



Fulton County Board of Commissioners
Agenda Item Summary

17-0579

BOC Meeting Date
 7/19/2017

Requesting Agency
 Public Works

Commission Districts Affected
 1, 7

Requested Action *(Identify appropriate Action or Motion, purpose, cost, timeframe, etc.)*
 Approval of Indemnification, Maintenance, and Land Use Agreement for Private Improvement with Alpha Kimball Hotel. To protect the interest of the County, the County Attorney is authorized to approve each of these documents as to form and substance and make any necessary modifications thereto prior to execution by the Chairman.

Requirement for Board Action *(Cite specific Board policy, statute or code requirement)*
 Requirement for Board Action (Cite specific Board policy, statute or code requirement)
 Fulton County is authorized to grant an encroachment on its sanitary sewer easement pursuant to Fulton County code, Subpart B-Code of Resolutions-Appendix A-Subdivision Regulations, Article VII (Required Improvements), Section 8.5.5(C), which states the following in part: No retaining wall, building, pole, sign or other vertical structure shall be constructed in sanitary and storm sewer easements, including vehicular access easements around structures, without approval from the Director of Public Works.

Is this Item related to a Strategic Priority Area? *(If yes, note strategic priority area below)*
 Yes All People are healthy

Is this a purchasing item?
 No

Summary & Background *(First sentence includes Agency recommendation. Provide an executive summary of the action that gives an overview of the relevant details for the item.)*

The property owner requests permission to install a patio deck into the sanitary sewer easement. Staff has confirmed the easement can be maintained with this encroachment and have added casing to protect the sewer. Other encroachments within the easement are subject to the terms of this agreement. This agreement affirms Fulton County's rights to maintain, inspect and operate the sewer in the easement, further affirms the property owner's responsibility for the maintenance, repair and replacement of the existing and proposed private improvements and the property owner's access to these improvements and the property owner's responsibility for any damage to any public utilities by his/her employees or subcontractors during the performance of this License and Agreement or resulting from the failure of the proposed private improvements.

Community Impact: The indemnification agreement allows the County full access to maintain the sanitary sewer while allowing the property owner flexibility with an improvement on their property.

Department Recommendation: Public Works recommends approval of this item.

Agency Director Approval		County Manager's Approval
Typed Name and Title	Phone	
Signature	Date	

Revised 03/12/09 (Previous versions are obsolete)

Project Implications: No negative impacts to sanitary sewer service.

Community Issues/Concerns: No additional concerns have been raised.

Department Issues/Concerns: Public Works has no additional concerns with this item.

History of BOC Agenda Item: This item has not been before the BOC

Contract & Compliance Information

(Provide Contractor and Subcontractor details.)

Agency Director Approval		County Manager's Approval
Typed Name and Title	Phone	
Signature	Date	

Revised 03/12/09 (Previous versions are obsolete)

17-0579

Solicitation Information	NON-MFBE	MBE	FBE	TOTAL
No. Bid Notices Sent:				
No. Bids Received:				
Total Contract Value	.			
Total M/FBE Values	.			
Total Prime Value	.			
Fiscal Impact / Funding Source	<i>(Include projected cost, approved budget amount and account number, source of funds, and any future funding requirements.)</i>			
No Impact to funding				
Exhibits Attached	<i>(Provide copies of originals, number exhibits consecutively, and label all exhibits in the upper right corner.)</i>			
Exhibit 1 – Indemnification, Maintenance and Land Use Agreement For Private Improvement Package				
Source of Additional Information	<i>(Type Name, Title, Agency and Phone)</i>			
David E. Clark, P.E., Director 404-612-2804				

Agency Director Approval		County Manager's Approval
Typed Name and Title	Phone	
Signature	Date	

Revised 03/12/09 (Previous versions are obsolete)

Procurement

Contract Attached: .	Previous Contracts: .		
Solicitation Number: .	Submitting Agency: .	Staff Contact: .	Contact Phone: .

Description:.

FINANCIAL SUMMARY

Total Contract Value:	MBE/FBE Participation:
Original Approved Amount: .	Amount: . %: .
Previous Adjustments: .	Amount: . %: .
This Request: .	Amount: . %: .
TOTAL: .	Amount: . %: .

Grant Information Summary:

Amount Requested: .	<input type="checkbox"/>	Cash
Match Required: .	<input type="checkbox"/>	In-Kind
Start Date: .	<input type="checkbox"/>	Approval to Award
End Date: .	<input type="checkbox"/>	Apply & Accept
Match Account \$: .		

Funding Line 1: .	Funding Line 2: .	Funding Line 3: .	Funding Line 4: .
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KEY CONTRACT TERMS

Start Date: .	End Date: .
Cost Adjustment: .	Renewal/Extension Terms: .

ROUTING & APPROVALS
(Do not edit below this line)

X	Originating Department:	Clark, David	Date: 6/30/2017
X	County Attorney:	Stewart, Derval	Date: 6/30/2017
.	Purchasing/Contract Compliance:	.	Date: .
.	Finance/Budget Analyst/Grants Admin:	.	Date: .
.	Grants Management:	.	Date: .
X	County Manager:	Anderson, Dick	Date: 7/5/2017

**INDEMNIFICATION, MAINTENANCE AND LAND USE AGREEMENT FOR
PRIVATE IMPROVEMENT**

THIS AGREEMENT, made this ____ day of _____, 2017, between ALHPA KIMBALL HOTEL LLC, a Delaware limited liability company and the owner of the Property within Fulton County, Georgia, its successors, affiliates and assigns, as Indemnitor (hereinafter, as "Owner"), and FULTON COUNTY, a political subdivision of the State of Georgia (hereinafter, "the County").

For good and valuable consideration, receipt of which is hereby acknowledged, it is hereby agreed as follows:

1. Fulton County grants Owner, "the License" to enter within a portions of its sanitary sewer easement as referenced in and recorded at Plat Book 38457, page 230 of Fulton County, Georgia records, as more fully described in Exhibit "A" which is attached hereto and incorporated herein, to construct, repair and replace, from time to time as may be needed certain private improvements at his sole cost and responsibility private improvements as same is more fully described in Exhibit "A".
2. With respect to this License, Owner shall install and construct the Private Improvements in a manner which complies with all state, local, and Fulton County laws and regulations, including but not limited to, all current state, local and Fulton County laws and regulations governing soil erosion and sedimentation control. Owner will at all times adhere to best management practice procedures to protect the environment in connection with the construction, repair and/or maintenance of the Private Improvements.
3. This License shall commence on the date of execution hereof and shall continue in full force and effect unless and until it is terminated at the will of the County.
4. Owner may terminate this License and Agreement by written notice to the County and shall remove the Private Improvement at his sole costs and return the area to its natural vegetative state. If during the term of this License, the area containing the Private Improvements is condemned by the County or its assign, Owner shall make no claim in the condemnation proceedings for compensation for the Private Improvements.
5. Owner shall perform all work on the Private Improvements in a good and workmanlike manner and in compliance with all applicable governmental, laws, ordinances, and regulations.

6. Fulton County personnel and /or agents shall have free access to and across the Private Improvements to perform routine maintenance and any emergency repairs to the existing public improvements when needed to protect the health, safety and general welfare of the public.

7. Owner shall be solely responsible for the maintenance, repair and replacement of the Private Improvements and the County grants Owner a right of access in order to carry out these obligations.

8. Notwithstanding any other provisions, in the case of an emergency, Fulton County may immediately suspend or revoke the License without notice in order to protect the health, safety, and welfare of the public. In non-emergency situations, after providing at least 10 days notice to Owner, Fulton County may suspend or revoke the License in order to carry out any necessary governmental function. In the event of the suspension or revocation of the License, Owner must cure all defects specified by the County in its notice and within the time reasonably specified by the County. Failure on the part of Owner to cure any defects within the allotted time will be grounds for the County to terminate the License. Alternately, the County may, but shall not be required to, cure any such defect at the sole cost and expense of Owner. The County may elect to terminate the License at will and remove the Private Improvements without liability for loss or damage for such removal. Fulton County shall remove the Private Improvements so as not to damage other portions of Owner's property and is granted a right of entry by Owner on the other portions of Owner's property to effectuate the repair, if necessary.

9. Owner hereby agrees to indemnify Fulton County and hold Fulton County harmless from any and all damages which Fulton County may suffer and from any and all liability, claims, penalties, forfeitures, suits, and costs and expenses incident to the granting of the License and this Agreement (including cost of defense, settlement, and reasonable attorney's fees), which it may hereafter incur, become responsible for, or pay out as a result of the death or bodily injuries to any person, destruction or damage to any property, contamination of or adverse effects on the environment, or any violations of governmental laws, regulations, or orders caused solely by the negligent act, negligent omission or willful misconduct of Owner, his employees, subcontractors, or assigns in the performance of this License or Agreement. Owner, further warrants that he is the full and true owner and has clear title to the property in which the Private Improvements will be made, as is defined in Exhibit "A", attached hereto and incorporated herein by reference.

10. Owner agrees to repair or replace in a manner acceptable to the County and/or the owner thereof any public utilities damaged by its employees or subcontractors during performance of this License and Agreement or resulting from the failure of the Private Improvements. At its election the County may repair or replace the damaged utility and assess all costs against Owner.

11. This License and Agreement shall be binding upon Owner, his assigns, affiliates, and successors and to the extent allowed by law, upon Fulton County. This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia. If any provisions of this agreement is held to be unenforceable for any reason, the unenforceability thereof shall not affect the remainder of the Agreement, which shall remain in full force and effect, and enforceable in accordance with its terms.

12. This License and Agreement shall constitute a covenant running with the land and shall be recorded in the real property records of Fulton County, Georgia and shall be binding upon all subsequent transferees of said property.

13. All notices, consents, request, demands or other communications to or upon the respective party shall be in writing and shall be effective for all purposes upon receipt, including, but not limited to, in the case of (I) personal delivery; (ii) delivery by messenger, express or air courier or similar courier; or (iii) delivery by United States first class certified or registered mail, postage prepaid and addressed as follows:

COUNTY: Fulton County
Director of Public Works
141 Pryor Street, SW, 6Th. Floor
Atlanta, GA. 30303

with a copy to: County Attorney
Office of the County Attorney
141 Pryor Street, SW, Suite 4038
Atlanta, GA. 30303

OWNER: Alpha Kimball Hotel LLC
Three Ravinia Drive, Suite 100
Atlanta, Georgia 30346
Attention: Kevin Kearney
Re: Land Lot 801, 1st District, 2nd Section,
City of Alpharetta, Fulton County, Georgia

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement at Atlanta, Georgia, as of the day and year first above written.

Signed, sealed and delivered in
in the presence of:

Carolyn Arnold
Unofficial Witness

ALPHA KIMBALL HOTEL LLC

By: [Signature]
Name: LAW ELLIOTT
Title: VICE PRESIDENT

Notary Public

My Commission Expires

(NOTARY SIGNATURE)



Address: Three Ravinia Drive, Suite 100
Atlanta, Georgia 30346

(Authorized Party to Bind Said Entity)

(NOTARY STAMP)

Attest:

FULTON COUNTY, GEORGIA

Mark Massey,
Clerk of the Commission

By: _____
John H. Eaves, Ph.D., Chairman
Board of Commissioners

APPROVED AS TO CONTENT:

APPROVED AS TO FORM:

David E. Clark, Director
Department of Public Works

County Attorney

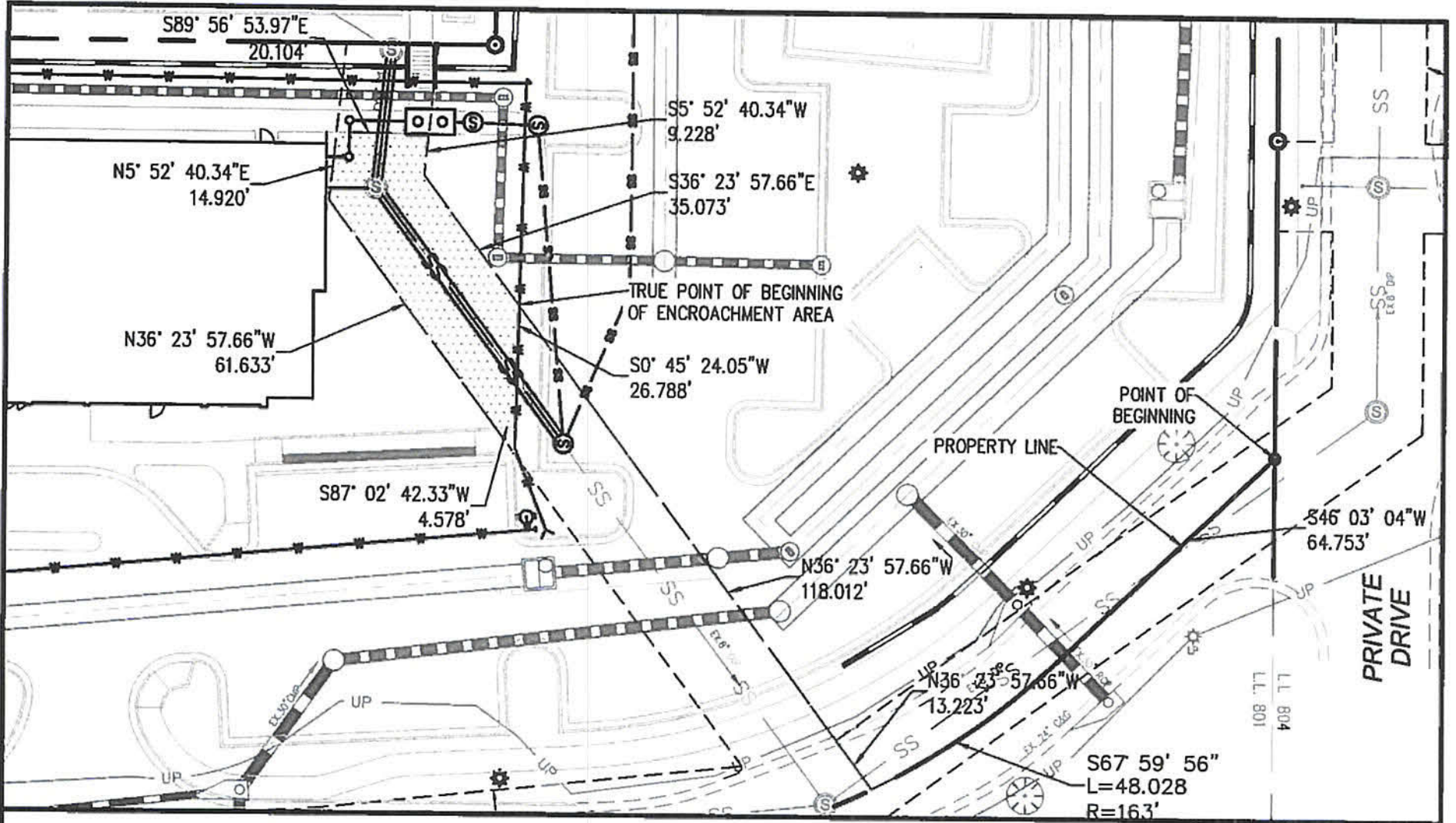
Exhibit A

Legal Description

All that tract or parcel of land lying and being in Land Lot 801, 1st District, 2nd Section, City of Alpharetta, Fulton County, Georgia and being more particularly described as follows:

To find the Point of Beginning, commence at a point at the Land Lot Corner common to Land Lots 800, 801, 804 and 805 as described in a Limited Warranty Deed to Greenstone Parkway 400 LLLP recorded among the Land Records of Fulton County, Georgia in Deed Book 45828, Page 613; thence, leaving said point and running with the line common to said Land Lots 801 and 804, North 00° 09' 34" West, 700.90 feet; thence, North 00° 06' 47" East, 463.84 feet to a point, being the True Point of Beginning of the herein described tract or parcel of land; thence, leaving the said True Point of Beginning and said land lot line and running along the centerline of a Private Access Drive common to the property now or formerly owned by Greenstone Parkway 400 LLLP, being recorded in the aforesaid Deed Book and Page South 46° 03' 04" West, 64.75 feet to a point; thence, 48.028' feet along the arc of a curve deflecting to the right, having a radius of 163.00 feet and a chord bearing and distance of South 67° 59' 56" West, 122.03 feet to a point; thence leaving the property line, thence North 23 degrees, 23 minutes, 57.66 seconds West a distance of 13.223 feet to a point on the Northeast side of the existing 20 foot Sanitary Sewer Easement line; thence North 23 degrees, 23 minutes, 57.66 seconds West a distance of 118.012 feet TO FIND THE TRUE POINT OF BEGINNING of Encroachment Area, thence, travel South 0 degrees, 45 minutes, 24.05 seconds West a distance of 26.788 feet to a point, thence, South 87 degrees, 02 minutes, 42.33 seconds West a distance of 4.578 feet to a point; thence North 36 degrees, 23 minutes, 57.66 seconds West a distance of 61.633 feet to a point; thence North 5 degrees, 52 minutes, 40.34 seconds East a distance of 14.920 feet to a point; thence South 89 degrees, 56 minutes, 53.97 seconds East a distance of 20.104 feet to a point; thence South 5 degrees, 52 minutes, 40.34 seconds West a distance of 9.228 feet to a point; thence South 36 degrees, 23 minutes, 57.66 seconds East a distance of 35.073 feet to a point;,, which is the TRUE POINT OF BEGINNING of the Encroachment Area; said property contains 0.029 acres; 1270 square feet.

This description is based on information from a boundary survey by GA Land Surveyor, LLC, dated 8/11/15



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**EXHIBIT B
SEWER ENCROACHMENT EXHIBIT**

GRANTOR: ALPHA KIMBALL HOTEL, LLC
ALPHARETTA, GA
MAY 10, 2017



Scale 1" = 30'



Civil Engineering Water Resources
Land Planning Property Services
Landscape Architecture Artistic Services

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