

RESOLUTION NO. 2019-102

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, APPROVING WITH CONDITIONS AS SET FORTH HEREIN, A CONDITIONAL USE FOR THE HOMESTEAD TO BRIGHTON EAST FARMS FILING NO. 3 GAS AND OIL UNDERGROUND TRANSMISSION PIPELINES, GENERALLY TRAVERSING VARIOUS PARCELS LOCATED IN THE CITY OF BRIGHTON, COLORADO, AND SETTING FORTH DETAILS IN RELATION THERETO.

WHEREAS, the Applicant, Chris Perdue, P.E., (“Applicant”) has filed with the City an application for approval of a Conditional Use on behalf of Petro Operating Company, LLC; and

WHEREAS, the Applicant, is requesting approval of a Conditional Use Permit for a project known as the Homestead to Brighton East Farms Filing No. 3 Oil and Gas Pipelines (“Pipeline”), an 8-inch natural gas and 6-inch crude oil underground transmission line used for the conveyance of natural gas and oil within the limits of the City of Brighton; and

WHEREAS, the Applicant is requesting approval of a Conditional Use for the construction of the Pipeline generally shown in Exhibit B; and

WHEREAS, approximately 12,200 linear feet of the Pipeline is located within Brighton city limits, generally traversing parcels of properties described in a portion of Exhibit A; and

WHEREAS, in accordance with the public notice requirements of the Land Use and Development Code, the City Council of the City of Brighton finds and declares that a Notice of Public Hearing was mailed to all property owners within 315 feet of the centerline of the Pipeline, a public notice was published in the Brighton Standard Blade, and a sign was posted on the Property, all for no less than fifteen (15) days prior to the City Council public hearing; and

WHEREAS, on October 1, 2019, the City Council conducted the public hearing at which the Applicant, interested parties, and city staff were permitted to present evidence and testimony and to ask and answer questions regarding the Pipeline and the requested Conditional Use; and

WHEREAS, the City Council finds that, pursuant to the Land Use and Development Code, a Conditional Use is an additional use of land that may be allowed with restrictions deemed necessary by the City Council, and that approval thereof is subject to the City’s Conditional Use procedures and criteria; and

WHEREAS, after reviewing the Application, evidence, representations, acknowledgements of the Applicant, presentations, and statements made at the Public Hearing by the city staff and interested persons, the City Council finds and determines that upon the conditions herein contained and agreement of the Applicant, the relevant criteria, according to the Land Use and Development Code, for approval of the Pipeline as a Conditional Use have been satisfied.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BRIGHTON AS FOLLOWS:

Section 1. The Conditional Use request for the Homestead to Brighton East Farms Filing No. 3 Oil and Gas Pipelines, submitted by Strategic Designs, LLC for an underground natural gas and oil transmission pipelines traversing various parcels of property, as described in Exhibit A and generally shown in Exhibit B, within the City of Brighton, Colorado is hereby approved with the following conditions:

1. Requirement for Easements. The Applicant will be utilizing a “Pipeline Route” that is owned or controlled by third parties (see **Map in Exhibit B**). This permit is conditioned on the Applicant entering into an easement or License with all parties within the pipeline route.
2. Design.
 - a. The Pipeline shall be constructed with a Class 4 Design (0.40 Design Factor) for steel pipelines.
 - b. If the Pipeline is constructed of steel, Fusion Bond Epoxy (FBE) Coated Pipe (or equivalent) shall be used to protect pipe from corrosion.
 - c. Crossing pipes shall have 12-14 mils of fusion bond epoxy applied for corrosion resistance with an additional 24-30 mils of abrasion resistant overlay coating applied.
 - d. The Pipeline shall utilize a cathodic protection system.
 - e. The Pipeline shall be hydrostatic tested to 1.25 times the Maximum Operating Pressure for four (4) hours for exposed pipe and eight (8) hours for buried pipe.
 - f. The Pipeline shall utilize in-out measurement for leak detection or other leak detection system approved by the City in its sole discretion.
 - g. The Pipeline shall utilize automated systems for over pressure protection and low-pressure detection that shuts-in the pipe in order for Applicant to investigate
3. Construction.
 - a. The Applicant agrees that the construction permitted hereunder shall proceed with reasonable diligence from the initiation of such construction to its completion. The installation of the Pipeline shall be completed no later than one year from the Effective Date. If Applicant fails to install the Pipeline within such time, this Permit shall be null and void and Applicant shall release the Permit in the real property records of Adams County, Colorado.
 - b. The following inspections and technologies will be employed to verify the internal structure and integrity of the Pipeline.
 - i. Applicant will conduct X-ray on 100% of welds.
 - ii. Applicant will conduct survey and logging for every girth weld in place.
 - iii. Applicant will utilize jeeping (holiday detector) as well as visual inspection of coating. Once a jeep (damage) is detected, pipe coating

shall be repaired and re-jeeped until damage is repaired and does not cause a jeep or detection.

- c. All steps and or phases of construction shall be inspected by Applicant's third-party inspectors.
 - d. Roads, creeks and other encumbrances shall be bored underneath at a safe depth of at least ten (10) feet.
 - e. The length of the pipeline along East 168th Avenue will utilize horizontal directional drilling at a depth of at least ten (10) feet to avoid damaging sidewalks and landscaping.
 - f. In areas utilizing open trench, the Pipeline shall be placed a minimum of four (4) feet below the surface to ensure Pipeline is a sufficient depth to allow for existing and future storm sewer, sanitary sewer, potable and non-potable water lines within the Pipeline Route. Applicant will be responsible for contacting the City to identify any possible utility conflicts with the proposed Pipeline alignment.
 - g. The Pipeline shall be placed a safe distance from any existing storm sewer, sanitary sewer, potable and non-potable water lines. Applicant will be responsible for contacting the City to identify any possible utility conflicts with the proposed Pipeline alignment.
 - h. Applicant shall notify the City thirty (30) days prior to beginning construction of the Pipeline, unless otherwise agreed to by the Parties.
 - i. Applicant shall contact the Utility Notification Center of Colorado (1-800-922-1987) for location of underground utilities.
 - j. Applicant shall apply for, obtain, and pay for, permits required by the City and any other applicable jurisdictions prior to commencing any work along the Pipeline Route.
 - k. The City has and will continue to allow "Facilities" to be constructed within the Pipeline Route. "Facilities" include, without limitation, water lines, sewer lines, electrical lines, fences, roads, and natural gas gathering, storage, transmission, and distribution. Applicant accepts any associated risks and shall advise its employees, agents, contractors, and other persons who enter upon the Pipeline Route, pursuant to the provisions of this Permit, of the existence and nature of those risks.
 - l. Applicant shall not conduct, nor permit, any blasting above, underneath or near the Pipeline Route without prior written permission from the City. Any blasting allowed shall be done in the presence of a representative of the City and in accordance with directions such representative may give for the protection or safety of Facilities in the Pipeline Route.
4. Operation & Maintenance. The following inspections and technologies will be employed to find leaks and/or verify the internal structure and integrity of the Pipeline.
- a. Applicant will conduct regular pigging on the Pipeline at least once a year.
 - b. Applicant will conduct smart pigging every five (5) years to detect anomalies such as internal and external corrosion or denting.

- c. Applicant will conduct leak detection, including aerial surveys at least two times per year.
- d. Applicant will conduct annual pressure testing.
- e. In the event of a leak detection, Applicant will immediately shutdown the Pipeline.
- f. The City will be informed as soon as possible if pigging or pressure testing detects any issues requiring maintenance or repair.
- g. The City or its representative may inspect the installation or repairs of the pipeline during the construction as it deems necessary.

5. Reclamation and Weed Control.

- a. Applicant shall submit a reclamation and weed control plan for the City's review and approval.
- b. Applicant shall remove and store the topsoil separately for the full width of the pipe trench and replace the topsoil on the top of the backfill over the pipe trench to the extent possible as part of the initial Pipeline construction procedures. Topsoil shall be replaced and re-seeded in cultivated and agricultural areas.
- c. Applicant shall immediately restore, at its sole cost and expense, the surface of along the entire length of the Pipeline Route, to its prior condition and contour, as nearly as practical and permissible, following any disturbance occasioned by the rights granted Applicant in this Permit.
- d. For a period of one year following disturbance of the surface of the Pipeline Route, the Applicant will maintain the surface elevation and quality of the soil by correcting any erosion, settling or subsidence that may occur as a result of the work done by the Applicant.
- e. Applicant shall, at its sole cost and expense, immediately repair any damage to property along to Pipeline Route or to the City's roads or other Facilities within or outside the Pipeline Route, resulting from any Authorized Uses or other activities related to the Pipeline. Repairs shall be made in accordance with current City rules, regulations, and ordinances, and shall be completed no later than one (1) week after damage is inflicted.

6. Abandonment. For abandonment, Applicant must permanently remove the Pipeline from service by physically separating it from all sources of hydrocarbons. At the sole discretion of the City, the Applicant shall comply with one of the following:

- a. **Abandonment in place.** Applicant shall:
 - i. Purge the Pipeline of any liquids;
 - ii. Deplete the Pipeline to atmospheric pressure;
 - iii. Cut the Pipeline's risers to three (3) feet below grade or to the depth of the Pipeline, whichever is shallower;
 - iv. Seal the ends of the Pipeline below grade; and
 - v. Remove above-ground cathodic protection and equipment associated with the riser.

- b. **Removal.** Applicant shall remove the Pipeline and its risers, the riser associated with cathodic protection, and above-ground equipment.
- 7. Emergency Response Plan. An Emergency Response Plan for the Pipeline must be submitted which is in compliance with the applicable fire code. The plan shall be filed with the City and the appropriate Fire District. The Emergency Response Plan may need to be updated at any time the discretion of the City or Fire District. The Emergency Response Plan shall consist of at least the following information to be submitted to the City for review and approval:
 - a. Name, address and phone number, including twenty-four (24) hour emergency numbers for at least two persons responsible for emergency field operations; and
 - b. A diagram depicting the planned Pipeline route. Following construction of the Pipeline, the Applicant shall submit as-built drawings in AutoCAD format, or another format acceptable to the City, that is compatible with the City's current adopted coordinate system. The as-built drawings shall depict the locations and type of above and below ground facilities including sizes, and depths below grade of the Pipeline and associated equipment, isolation valves, surface operations and their functions. The information concerning isolation valves shall be held confidentially by the City and shall only be disclosed in the event of an emergency or to emergency responders; and
 - c. Detailed information addressing each reasonably potential emergency that may be associated with the operation. This may include any or all of the following: explosions, fires, pipeline leaks or ruptures; and
 - d. Detailed information identifying access or evacuation routes, and health care facilities anticipated to be used.
- 8. Recording. Applicant shall record a Pipeline "as-built" legal description and map of the location with the Clerk and Recorder of Adams County within thirty (30) days of completion of construction and shall provide the same to the City.
- 9. Risk, Liability, Indemnity.
 - a. By virtue of entering into this Permit, the City: (1) assumes no liability for use, operation, or existence of the Applicant's engineering, preparation, installation, maintenance or repair; and (2) assumes no additional responsibilities or obligations related to the Applicant's future or additional activities along the Pipeline route, except for those activities associated with the routine operation and maintenance activities within the Pipeline Route.
 - b. The Applicant agrees to indemnify, defend, and hold harmless the City, its officials, officers, agents, employees and contractors, from and against any and all claims and liability for damages or injury to property or persons arising from, alleged to arise from, or related to or caused directly or indirectly by (i) the Applicant's Authorized Uses, (ii) the placement or operation of the Pipeline within the City, (ii) any defect or failure of the engineering, preparation, construction, installation, maintenance, operation or

repair of the Pipeline, and/or (iv) Applicant's actions or omissions under the provisions of this Permit. This obligation does not extend to any negligent act, omission, error, mistake or accident of the City.

10. Insurance.

- a. Applicant shall purchase and maintain insurance as specified below covering the Permit, all the work and services to be performed and all obligations assumed under it, from the Effective Date with insurance companies reasonably acceptable in the industry:
 - i. **Workers' Compensation and Employers Liability Insurance** providing workers' compensation benefits mandated under applicable state law and employer's liability insurance subject to minimum limits of not less than \$1,000,000 for each accident for bodily injury by accident; \$1,000,000 for each employee for bodily injury by disease, and \$1,000,000 policy limit for bodily injury by disease.
 - ii. **Commercial General Liability Insurance** written on an occurrence basis subject to limit of \$1,000,000 each occurrence for bodily injury, property damage, personal injury, libel and/or slander with an annual aggregate limit of no less than \$2,000,000. Policy coverage is to be based on usual Insurance Services Office ("ISO") policy forms to include, but not be limited to: Operations and Premises Liability, Completed Operations and Products Liability Personal Injury Liability and Contractual Liability insurance.
 - iii. **Business Automobile Liability Insurance** subject to a minimum limit of \$1,000,000 each accident for bodily injury and property damage. Policy coverage shall be based on ISO policy forms referred to as Business Automobile Policy ("BAP") to cover motor vehicles owned, leased, rented, hired or used on behalf of Applicant.
 - iv. **Umbrella Liability Insurance** written on an occurrence basis subject to a limit of \$10,000,000 each occurrence for bodily injury, property damage, personal injury and libel and/or slander. Policy coverage is to be at least as broad as primary coverages and include, but not be limited to, Operations and Premises Liability Completed Operations and Products Liability, Personal Injury Liability and Contractual Liability insurance. Completed Operations coverage is to be maintained for a period of not less than three (3) years after the termination of this Permit.
- b. All insurance required of Applicant shall include the City, its officers, officials, agents, and employees as additional insured and include wording which states that the insurance shall be primary and not excess over or contributory with any insurance carried by the City.

- c. All insurance shall provide a minimum of thirty (30) days advance written notice of insurer's intent to cancel or otherwise terminate policy coverage to the City.
- d. All policies shall be written on an occurrence basis. If Applicant cannot obtain an occurrence based policy for any required coverage, policies may be written on a claims made basis. If any policies providing the required coverage(s) are written on a claims-made basis, the following is applicable:
 - i. The retroactive date shall be prior to the Effective Date of this Permit.
 - ii. Applicant shall maintain such policies on a continuous basis.
 - iii. If there is a change in insurance companies or the policies are canceled or not renewed, Applicant shall purchase an extended reporting period of not less than three (3) years after the Permit termination date.
- e. Applicant shall file with City on or before the Effective Date a valid Certificate of Insurance for all required insurance policies. Each Certificate shall identify the City as additional insured as required and state that the City will receive a minimum of thirty (30) days advance written notice of insurer's intent to cancel, reduce or otherwise terminate policy coverage. Prior to expiration of such insurance, Applicant shall supply an updated Certificate of Insurance that clearly evidences the continuation of all coverage in the same manner, limits of protection, and scope of coverage, as was provided by the original Certificates.
- f. Applicant hereby waives all rights of subrogation against the City and other required parties as noted above, for damages to the extent covered by insurance, all insurance policies of Applicant shall allow that any release from liability or waiver of claim for recovery from any other party entered into in writing by Applicant prior to any loss or damage shall not affect the validity of said policy(ies) or the right of the insured or insureds to recover under them.
- g. In the event that any work under this Permit is to be performed by a private contractor, said contractor shall provide evidence of insurance coverage specified in this Permit.

11. Required Notifications.

- a. Applicant must notify the City at least ten days before conducting a pressure test.
- b. If a lane closure or work within the right of way is planned for any roadway within Brighton, either during construction or while the pipeline is in operation, a traffic control plan shall be submitted to the City for approval a minimum of 10 business days in advance of the planned closure.
- c. Applicant must submit reports of failed pressure tests to the City within 24 hours after conducting the test.

- d. Except in an emergency, the Applicant shall notify the City at least ten days preceding the date of commencing any work on or relating to the installation or repair of the Pipeline permitted hereunder.
- e. In the event of an emergency, Applicant shall attempt to notify the City's engineer prior to performing emergency repairs. The City Administrator shall also be notified as soon as possible.
- f. Applicant will submit to City all records required to be submitted to U.S. *Pipeline and Hazardous Materials Safety Administration* or the Colorado Public Utilities Commission including those related to inspections, pressure testing, pipeline accidents and other safety incidents.

12. Notices. All notices, statements or other communications required or permitted between the Parties shall be in writing and shall be considered as having been given if delivered by mail, courier, hand delivery or email to the other Party at the designated physical address or email address. Date of service by mail, courier or hand delivery is the date on which such notice is received by the addressee; *provided, however*, if such date received is not a business day, then the date of service shall be considered to be the next date that is a business day. Date of service by email is the date receipt is acknowledged. Notices shall be delivered as follows:

If to Applicant:

Petro Operating
 Fax: 720-362-7116
 Phone: (303) 362-5995
 Email: rogerparker9@aol.com
 Attn: Roger Parker

With Copy to:

Cureton Midstream
 Office: (720) 390-4506
 Cell: (303) 324-5967
 Email: nick.holland@curetonmidstream.com
 Attn: Nick Holland, Director EHSR

If to City:

City of Brighton
 500 S 4th Avenue,
 Brighton, CO 80601
 Phone: 303-655-2058
 Email: Spesek@brightonco.gov
 Attn: Sean Pesek, Assistant Planner

13. Reimbursement of Expenses.

- a. Applicant agrees to reimburse the City for all actual reasonable engineering costs, legal costs, administrative costs of the City, or other costs incurred by the City in reviewing, revising and approving the plans and specifications related to

installation, repair, maintenance, monitoring or other activities associated with the Pipeline, in preparing and entering into this Permit, in enforcing this Permit, or in inspecting, testing, reviewing, approving or rejecting the work performed hereunder. In the sole discretion of the City, it may require its engineer to make construction observations periodically throughout the duration of the installation of the Pipeline. In its further sole discretion, the City may require Applicant to perform or have performed quality control tests from a materials service, the results of which shall be provided to the City's engineer for review. All costs incurred in having such construction observations, tests, and reviews performed shall be "administrative costs" as that term is used in this section and shall be reimbursed by Applicant.

- b. Applicant agrees to reimburse the City for all actual reasonable administrative and inspection costs incurred as a result of complying with and enforcing the terms of this Permit. For purposes of this Permit, reimbursement shall be made by the Applicant at the actual hourly rate for labor and equipment incurred by the City.
- c. Statements for the costs chargeable to the Applicant hereunder will be forwarded to the Applicant and the same shall be paid to the City within 30 days after the billing date. If payment has not been received by the City within said 30 days, Applicant shall have breached this Permit and upon 10 days written notice to Applicant, the City shall be entitled to terminate this Permit and remove any portion or all of the Pipeline from the City's ROW at Applicant's sole expense.

14. Assignment. This Permit is not transferable or assignable without prior written permission from the City Manager.

Section 2. Conditions Run with the Land.

The Conditional Use herein approved and the conditions imposed thereon shall run with the land. The City shall record this Resolution in the office of the appropriate County Clerk and Recorder at the expense of the Applicant.

(Signatures begin on next page)

RESOLVED, this 1st day of October, 2019.

CITY OF BRIGHTON, COLORADO

KENNETH J. KREUTZER, Mayor

ATTEST:

NATALIE HOEL, City Clerk

APPROVED AS TO FORM:

JACK D. BAJOREK, City Attorney

EXHIBIT A

Legal Description

A CENTERLINE DESCRIPTION BEING THAT PART OF SECTION 34, TOWNSHIP 1 NORTH, RANGE 66 WEST OF THE 6TH P.M., WELD COUNTY, STATE OF COLORADO AND SECTIONS 2 AND 3 TOWNSHIP 1 SOUTH, RANGE 66 WEST OF THE 6TH P.M., ADAMS COUNTY, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: BEARINGS ARE BASED UPON THE EAST LINE OF THE SOUTHEAST QUARTER OF SECTION 34, TOWNSHIP 1 NORTH RANGE 66 WEST OF THE 6TH P.M., BEING MONUMENTED AT THE WEST CORNER OF SAID SOUTHEAST QUARTER OF SECTION 34, BY A 2.5" ALUMINUM CAP STAMPED "LS 38175" AND AT THE SOUTHEAST CORNER BY A 3.25" ALUMINUM CAP STAMPED "LS 13155", BEING ASSUMED TO BEAR SOUTH 00°39'47" EAST, WITH ALL BEARINGS HEREIN RELATIVE THERETO;

COMMENCING AT THE WEST QUARTER CORNER OF SAID SECTION 34;

THENCE, SOUTH 72°41'01" WEST A DISTANCE OF 673.67 FEET TO THE POINT OF BEGINNING; THENCE THE FOLLOWING 19 COURSES ALONG SAID CENTERLINE:

THENCE, NORTH 89°47'43" EAST A DISTANCE OF 220.58 FEET; THENCE, SOUTH 00°12'17" EAST A DISTANCE OF 2301.88 FEET; THENCE, NORTH 89°47'43" EAST A DISTANCE OF 61.54 FEET; THENCE, SOUTH 00°00'00" EAST A DISTANCE OF 207.39 FEET; THENCE, NORTH 89°43'41" EAST A DISTANCE OF 542.76 FEET; THENCE, NORTH 84°43'24" EAST A DISTANCE OF 20.68 FEET; THENCE, NORTH 89°19'00" EAST A DISTANCE OF 4339.18 FEET; THENCE, NORTH 89°16'11" EAST A DISTANCE OF 408.04 FEET; THENCE, NORTH 74°29'10" EAST A DISTANCE OF 17.74 FEET;

THENCE, NORTH 89°29'49" EAST A DISTANCE OF 428.73 FEET; THENCE, NORTH 84°06'04" EAST A DISTANCE OF 24.17 FEET; THENCE, SOUTH 89°57'50" EAST A DISTANCE OF 269.09 FEET; THENCE, SOUTH 01°13'38" EAST A DISTANCE OF 1058.45 FEET; THENCE, SOUTH 23°42'02" EAST A DISTANCE OF 14.14 FEET; THENCE, SOUTH 01°12'02" EAST A DISTANCE OF 125.00 FEET; THENCE, SOUTH 21°17'58" WEST A DISTANCE OF 14.21 FEET; THENCE, SOUTH 01°12'02" EAST A DISTANCE OF 1762.04 FEET; THENCE, SOUTH 89°32'48" EAST A DISTANCE OF 198.00 FEET;

THENCE, NORTH 00°39'47" WEST A DISTANCE OF 85.87 FEET TO THE POINT OF TERMINUS.

EXHIBIT B

Conceptual Map of Proposed Pipelines

