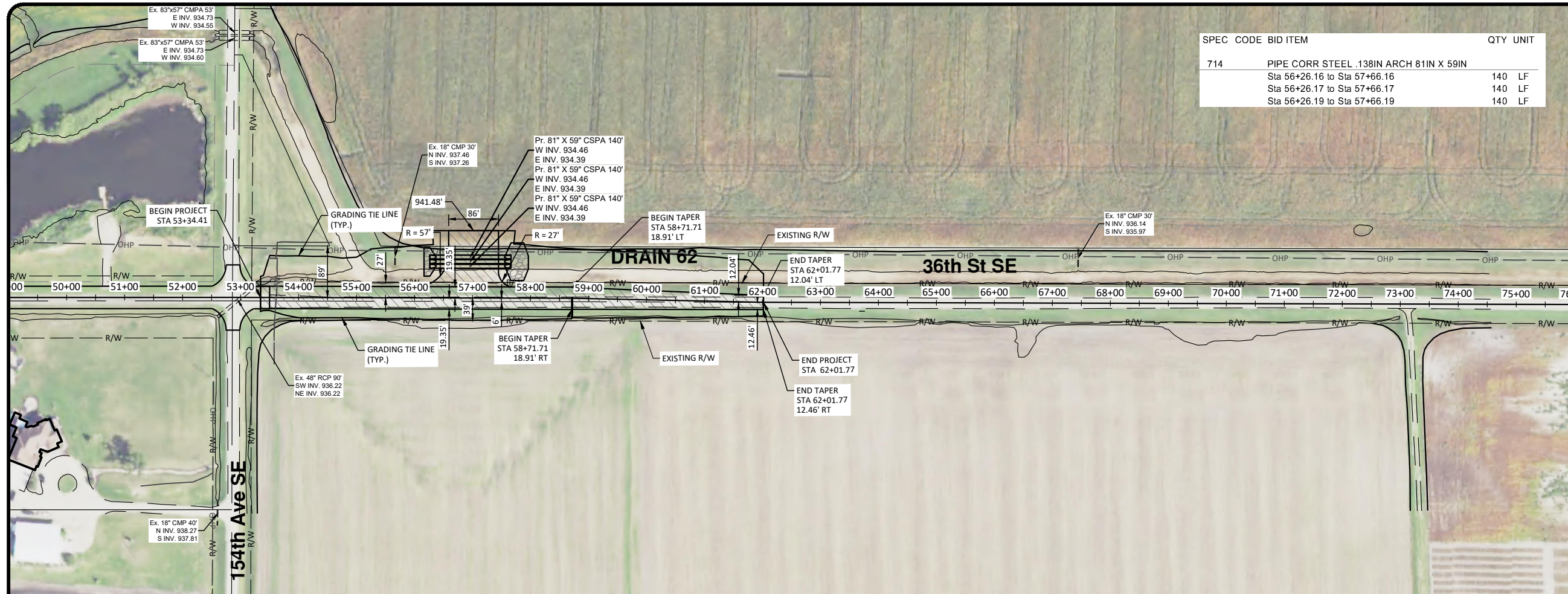
36TH ST. SE (POTENTIAL FUTURE COUNTY ROAD)  
 CASS COUNTY HIGHWAY DEPARTMENT  
 CASSELTON, ND

COUNTY ROAD 23  
 IMPROVEMENTS  
 PROJECT NO. CBXXXX

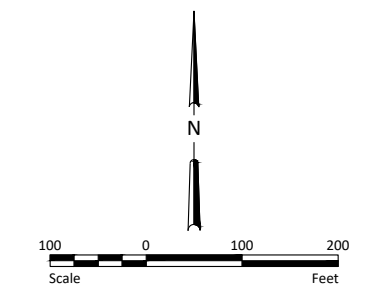
SHEET  
 X

# EXHIBIT F



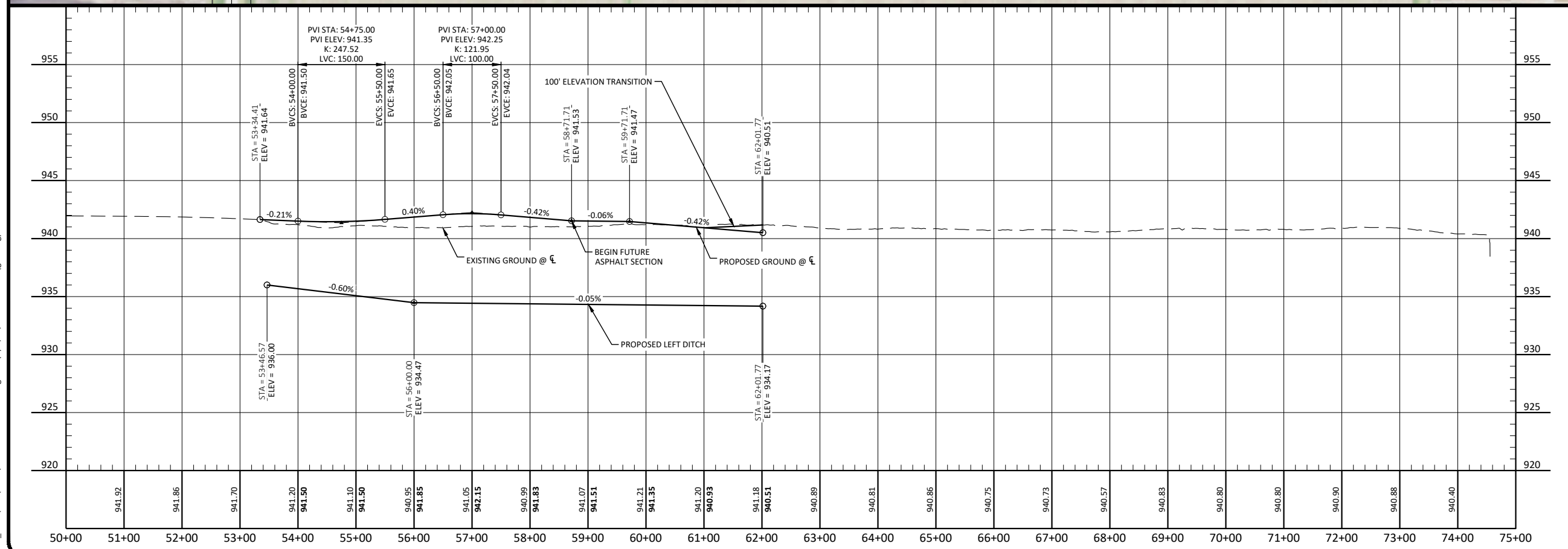


SPEC CODE	BID ITEM	QTY	UNIT
714	PIPE CORR STEEL .138IN ARCH 81IN X 59IN	140	LF
	Sta 56+26.16 to Sta 57+66.16	140	LF
	Sta 56+26.17 to Sta 57+66.17	140	LF
	Sta 56+26.19 to Sta 57+66.19	140	LF



**LEGEND**

3" AGGREGATE BASE COURSE	
CL 5 & 7" CRUSHED CONCRETE	



REGISTERED PROFESSIONAL ENGINEER  
 ADAM M. RUDD  
 PE-10407  
 DATE  
 NORTH DAKOTA  
 1/24/2023

H:\JBN\6000\6006\6006\_0152\CAD\Plans\60 - Plan & Profile.dwg-P&P (1)-1/24/2023 8:18 AM (gcowling)

No.	Revision	Date	By



Drawn by  
JER  
Date  
1/24/23  
Checked by  
AMR  
Scale  
AS SHOWN

36TH ST. SE (POTENTIAL FUTURE COUNTY ROAD)  
 CASS COUNTY HIGHWAY DEPARTMENT  
 CASSELTON, ND

PLAN & PROFILE  
 PROJECT NO. CB2308

SHEET  
16

**EXHIBIT G**

Project Timeline Summary

<u>Milestone</u>	<u>Completion Date</u>	<u>Comments</u>
Phase I – Culvert Replacements	Completed	
Phase II – Permanent Crossing	August 1, 2023	NDSP Driveway Improvements
Phase III – Concrete Installed	July 1, 2024	All Projects completed including Concrete work