

**AGENDA ITEM EXECUTIVE SUMMARY**

Agenda Item number: IIC2

Title:

Motion to Approve An Ordinance Authorizing the Execution of a Temporary Construction License Agreement between STC Arcada, LLC and the City of St. Charles, Kane and DuPage Counties, Illinois

Presenter:

Rita Tungare

Meeting: City Council

Date: November 4, 2019

Proposed Cost:

Budgeted Amount: N/A

Not Budgeted: **Executive Summary** (*if not budgeted please explain*):

This is a follow up item to the Redevelopment Agreement (RDA) with STC Arcada, LLC pertaining to 107-109 E. Main St. (George's building).

Proposed is a Temporary Construction License over the George's courtyard property in order for the developer to proceed with the site and utility improvements identified in the RDA.

Granting the license will enable work to begin now in coordination with planned improvements to George's and the ongoing improvements to the Arcada Theater.

The License will terminate upon completion of the work, or Dec. 31, 2019, whichever is earlier. It is anticipated that the George's property will be conveyed to STC Arcada, LLC before the termination, and at the time of conveyance, the License will no longer be necessary or effective.

The License has been prepared by the City Attorney.

Attachments (*please list*):

Ordinance

Recommendation/Suggested Action (*briefly explain*):

Vote on ordinance

City of St. Charles, Illinois
Ordinance No. 2019-M-

An Ordinance Authorizing the Execution of a Temporary Construction License Agreement between STC Arcada, LLC and the City of St. Charles, Kane and DuPage Counties, Illinois

WHEREAS, the City of St. Charles (“City”) owns the property commonly known as 107-109 East Main Street, St. Charles, Illinois (“George’s Building”); and

WHEREAS, the City and STC Arcada, LLC, an Illinois limited liability company (“Developer”) are parties to the City of St. Charles Redevelopment Agreement, of even date (“RDA”); and

WHEREAS, Developer has requested the temporary right to commence construction activities for limited utility and courtyard improvements to serve the redevelopment of the George’s Building by Developer, prior to acquisition by Developer from the City, all as provided for and required under the RDA.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of St. Charles, Kane and Du Page Counties, Illinois:

1. That the Mayor and City Clerk be, and the same are, hereby authorized and directed to execute that certain Temporary Construction License Agreement with Developer in substantially the same form as attached hereto as Exhibit "A" and, by this reference, made a part hereof.
2. This Ordinance shall be in full force and effect from and after its passage and approval pursuant to law.
3. That after the adoption and approval hereof the Ordinance shall (i) be printed or published in book or pamphlet form, published by the authority of the Council, or (ii) within thirty (30) days after the adoption and approval hereof, be published in a newspaper published in and with a general circulation within the City of St. Charles.

PRESENTED to the City Council of the City of St. Charles, Kane and DuPage Counties, Illinois this 4th day of November, 2019.

PASSED by the City Council of the City of St. Charles, Kane and DuPage Counties, Illinois this 4th day of November, 2019.

APPROVED by the Mayor of the City of St. Charles, Kane and DuPage Counties,

Illinois this 4th day of November, 2019.

Raymond P. Rogina, Mayor

ATTEST:

Charles Amenta, City Clerk

Council Vote:

Ayes:

Nays:

Absent:

Abstain:

APPROVED AS TO FORM:

City Attorney

DATE: _____

EXHIBIT "A"

TEMPORARY CONSTRUCTION LICENSE AGREEMENT

**PREPARED BY AND
AFTER RECORDING
RETURN TO:**

NICHOLAS S. PEPPERS
STORINO, RAMELLO & DURKIN
9501 West Devon Avenue, Suite 800
Rosemont, Illinois 60018

This space reserved for Recorder's use only

TEMPORARY CONSTRUCTION LICENSE AGREEMENT

Pursuant to this Temporary Construction License Agreement ("Agreement"), dated as of the ____ day of November, 2019, the CITY OF ST. CHARLES, an Illinois municipal corporation (the "Grantor"), as the owner of a certain parcel of land in the City of St. Charles, legally described in Exhibit A attached hereto and made a part hereof (hereinafter referred to as the "Grantor Parcel"), for and in good and valuable consideration, the receipt of which is hereby acknowledged, does hereby LICENSE unto STC ARCADA, LLC, an Illinois limited liability company (the "Grantee"), and its successors, assigns, tenants and licensees, and their respective agents, employees, contractors, and subcontractors (collectively with Grantee, the "Grantee Parties"), subject to the terms and conditions hereof and all matters and conditions of record, temporary non-exclusive license on, over, under and across that portion of the Grantor Parcel depicted on Exhibit B attached hereto and made a part hereof (hereinafter referred to as the "License Area"), for the purposes of the construction and installation by the Grantee Parties of that work depicted on Exhibit B, attached hereto and made a part hereof ("License Scope of Work") and the ingress and egress and staging of equipment and material related thereto (the "Construction License").

The Construction License granted herein shall be subject to the following conditions:

1. Reservation. Except as hereinafter provided, Grantor hereby reserves the full and complete title, ownership and use of the Grantor Parcel, including but not limited to the License Area, for any purpose whatsoever, so long as such use does not materially interfere with the Grantee Parties' right to use such License Areas solely for the Construction License purposes described herein.
2. Termination of Construction License and Agreement. The Construction License and this Agreement shall terminate (i) at such time as the Grantee Parties have completed construction of the License Scope of Work located in the License Area, or (ii) December 31, 2019, whichever is earlier.
3. Liens. The Grantee Parties shall not permit or suffer any mechanic's lien or similar encumbrance to be claimed against any of the Grantor Parcel in connection with the License Scope of Work and this Agreement.
4. Work by Grantee Parties. The Grantee has examined the Grantor Parcel and the License Area and accepts same in its existing condition, subject to all defects, whether concealed or otherwise, and whether known or unknown to the Grantor, its elected officials, officers, managers, representatives, assigns, servants, agents and employees ("Grantor Parties"), and does hereby release and discharge Grantor Parties from any and all damages of every kind and nature that may be in any way occasioned

thereby. All work undertaken by the Grantee Parties shall be performed and completed with diligence in a good and workmanlike manner, shall be at the sole risk of Grantor and shall be deemed improvements inuring to the benefit of the Grantor Parcel, and upon completion to be owned by Grantor upon termination of this Agreement.

5. Liability. The Grantee shall be liable for all claims for damages to persons or property by reason of its performance and activities under this Agreement. The Grantor Parties shall not be liable for any damage to the Grantor Parcel and the License Area or the property of any adjoining property owners or the public.

6. Indemnity by Grantee. The Grantee, and all those acting by or under the Grantee, shall defend, indemnify and hold harmless the Grantor Indemnitees (as defined below) from any and all liability, suits, actions, claims, costs, damages and expenses of every kind and description, including court costs and reasonable attorney's fees, and including liability and expenses in connection with the loss of life, personal injury, or damage to property, or any of them, brought because of any injuries or damages received or sustained by any person, persons or property on account of or arising out of or related to (a) performance by Grantee or anyone acting by or under the Grantee pursuant to this Agreement, except to the extent caused by the intentional or gross misconduct of Grantor or its agents, contractors, subcontractors, invitees and employees, (b) Grantee's breach of this Agreement and (c) any mechanic's liens or encumbrances asserted against the Grantor Parcel due to any labor or materials in connection with work of any character performed or claimed to have been performed at the direction or sufferance of Grantee. Except to the extent caused by the intentional or gross misconduct of Grantor or its agents, contractors, subcontractors, invitees and employees, Grantee assumes sole and entire responsibility for all loss of life, injury to persons, or damage to property that may be sustained due to the activities, operation or use of the Grantor Parcel or the License Area by the Grantee Parties and all those claiming through the Grantee Parties.

7. Insurance. Grantee shall carry at all times commercial general public liability insurance, including contractual liability, in an amount not less than Two Million Dollars (\$2,000,000.00) combined single limit per occurrence, or such higher limit as the parties may otherwise agree. Such insurance shall (i) name Grantor as an additional insured and (ii) contain a waiver of subrogation. Grantee shall, upon execution of this Agreement and within ten (10) days after the request of Grantor made from time to time, furnish to Grantor certificates evidencing the insurance coverage described in this Section 6, which certificates shall state that such insurance coverage may not be reduced, cancelled or allowed to expire without at least ten (10) days' prior written notice to Grantor.

8. Assignment. The Grantee shall neither assign this Agreement nor any part of it without the prior written consent of Grantor, which may be withheld for any or no reason.

9. Time is of the Essence. Time is of the essence in this Agreement, and in all terms and conditions contained herein.

10. Notices. Written notice mailed or hand-delivered to the Grantor at Two East Main Street, St. Charles, Illinois 60174, Attn: Mark Koenen, shall constitute sufficient notice to it and written notice mailed or hand-delivered to Grantee, c/o Frontier Development, LLC, 4N316 Route 31, St. Charles, Illinois 60174, shall constitute sufficient notice to Grantee to comply with the terms of this Agreement. Notice by mail shall be considered given on the date postmarked, or in the case of hand-delivery, on the date delivered.

11. Entire Agreement. This Agreement constitutes the entire agreement between the parties relating to the matters set forth herein, and shall supersede all written or oral agreements or

understandings that may have been had between the parties. This Agreement may be amended by the mutual written agreement of the parties.

12. Negotiation. The parties to this Agreement acknowledge that all terms of this Agreement were negotiated at arm's length and that this Agreement and all documents executed in connection herewith were prepared and executed without undue influence exerted by any party or on any party. Further, this Agreement was drafted jointly by all parties, and no parties are entitled to the benefit of any rules of construction with respect to the interpretation of any terms, conditions or provisions of this Agreement in favor of or against any person or party who drafted this Agreement.

13. Litigation. In the event of litigation between the parties with respect to this Agreement or the performance of their respective obligations hereunder, the non-prevailing party shall pay all costs and expenses incurred by the prevailing party in connection with such litigation, including, but not limited to, reasonable attorneys' fees of counsel selected by the prevailing party.

[Signature page follows]

EXHIBIT A

Grantor Parcel

LOT 3 IN BLOCK 2 OF THE ORIGINAL TOWN (NOW CITY) OF ST. CHARLES, KANE COUNTY, ILLINOIS. EXCEPT THAT PART OF THE WESTERLY 9 FEET OF THE SOUTHERLY 12 FEET OF THE PROPERTY CONVEYED TO ARCADA PARTNERS, LLC AS DOCUMENT NO. 2001K034378 LEGALLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 4; THENCE NORTHERLY ALONG THE EASTERLY LINE OF SAID LOT, 29.05 FEET; THENCE EASTERLY, PARALLEL WITH THE SOUTHERLY LINE OF SAID LOT 3, A DISTANCE OF 0.32 FEET TO THE CENTER LINE OF A 1 FOOT WIDE PARTY WALL; THENCE NORTHERLY ALONG SAID CENTER LINE 37.25 FEET TO THE POINT ON THE WESTERLY LINE OF SAID LOT 3 WHICH IS 34 FEET SOUTHERLY OF, AS MEASURED ALONG SAID WESTERLY LINE, THE NORTHWEST CORNER OF SAID LOT; THENCE NORTHERLY ALONG THE CENTER LINE OF SAID 1 FOOT WIDE PARTY WALL TO A POINT ON THE NORTHERLY LINE OF SAID LOT 4 WHICH IS 0.28 FEET WESTERLY OF THE NORTHEAST CORNER THEREOF; THENCE EASTERLY ALONG SAID NORTHERLY LINE 50.57 FEET TO THE NORTHEAST CORNER OF SAID LOT 3; THENCE SOUTHERLY ALONG THE EASTERLY LINE OF SAID LOT 3, A DISTANCE OF 100.30 FEET TO THE SOUTHEAST CORNER OF SAID LOT; THENCE WESTERLY ALONG THE SOUTHERLY LINE OF SAID LOT, 50.295 FEET TO THE POINT OF BEGINNING; IN THE CITY OF ST. CHARLES, KANE COUNTY, ILLINOIS.

Commonly known as: 107-109 Main Street, St. Charles, IL, 60174.

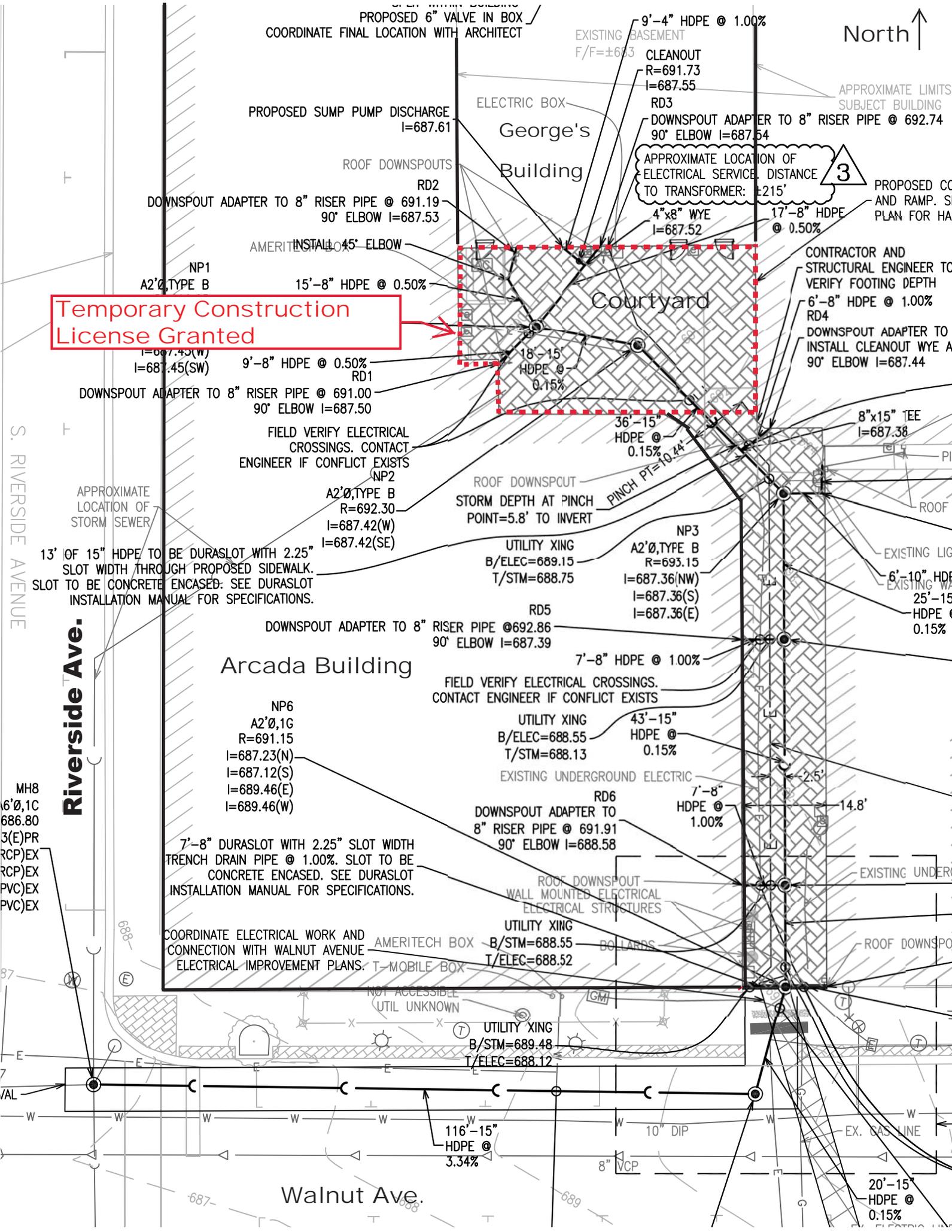
PIN: 09-27-389-010

EXHIBIT B

**License Area
and License Scope of Work**



Temporary Construction License Granted



PROPOSED 6" VALVE IN BOX /
COORDINATE FINAL LOCATION WITH ARCHITECT

EXISTING BASEMENT
F/F=±687.3

CLEANOUT
R=691.73
I=687.55
RD3
DOWNSPOUT ADAPTER TO 8" RISER PIPE @ 692.74
90° ELBOW I=687.54

APPROXIMATE LIMITS
SUBJECT BUILDING

PROPOSED SUMP PUMP DISCHARGE
I=687.61

ELECTRIC BOX
George's Building

APPROXIMATE LOCATION OF
ELECTRICAL SERVICE. DISTANCE
TO TRANSFORMER: ±215'

PROPOSED CO
AND RAMP. S
PLAN FOR HA

ROOF DOWNSPOUTS
RD2
DOWNSPOUT ADAPTER TO 8" RISER PIPE @ 691.19
90° ELBOW I=687.53

INSTALL 45° ELBOW

4"x8" WYE
I=687.52

17'-8" HDPE
@ 0.50%

NP1
A2'Ø, TYPE B

15'-8" HDPE @ 0.50%

CONTRACTOR AND
STRUCTURAL ENGINEER TO
VERIFY FOOTING DEPTH

6'-8" HDPE @ 1.00%

RD4
DOWNSPOUT ADAPTER TO
INSTALL CLEANOUT WYE A
90° ELBOW I=687.44

Courtyard

I=687.45(W)
I=687.45(SW)

9'-8" HDPE @ 0.50%

18'-15"
HDPE @
0.15%

DOWNSPOUT ADAPTER TO 8" RISER PIPE @ 691.00
90° ELBOW I=687.50

FIELD VERIFY ELECTRICAL
CROSSINGS. CONTACT
ENGINEER IF CONFLICT EXISTS

NP2
A2'Ø, TYPE B
R=692.30
I=687.42(W)
I=687.42(SE)

ROOF DOWNSPOUT
STORM DEPTH AT PINCH
POINT=5.8' TO INVERT

36'-15"
HDPE @
0.15%

8"x15" TEE
I=687.38

APPROXIMATE
LOCATION OF
STORM SEWER

13' OF 15" HDPE TO BE DURASLOT WITH 2.25"
SLOT WIDTH THROUGH PROPOSED SIDEWALK.
SLOT TO BE CONCRETE ENCASED. SEE DURASLOT
INSTALLATION MANUAL FOR SPECIFICATIONS.

UTILITY XING
B/ELEC=689.15
T/STM=688.75

NP3
A2'Ø, TYPE B
R=693.15
I=687.36(NW)
I=687.36(S)
I=687.36(E)

DOWNSPOUT ADAPTER TO 8" RISER PIPE @ 692.86
90° ELBOW I=687.39

FIELD VERIFY ELECTRICAL CROSSINGS.
CONTACT ENGINEER IF CONFLICT EXISTS

UTILITY XING
B/ELEC=688.55
T/STM=688.13

43'-15"
HDPE @
0.15%

Riverside Ave.

Arcada Building

NP6
A2'Ø, 1G
R=691.15
I=687.23(N)
I=687.12(S)
I=689.46(E)
I=689.46(W)

7'-8" DURASLOT WITH 2.25" SLOT WIDTH
TRENCH DRAIN PIPE @ 1.00%. SLOT TO BE
CONCRETE ENCASED. SEE DURASLOT
INSTALLATION MANUAL FOR SPECIFICATIONS.

RD5
DOWNSPOUT ADAPTER TO
8" RISER PIPE @ 691.91
90° ELBOW I=688.58

7'-8"
HDPE @
1.00%

EXISTING UNDERGROUND ELECTRIC

ROOF DOWNSPOUT
WALL MOUNTED ELECTRICAL
ELECTRICAL STRUCTURES

COORDINATE ELECTRICAL WORK AND
CONNECTION WITH WALNUT AVENUE
ELECTRICAL IMPROVEMENT PLANS.

AMERITECH BOX
T-MOBILE BOX

UTILITY XING
B/STM=688.55
T/ELEC=688.52

UTILITY XING
B/STM=689.48
T/ELEC=688.12

116'-15"
HDPE @
3.34%

Walnut Ave.

20'-15"
HDPE @
0.15%

MH8
16'Ø, 1C
686.80
3(E)PR
RCP)EX
PVC)EX
PVC)EX

