



**CITY OF BOULDER  
CITY COUNCIL AGENDA ITEM**

**MEETING DATE: February 19, 2019**

**AGENDA TITLE:**

Consideration of a motion to authorize the city manager to approve and execute a twenty-year revocable permit for a dewatering pipe crossing a public access easement and a flood control easement located at 3000 Pearl Parkway and 2100 30th Street (REV2018-00003).

Applicants: 30<sup>th</sup> and Pearl Boulder, LLC

**PRESENTER/S**

Jane S. Brautigam, City Manager

Chris Meschuk, Assistant City Manager / Interim Director of Planning

Mary Ann Weideman, Deputy City Manager/Interim Director of Public Works

Charles Ferro, Development Review Manager, Planning

Edward Stafford, Development Review Manager, Public Works

BrieAnna Simon, Associate Planner

**EXECUTIVE SUMMARY**

The purpose of this item is for City Council to consider a revocable lease to authorize a twenty-year revocable permit (“Revocable Permit”) for an approximately 117-foot long portion of a dewatering pipe encroaching across a public access easement and a flood control easement located between 3000 Pearl Parkway and 2100 30th Street and authorize the City Manager to execute the necessary documents to accomplish this transaction (see **Attachment A**). The proposed Revocable Permit is attached (see **Attachment B**). Considering the permanency of the encroachment, as well as its essential role in storm water management on site, a long-term revocable permit for that portion of the dewatering pipe crossing City easements is necessary.

The Revocable Permit is associated with the “Reve” redevelopment project, which is a mixed-use neighborhood with four buildings over an approximately six-acre site generally located at 30th Street and Pearl Parkway.

The site review for the project was approved by Planning Board on Jan. 28, 2016 (LUR2015-00042). The rezoning for the site and a change to the Transit Village Area Plan Connections Plan was approved by City Council on Mar. 15, 2016 (LUR2015-00043). As part of the storm water management plan and building construction, the applicant proposed the use of a dewatering pipe running north-south between the buildings at 3000 Pearl Parkway and 2100 30<sup>th</sup> Street, under the Boulder Slough and Lefthand Ditch. The approximately 117-foot long portion of the dewatering pipe crosses a public access easement and a flood control easement, which requires council's approval of a long-term revocable permit.

Pursuant to Section 2-2-8, "Conveyance of City Real Property Interests", B.R.C. 1981, City Council approval is required for lease and permit terms which exceed three years.

### **STAFF RECOMMENDATION**

**Suggested Motion Language:**

Staff requests council consideration of this matter and action in the form of the following motion:

*Motion to authorize the City Manager to approve and execute a long-term revocable permit, essentially in the form as attached to the staff memorandum, for approximately 117-foot long portion of a dewatering pipe crossing a public access and a flood control easement at 3000 Pearl Street and 2100 30<sup>th</sup> Street for up to twenty (20) years.*

### **COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS**

- Economic: None identified at this time.
- Environmental: The dewatering pipe is an integral component for storm water drainage. Without the proposed dewater pipe, the stormwater management plan for the development as approved by city staff (#TEC2016-00038) cannot be properly executed or will require significant revisions.
- Social: None identified at this time.

### **OTHER IMPACTS**

- Fiscal: None identified at this time.
- Staff time: The applicant has paid the required application fee to cover the staff review time of the proposed lease.

### **PUBLIC FEEDBACK**

There is no required public notification for the revocable application process. This item is being heard as part of the consent agenda and has been advertised in the Daily Camera.

## BACKGROUND / PROCESS

Any permit or lease term of three years or greater, up to twenty years, must be approved by the City Council. The City Manager is authorized to permit encroachments within the public right-of-way or a public easement for a period of three years or less. See Section 2-2-8, "Conveyance of City Real Property Interest," B.R.C. 1981, and the City Charter Section 111, "Terms not longer than twenty years – compensation." The encroachments at 3000 Pearl Parkway and 2100 30<sup>th</sup> Street are permanent in nature and can be permitted for a period exceeding three years only upon approval of the City Council. Staff has determined that there will be no public need for the leased area for the duration of the permit term. A copy of the proposed Revocable Permit is attached (see **Attachment B**).

The subject encroachment is located in the Reve mixed use development (reference Figure 1, *Vicinity Map*). The development is under construction and will include office, retail, restaurant, and multi-family residential units. As a component of the Technical Document review phase for the project, a stormwater management plan was submitted that includes the use of dewatering pipe to meet necessary water quality requirements (TEC2016-00038), at which point the applicant was advised to apply for the subject Revocable Permit.



Figure 1. Vicinity Map, Reve Redevelopment

Since the encroachments are permanent in nature, a long-term revocable permit may be approved, if the following criteria are met, pursuant to Section 8-6-6(f), B.R.C. 1981:

1. *The encroachment does not constitute a traffic or other hazard.*

The dewatering pipe system is required to be installed according to the approved storm water management plan. It will not create a traffic hazard.

2. *The encroachment does not destroy or impair the public's use of the land for its intended purposes or serves a public purpose that cannot otherwise be accomplished without such minor impairment.*

The dewatering pipe does not destroy or impair the public's use of the land for its intended purposes. The system allows the public to use the area above for a multi-use path, while simultaneously serving the public purpose of on-site storm water management.

3. *Encroachment on a sidewalk in commercial areas maintains a minimum clearance of eight feet vertically and horizontally of unobstructed pedestrian way. The requirements of this paragraph may be modified by the City Manager if reasonable passage is provided on the sidewalk and the safety of pedestrians, bicyclists and motorists is not impaired.*

The proposed dewatering-pipe will provide the required minimum vertical clearance.

4. *A longer term use of the public property for the specific term approved will not be contrary to the public interest and ultimate use of the public right-of-way or public easement; and there will be no public need for the leased area during the lease period.*

A twenty-year revocable permit to allow for the encroachments is not contrary to the public interest. There is a public need for the multi-use path, but the dewatering system does not prohibit the public's ability to access the multi-use path above the dewatering pipe. Furthermore, the dewatering pipe functions as an essential component for drainage on site which benefits the public interest through effective storm water management.

5. *Adequate compensation is provided to the city throughout the lease term.*

An annual rate of \$100 will be required for renewal fee for this Revocable Permit. The rate was determined based on the nature of the encroachments and the public purpose served. Rates are reviewed annually, and City Council approves the annual rate as part of the annual budget process.

## **MATRIX OF OPTIONS**

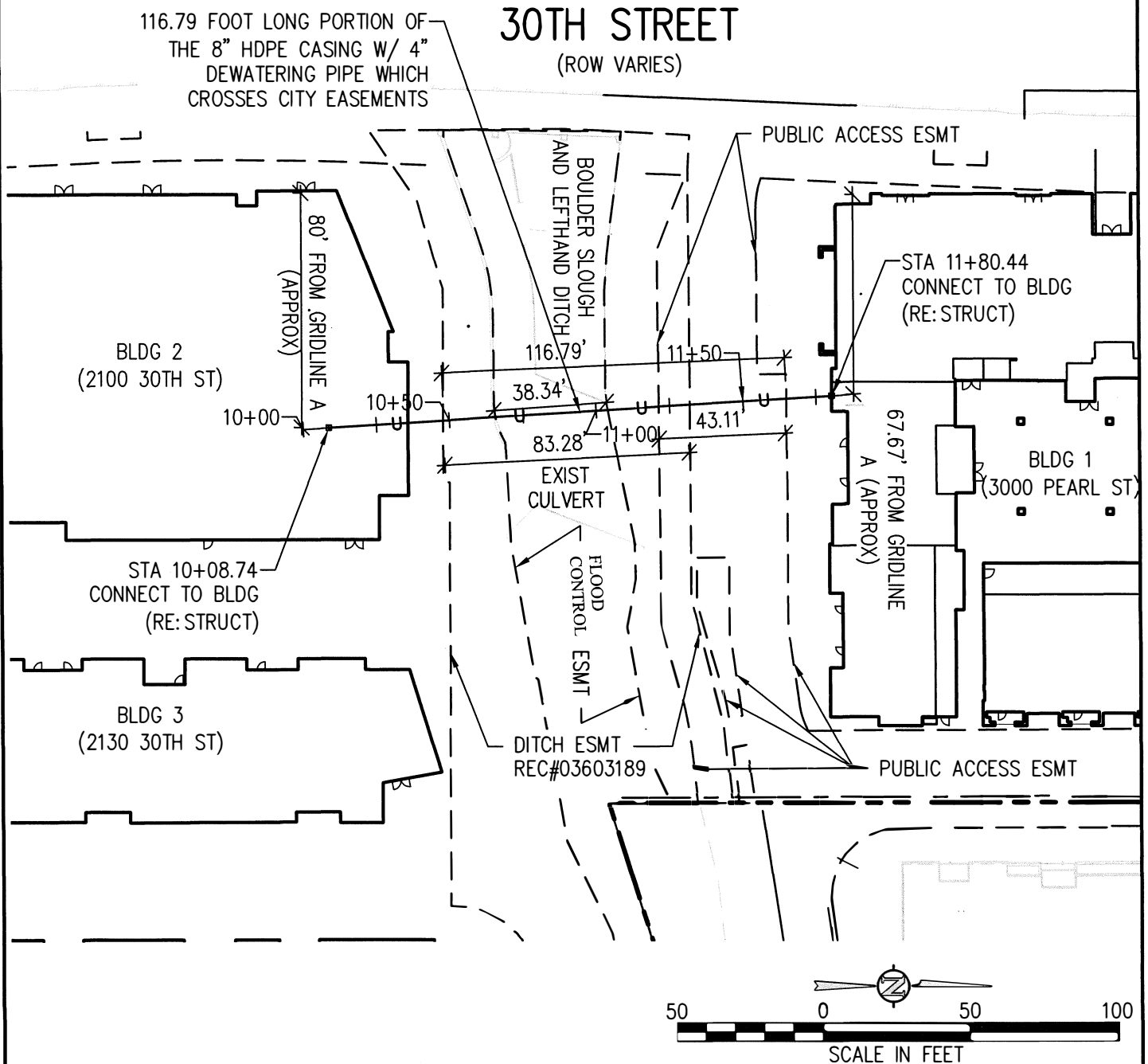
City Council may:

1. Approve the twenty-year permit as proposed.
2. Deny the twenty-year permit but direct the City Manager to approve a three-year short-term permit. The applicant would renew the permit in three year increments, as directed by the city.
3. Deny both the long and short-term permit and require a revised stormwater management plan for the development that does not include encroachments into public easements.

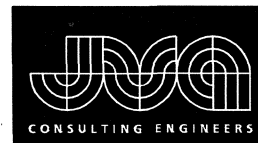
## **ATTACHMENTS**

- A. Map of Dewatering Pipe Area—3000 Pearl Pkwy and 2100 30<sup>th</sup> St
- B. Proposed Revocable Permit

ATTACHMENT A: MAP OF DEWATERING PIPE AREA  
3000 Pearl Pkwy and 2100 30th Street (REV2018-00003)



**EXHIBIT TO REVOCABLE PERMIT (REV2018-00003)**  
**8" HDPE CASING WITH 4" DEWATERING PIPE**  
**REVE-3000 PEARL ST**



JVA, Inc.  
1319 Spruce Street  
Boulder, CO 80302  
303.444.1951  
[www.jvajva.com](http://www.jvajva.com)  
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**CITY OF BOULDER  
REVOCABLE PERMIT (REV2018-00003)**

THIS Revocable Permit ("Permit") is issued by the CITY OF BOULDER, a Colorado home rule City (the "City,"), to 30<sup>TH</sup> AND PEARL BOULDER, LLC, a Delaware limited liability company (the "Permittee,"), to construct and maintain an encroachment consisting of conduit crossing a flood control easement and a public access easement ("the "Easements") dedicated on the final plat of Reve Subdivision recorded at Reception No. 03642590 on February 28, 2018 generally located on Lot 1, Reve Subdivision, City of Boulder, County of Boulder, State of Colorado between Building 1 at 3000 Pearl Parkway and Building 3 at 2100 30<sup>th</sup> Street. This Permit is granted in consideration of the application fee paid and for permitting the conduit and subject to the following terms and conditions:

1. Encroachment. The 116.79-foot long conduit consisting of 8" high-density polyethylene (HDPE) casing with 4" dewatering pipe (the "Encroachment") herein authorized on a revocable permit basis is restricted exclusively to the location above and in more particularly described in Exhibit A attached hereto and incorporated herein.
2. Type of Encroachment. This Permit is limited specifically to the type of encroachment described in the application, filed by the Permittee with the City. No expansion or enlargement of the Encroachment or modification of the type of encroachment is permitted without prior approval by the city manager.
3. Term. If not sooner revoked, this Permit is granted for a term of no longer than twenty (20) years ("Permit Term").
4. Building Permit Requirement. The Permittee shall obtain all required permits for the construction of the Encroachment, including without limitation a building permit. The Permittee shall be responsible for obtaining all required inspections by the City.
5. Revocation. The city manager may revoke this Permit at any time or for any reason deemed sufficient including without limitation the following instances: (a) if the Encroachment, obstruction, or other structure constitutes a nuisance, destroys or impairs the use of the Easements by the public or the City, or otherwise constitutes a traffic hazard; or (b) the property upon which the Encroachment, obstruction or structure exists is required for use by the public or the City.
6. Removal. Permittee shall remove, at its expense, the Encroachment, obstruction, or structure within thirty (30) days after receiving notice of any revocation of this Permit, except in the case of an emergency, when the encroachment shall be removed immediately, and in no event later than the end of the Permit Term

7. City Authority to Remove Encroachment. In the event said removal of the Encroachment, obstruction, or structure is not accomplished within the thirty (30) days, at the end of the Permit Term, or in the case of an emergency, the City is hereby authorized to remove same. Permittee agrees to reimburse the City for the cost of said removal. If Permittee fails to pay any monies due under this Permit or fails to perform any affirmative obligation hereunder, the Permittee agrees that the City may collect the monies due in the manner provided for in Section 2-2-12, B.R.C. 1981, as amended, as if said monies were due and owing pursuant to a duly adopted ordinance of the City or the City may perform the obligation on behalf of the Permittee and collect its costs in the manner herein provided. The Permittee agrees to waive any rights it may have under Section 31-20-105, C.R.S., based on the City's lack of an enabling ordinance authorizing collection of this specific debt.

8. Assignment. Prior to any assignment of this Permit, the Permittee will request the prior approval of the city manager. The purpose of the city manager's approval will be to ensure that the requirements of this Permit continue to be in compliance with this Permit.

9. Construction and Maintenance. The Permittee agrees to construct and maintain the Encroachment as approved by this Permit with due caution and regard for the City of Boulder and public use of the Easements. The City shall not be responsible for any maintenance of the Encroachment.

10. City Right of Access. The City retains all rights in the Easements and to construct and maintain utilities and other public improvements in said Easements. It is expressly understood that interruptions of utility services to Permittee's property or damage to Permittee's property by interruptions of utility services, reasons of maintenance, act of God, or vandalism are expected and do not constitute a breach of this Permit.

11. Insurance. Prior to granting of this Permit for constructing the Encroachment, the Permittee shall submit to the City insurance policies or Certificates of Insurance as evidence of compliance with the provisions of this paragraph and subject to approval by the City. Permittee shall, at Permittee's sole expense, procure and maintain or cause to be procured and maintained with insurers approved by the City a comprehensive general or personal liability insurance policy with minimum limits of \$1 million per occurrence and a \$2 million aggregate. Subrogation shall be waived in favor of the City. This policy shall name the City of Boulder and its elected officials and employees as additional insured. The Permittee agrees that the above stated policy limits shall be raised to meet any additional coverage necessitated by amendments to the Colorado Governmental Immunity Act that may expose the City to judgments greater than the insurance coverage required herein.

This policy shall be written on a primary basis, non-contributory with any other insurance coverages and/or self-insurance carried by the City. This policy shall be maintained in full force and effect for the duration of the Permit. Permittee or Permittee's insurance broker



shall notify the City of any cancellation or reduction in coverage or limits of any insurance policy within 7 (seven) days of receipt of insurers' notification to that effect. Permittee shall forthwith obtain and submit proof of substitute insurance in the event of expiration or

cancellation of coverage and shall provide the City with an updated Certificate of Insurance annually.

12. Indemnification. The Permittee agrees to indemnify and hold harmless the City from and against all claims, suits, losses, and expenses in any manner resulting from, arising out of, or connected with the construction, use, operation or maintenance of the Encroachment.

13. Assumption of Risk. The Permittee assumes the risks and accepts all liability and damage that may occur as a result of the City, its agents or contractor's work in the Easements.

14. Renewal. This Permit may be renewed at the end of the Permit Term in the sole discretion of the City, upon payment of the current fees, if renewal is determined to have no adverse impact on the public or the City. Any term greater than two years, 364 days but less than 20 years in length requires the mutual consent of the City and Permittee after appropriate action by the Boulder City Council.

15. Binding Provision. The provisions of the Permit shall be binding upon the parties hereto and upon their respective heirs, successors, and assigns.

16. Compliance with All Laws and Regulations. The Permittee shall comply with all state and local laws and regulations, including all requirements of the Boulder Revised Code and the Colorado State Department of Transportation.

17. Computation of Time. In computing a period of days under this Permit, the first day is excluded and the last day is included. If the last day of any period is a Saturday, Sunday, or legal holiday, the period is extended to include the next day which is not a Saturday, Sunday, or legal holiday.

18. Notice. Any notice required by this Permit shall be in writing, made by hand-delivery or certified mail, return receipt requested, addressed to the following unless one party notifies the other party in writing that such contact or address has changed:

**To Permittee:**  
30<sup>th</sup> and Pearl Boulder, LLC  
Attn: Thomas Skube  
1550 W. McEwen Dr, Suite 200  
Franklin, TN 37067


**To City:**  
City Manager  
Boulder Municipal Building  
P.O. Box 791  
Boulder, CO 80306

**DATE OF ISSUANCE:** \_\_\_\_\_

**EXPIRATION DATE:** \_\_\_\_\_

**PERMITTEE:**  
30<sup>th</sup> and Pearl Boulder, LLC,  
a Delaware limited liability company

By: Southern Land Company, LLC,  
a Tennessee limited liability company, its Managing Member

By:   
Name: Brian S. Sewell  
Title: President



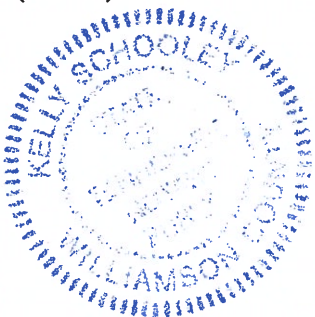
STATE OF TENNESSEE     )  
  ) ss.  
COUNTY OF WILLIAMSON )

The foregoing instrument was acknowledged before me this 2nd day of  
February, 2019, by Brian S. Sewell as President Southern Land  
Company, LLC, Managing Member of 30<sup>th</sup> and Pearl Boulder, LLC.

WITNESS MY HAND AND NOTARIAL SEAL:

My Commission expires: My Commission Expires May 25, 2020

(SEAL)



  
Notary Public

**CITY OF BOULDER:**

By: \_\_\_\_\_  
Jane S. Brautigam, City Manager

Attest:

\_\_\_\_\_  
City Clerk

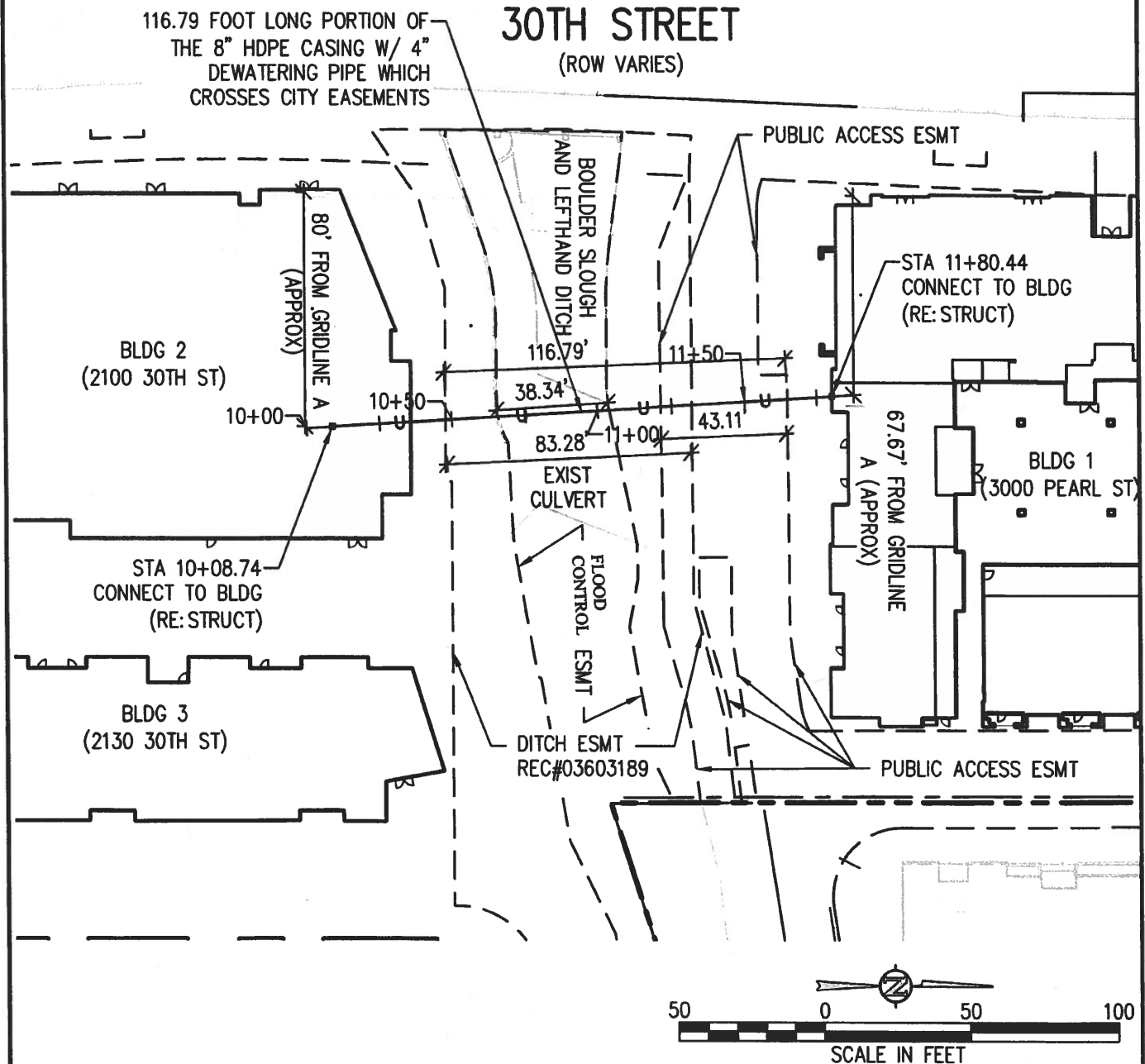
Approved As To Form:

  
\_\_\_\_\_  
City Attorney's Office

Date: 1-31-2019

**Exhibits:**

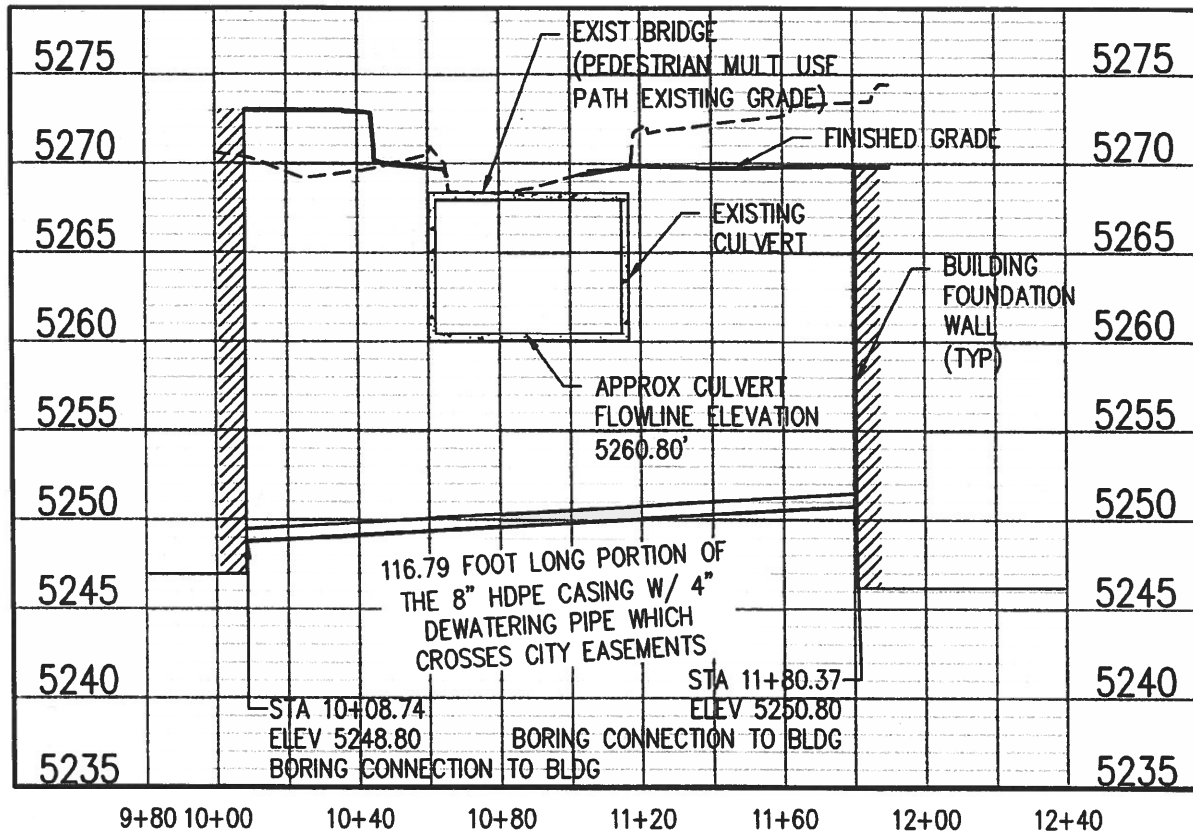
- A. Utility Conduit Plan for 8" HDPE Casing with 4" Dewatering Pipe
- B. Certificate of Insurance

**EXHIBIT A**

**EXHIBIT TO REVOCABLE PERMIT (REV2018-00003)**  
**8" HDPE CASING WITH 4" DEWATERING PIPE**  
**REVE-3000 PEARL ST**



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### UTIL CONDUIT PROFILE

SCALE: 1"=50' HORIZ  
1"=10' VERT

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## EXHIBIT B

## CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

5/29/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Arthur J. Gallagher Risk Management Services, Inc. 201 E 4th Street Ste 625 Cincinnati OH 45202		<b>CONTACT NAME:</b> PHONE (A/C, No, Ext): 513-977-3100 FAX (A/C, No): E-MAIL: ADDRESS:	
<b>INSURED</b> 30th and Pearl Boulder, LLC 1550 W Mcawen Drive Suite 200 Franklin TN 37067-1771		<b>INSURER(S) AFFORDING COVERAGE</b> INSURER A: Navigators Specialty Insurance Company NAIC # 36056 INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:	

## COVERAGES

CERTIFICATE NUMBER: 403037888

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:		IS17CGL134431IC	7/31/2017	7/31/2018	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$- MED EXP (Any one person) \$Excluded PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 Fire Legal Liability \$50,000 COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY					EACH OCCURRENCE \$ AGGREGATE \$ \$
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE <b>DED</b> <input type="checkbox"/> RETENTIONS					EACH OCCURRENCE \$ AGGREGATE \$ \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y <input checked="" type="checkbox"/> N If yes, describe under DESCRIPTION OF OPERATIONS below		N/A			PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

The City of Boulder is included as Additional Insured with respects to the General Liability per written contract. Waiver of Subrogation applies in favor of the certificate holder.

## CERTIFICATE HOLDER

## CANCELLATION

City of Boulder and its elected officials and employees  
 1739 Broadway, 3rd Floor  
 P.O. Box 791  
 Boulder CO 80306

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

ACORD 25 (2016/03)

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