A SUBSTITUTE RESOLUTION
BY FINANCE/EXECUTIVE COMMITTEE

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH COBB COUNTY FOR CERTAIN IMPROVEMENTS TO STATE ROUTE 3 AND U.S. HIGHWAY 41; AND FOR OTHER PURPOSES

WHEREAS, Cobb County, a political subdivision of the State of Georgia acting by and through its duly elected Board of Commissioners ("Cobb"), in partnership with Georgia Department of Transportation, an agency of the State of Georgia ("GDOT"), will make certain improvements to State Route 3 and U.S. Highway 41 from Northgate Drive to Paces Mill Road, including bridge replacement over the Chattahoochee River, such project identified as GDOT Project No. BHFST-0001-05(024), P.I. No. 720125 (the "Project"); and

WHEREAS, accomplishment of Phase I of the Project requires the acquisition of certain property rights and interests lying within the jurisdiction of the City of Atlanta, a municipal corporation of the State of Georgia (the "City"), belonging to Post Apartment Homes, L.P., a limited partnership organized under the laws of the State of Georgia ("Post"); and

WHEREAS, the City and Cobb have negotiated a certain Intergovernmental Agreement (the "IGA") allowing Cobb to exercise the eminent domain provisions pursuant to Section 32-3-1 et seq. of the Official Code of Georgia Annotated, as necessary, to effect the acquisition of the aforementioned property rights and interests; and

WHEREAS, pursuant to the IGA, the City will incur no costs and bear no liability otherwise in relation to the land acquisition, land improvement, contracted property management and other related activities pertaining to the Project; and

WHEREAS, continual maintenance and repair of the Project, including, without limitation, street improvements and bridge replacement, shall be borne by GDOT or assigned through GDOT's customary maintenance procedures.

THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA, HEREBY RESOLVES, that the Mayor is authorized to enter into the IGA with Cobb allowing Cobb to exercise the right of eminent domain pursuant to Section 32-3-1 et seq. of the Official Code of Georgia Annotated within the jurisdiction of the City to the extent such exercise is directly related to the acquisition of property owned by Post for completion of Phase I of the Project.

BE IT FURTHER RESOLVED, that the City Attorney or her designee is directed to prepare the IGA for execution by the Mayor.

BE IT FINALLY RESOLVED, that the IGA will not become binding on the City, and the City will incur no liability under it until it has been approved by the City Attorney as to form, executed by the Mayor, attested to by the Municipal Clerk and delivered to Cobb.

INTERGOVERNMENTAL AGREEMENT
BETWEEN THE CITY OF ATLANTA AND COBB COUNTY

THIS AGREEMENT (this "Agreement") entered into this ____ day of _____, 2011 (the "Effective Date"), by and between **THE CITY OF ATLANTA**, a municipal corporation of the State of Georgia (the "City"), and **COBB COUNTY**, a political subdivision of the State of Georgia acting by and through its duly elected Board of Commissioners ("Cobb").

WITNESSETH

WHEREAS, Cobb, in partnership with Georgia Department of Transportation, an agency of the State of Georgia ("GDOT"), will make certain improvements to State Route 3 and U.S. Highway 41 from Northgate Drive to Paces Mill Road, including bridge replacement over the Chattahoochee River, such project identified as GDOT Project No. BHFST-0001-05(024), P.I. No. 720125 (the "Project"); and

WHEREAS, accomplishment of Phase I of the Project requires the acquisition of certain property rights and interests lying within the jurisdiction of the City belonging to Post Apartment Homes, L.P., a limited partnership organized under the laws of the State of Georgia ("Post"); and

WHEREAS, Cobb and GDOT entered into that certain Local Government Project Agreement dated November 20, 2009 (the "LGP Agreement"), and that certain Contract for Acquisition of Right of Way dated December 10, 2010 (the "Acquisition Contract"), to delineate certain responsibilities with respect to the Project, including Cobb's obligation to acquire the rights of way and easements necessary for the construction and development of the Project; and

WHEREAS, Cobb shall proceed diligently and in good faith to acquire the necessary property rights and interests without enforcing the eminent domain provisions of O.C.G.A. § 32-3-1 et seq. and in the event such efforts are unsuccessful, Cobb shall proceed to file such eminent domain actions pursuant to the same provisions of law; and

WHEREAS, the Project is an authorized undertaking of Cobb initiated in Cobb and beneficial to the citizens of Cobb and the City, and the City is willing, pursuant to the terms and conditions of this Agreement, to permit Cobb to exercise lawful authority in the acquisition of the necessary property rights and interests within the City's boundaries related to the Project; and

WHEREAS, an Intergovernmental Agreement is required by Ga. Const. art. IX, § II, para. III(b), to permit the exercise of certain powers and the provision of certain public services by local governments outside their jurisdictional boundaries and inside the boundaries of another jurisdiction.

NOW THEREFORE, for and in consideration of the foregoing premises, the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the each of the parties hereto, the parties do mutually agree as follows:

1. STATEMENT OF AGREEMENT.

A. Cobb hereby represents and warrants that it is in a cooperative relationship with GDOT for the funding and development of the Project pursuant to the terms of the LGP Agreement and Acquisition Contract, and as provided therein and subject to the conditions thereof, Cobb will fund all costs for land acquisition, land improvement, contracted property management and required demolition in relation to the Project.

B. Cobb hereby confirms that (1) improvements to the portion of the Project located on State Route 3 and U.S. Highway 41 will be maintained by GDOT and (2) responsibility for continual maintenance and repair of the bridge replacement portion of the Project will be assigned through GDOT's customary bridge maintenance procedures.

C. The City hereby acknowledges the extraterritorial exercise of the right of eminent domain by Cobb is reasonably necessary to Cobb's successful completion of the Project, and therefore authorizes Cobb to exercise its right of eminent domain only pertaining to the property owned by Post within the corporate limits of the City pursuant to the applicable provisions of O.C.G.A. § 32-3-1 et seq. to the extent such exercise is directly related to the Phase I of the Project as more fully described on the plans for the Project attached hereto as Exhibit A and specifically made a part hereof.

D. Cobb hereby agrees the City shall incur no costs and bear no liability otherwise in relation to Cobb's exercise of eminent domain or other method of acquisition of necessary property interests and rights within the City corporate limits.

2. TERM.

This Agreement shall expire on the date that is one (1) year from the Effective Date or upon completion of the Project, whichever is sooner.

3. AUTHORITY.

Each party represents that it has the authority to enter into this Agreement and that its governing body has authorized, by proper action, the execution and delivery of this Agreement.

4. INDEMNIFICATION.

To the extent permitted by law, Cobb agrees to indemnify, defend, save and hold harmless the City from and against any and all claims, demands, counterclaims, damages, disbursements, losses, judgments, liabilities, penalties, injuries, fines, litigation, lawsuits and other proceedings and costs and expenses (including reasonable attorneys' fees and expenses) which accrue against or are incurred by the City and which arise from a breach of this Agreement by Cobb or any employee, agent, representative or contractor thereof.

5. NO WAIVER OF IMMUNITY.

Nothing contained in this Agreement shall be construed to be a waiver of sovereign immunity for either party or qualified immunity for any government official acting on behalf of either party.

6. NO WAIVER.

No failure of either party hereto to exercise any right or power granted under this Agreement, or to insist upon strict compliance by the other party with this Agreement, and terms and conditions of this Agreement, shall constitute a waiver of either party's right to demand exact and strict compliance by the other party hereto with the terms and conditions of this Agreement.

7. GOVERNING LAW.

This Agreement and any and all rights and obligations of the parties hereto shall be governed by and construed according to the laws of the State of Georgia without giving effect to the principles of conflict of laws.

8. ENTIRE AGREEMENT.

This Agreement constitutes the entire agreement of the parties pertaining to the subject matter hereof and is intended as a complete and exclusive statement of the promises, representatives, negotiations, discussions and agreements, oral or otherwise, that have been made in connection therewith. No modification or amendment to this Agreement shall be binding upon the parties unless the same is in writing and signed by the parties' duly authorized representatives.

9. FORCE MAJEURE.

Neither party shall be deemed in violation of this Agreement if either is prevented from performing its obligations hereunder for any reason beyond its control, including, but not limited to, acts of God, civil or military authority, acts of public enemy, war, accidents, fires, explosions, earthquakes, floods or catastrophic failure of public transportation so long as the party diligently proceeds to perform such obligations after the end of any such event; provided, however, that nothing herein shall relieve or be construed to relieve either party from performing its obligations hereunder in the events of riots, rebellions, or legal strikes.

10. NO PARTNERSHIP.

This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the parties, nor to impose any partnership obligations or liabilities on any party. Furthermore, no party shall have any right, power or authority to enter into any agreement or undertaking of or on behalf of, to act as or be an agent or representative of, or to otherwise bind the other party of this Agreement.

11. SEVERABILITY.

If any provisions of this Agreement are 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. COMPLIANCE WITH APPLICABLE LAWS.

The parties shall at all times observe and comply with all federal, state, local and municipal ordinances, rules, regulations and professional codes of responsibilities relating to the terms of this Agreement hereunder or which in any manner affect this Agreement.

13. EFFECT OF TERMINATION.

The termination of this Agreement shall not operate to cut off any claims or causes of action in favor of either party which occurred or arose prior to the effective date of such termination.

14. NOTICES.

Whenever notice shall or may be given by one party to the other, each such notice shall be made by personal delivery (via commercial courier or otherwise) or registered or certified mail, return receipt requested, addressed as follows:

If to the City:

Office of Enterprise Assets Management
68 Mitchell Street, S.W., Suite 1225
Atlanta, GA 30303
Attn: Director, Real Estate Portfolio

and

City of Atlanta Law Department
68 Mitchell Street, S.W., Suite 4100
Atlanta, GA 30303
Attn: Real Estate Attorney

If to Cobb:

Director, Cobb County Department of Transportation
1890 County Services Parkway
Marietta, GA 30008

and

County Manager, Cobb County/Georgia
100 Cherokee Street, Suite 300
Marietta, GA 30090

SIGNATURES APPEAR ON THE FOLLOWING PAGES

IN WITNESS WHEREOF, the Parties hereto have set their hands and seals on the dates set forth below. This Agreement may be executed in counterparts, each of which shall be an original and all of which when taken together constitute one and the same agreement.

Signed, sealed and delivered before me
this ____ day of _____, 2011

_____
Witness

_____
Notary Public

(S E A L)

COBB COUNTY, a political
subdivision of the State of Georgia

By: _____
Timothy D. Lee, Chairman
Cobb County Board of Commissioners

ATTEST:

_____
County Clerk

(S E A L)

APPROVED AS TO FORM:

_____
County Attorney

Signed, sealed and delivered before me
this ____ day of _____, 2011

_____
Witness

_____
Notary Public

(S E A L)

THE CITY OF ATLANTA, a
municipal corporation of Georgia

By: _____
Mayor Kasim Reed

ATTEST:

_____
Municipal Clerk

(S E A L)

APPROVED:

_____
Commissioner, Department of
Public Works

APPROVED AS TO FORM:

_____
Assistant City Attorney

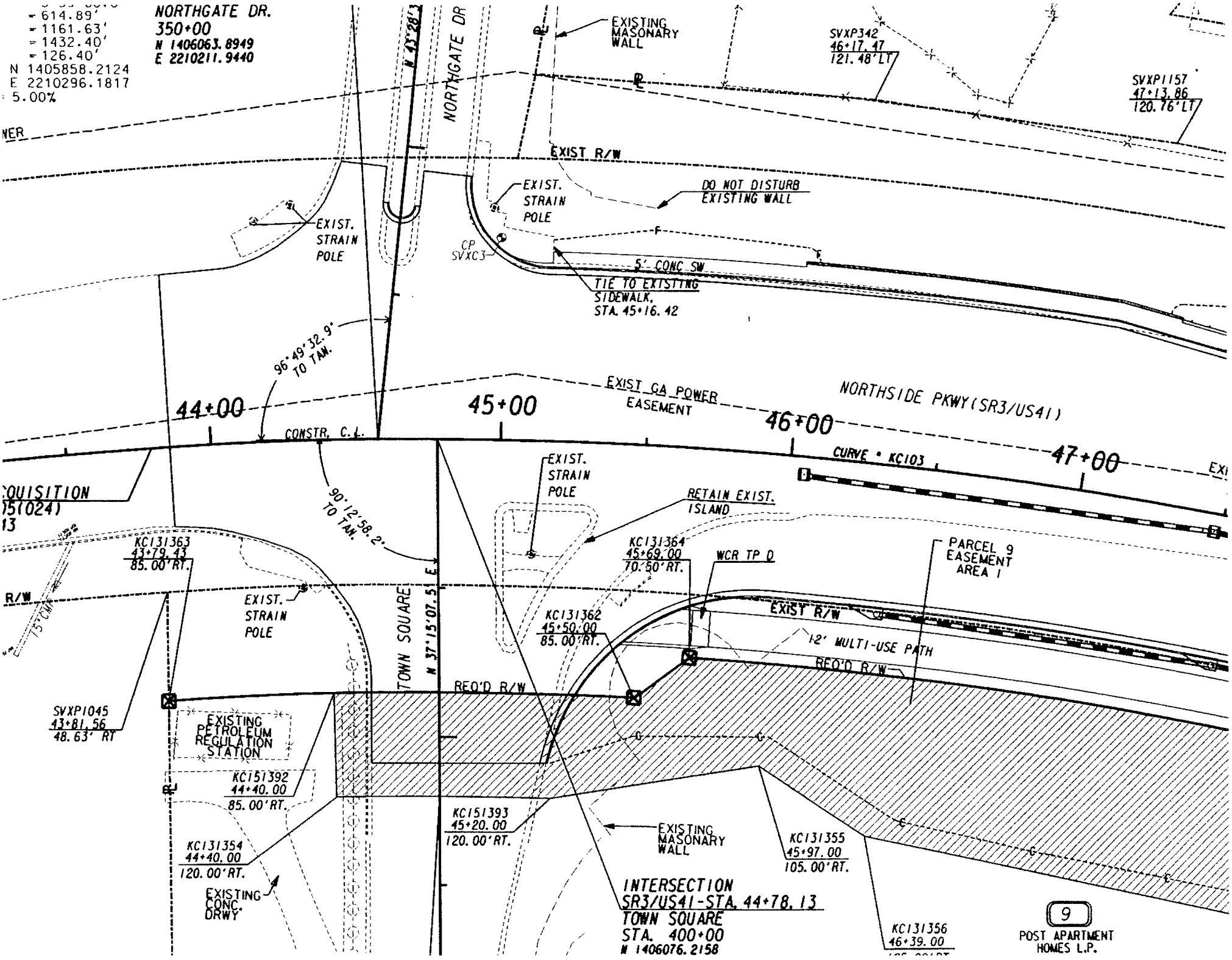
RECOMMENDED:

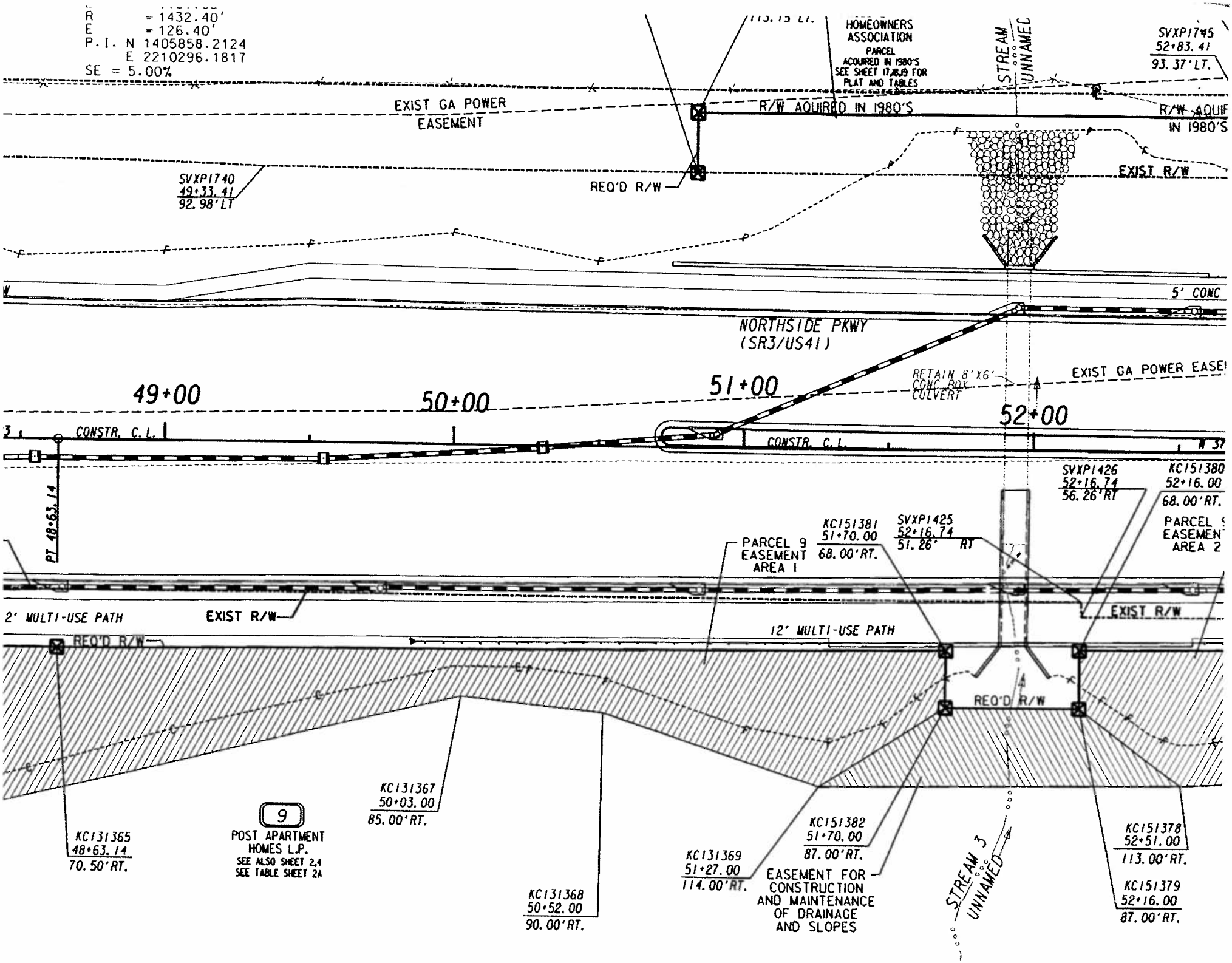
_____
Chief Financial Officer

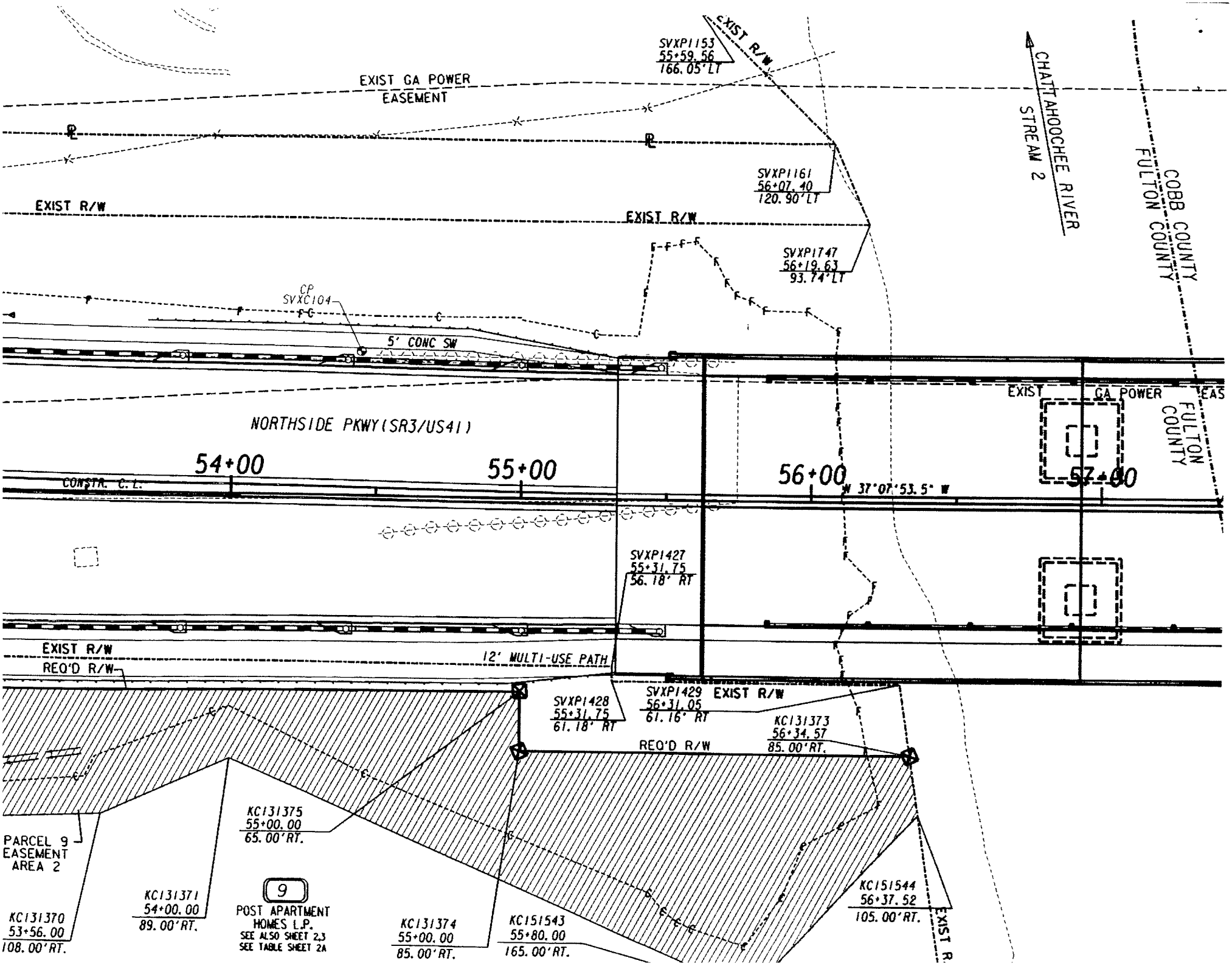
FEIN: _____

EXHIBIT A

PROJECT PLANS


= 614.89'
= 1161.63'
= 1432.40'
= 126.40'
N 1405858.2124
E 2210296.1817
5.00%
NORTHGATE DR.
350+00
N 1406063.8949
E 2210211.9440
N 43°28'3
NORTHGATE DR
EXISTING MASONRY WALL
SVXP342
46+17.47
121.48' LT
SVXP1157
47+13.86
120.76' LT
EXIST R/W
EXIST. STRAIN POLE
DO NOT DISTURB EXISTING WALL
EXIST. STRAIN POLE
CP SVXC3
5' CONC SW
TIE TO EXISTING SIDEWALK, STA. 45+16.42
96°49'32.9" TO TAN.
EXIST GA POWER EASEMENT
NORTHSIDE PKWY (SR3/US41)
44+00
45+00
46+00
47+00
CONSTR. C.L.
CURVE • KC103
EXIST. STRAIN POLE
RETAIN EXIST. ISLAND
90°12'58.2" TO TAN.
KC131363
43+79.43
85.00' RT.
KC131364
45+69.00
70.50' RT.
WCR TP D
PARCEL 9 EASEMENT AREA 1
EXIST. STRAIN POLE
TOWN SQUARE
N 37°15'07.5" E
KC131362
45+50.00
85.00' RT.
EXIST R/W
12' MULTI-USE PATH
REQ'D R/W
REQ'D R/W
SVXP1045
43+81.56
48.63' RT
EXISTING PETROLEUM REGULATION STATION
KC151392
44+40.00
85.00' RT.
KC151393
45+20.00
120.00' RT.
EXISTING MASONRY WALL
KC131355
45+97.00
105.00' RT.
KC131354
44+40.00
120.00' RT.
EXISTING CONC. DRWY
INTERSECTION
SR3/US41-STA. 44+78.13
TOWN SQUARE
STA. 400+00
N 1406076.2158
KC131356
46+39.00
9
POST APARTMENT HOMES L.P.


R = 1432.40'
E = 126.40'
P.I. N 1405858.2124
E 2210296.1817
SE = 5.00%
HOMEOWNERS ASSOCIATION
PARCEL ACQUIRED IN 1980'S SEE SHEET 17,18,19 FOR PLAT AND TABLES
STREAM UNNAMED
SVXP1745
52+83.41
93.37'LT.
EXIST GA POWER EASEMENT
R/W AQUIRED IN 1980'S
R/W AQUIR IN 1980'S
SVXP1740
49+33.41
92.98'LT
REQ'D R/W
EXIST R/W
5' CONC
NORTHSIDE PKWY (SR3/US41)
RETAIN 8'X6' CONC BOX CULVERT
EXIST GA POWER EASE
49+00
50+00
51+00
52+00
CONSTR. C.L.
CONSTR. C.L.
PT 48+63.14
SVXP1426
52+16.74
56.26'RT
KC151380
52+16.00
68.00'RT.
PARCEL 9 EASEMENT AREA 1
KC151381
51+70.00
68.00'RT.
SVXP1425
52+16.74
51.26' RT
PARCEL 9 EASEMENT AREA 2
2' MULTI-USE PATH
EXIST R/W
EXIST R/W
12' MULTI-USE PATH
REQ'D R/W
REQ'D R/W
KC131367
50+03.00
85.00'RT.
9
POST APARTMENT HOMES L.P.
SEE ALSO SHEET 2,4
SEE TABLE SHEET 2A
KC131365
48+63.14
70.50'RT.
KC131368
50+52.00
90.00'RT.
KC131369
51+27.00
114.00'RT.
KC151382
51+70.00
87.00'RT.
EASEMENT FOR CONSTRUCTION AND MAINTENANCE OF DRAINAGE AND SLOPES
STREAM 3 UNNAMED
KC151378
52+51.00
113.00'RT.
KC151379
52+16.00
87.00'RT.


EXIST GA POWER EASEMENT
SVXP1153
55+59.56
166.05'LT
EXIST R/W
CHATTAHOOCHEE RIVER
STREAM 2
COBB COUNTY
FULTON COUNTY
SVXP1161
56+07.40
120.90'LT
EXIST R/W
EXIST R/W
SVXP1747
56+19.63
93.74'LT
CP
SVXC104
5' CONC SW
EXIST GA POWER EAS
FULTON COUNTY
NORTHSIDE PKWY(SR3/US41)
54+00
55+00
56+00
57+00
CONSTR. C.L.
N 37°07'53.5" W
SVXP1427
55+31.75
56.18' RT
EXIST R/W
REQ'D R/W
12' MULTI-USE PATH
SVXP1428
55+31.75
61.18' RT
SVXP1429
56+31.05
61.16' RT
EXIST R/W
KC131373
56+34.57
85.00'RT.
REQ'D R/W
KC131375
55+00.00
65.00'RT.
PARCEL 9
EASEMENT
AREA 2
KC131371
54+00.00
89.00'RT.
9
POST APARTMENT
HOMES L.P.
SEE ALSO SHEET 2,3
SEE TABLE SHEET 2A
KC131370
53+56.00
108.00'RT.
KC131374
55+00.00
85.00'RT.
KC151543
55+80.00
165.00'RT.
KC151544
56+37.52
105.00'RT.
EXIST R

A RESOLUTION
BY FINANCE/EXECUTIVE COMMITTEE

11- R -0905

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH COBB COUNTY FOR CERTAIN IMPROVEMENTS TO STATE ROUTE 3 AND U.S. HIGHWAY 41; AND FOR OTHER PURPOSES

WHEREAS, Cobb County, a political subdivision of the State of Georgia acting by and through its duly elected Board of Commissioners ("Cobb"), in partnership with Georgia Department of Transportation, an agency of the State of Georgia ("GDOT"), will make certain improvements to State Route 3 and U.S. Highway 41 from Northgate Drive to Paces Mill Road, including bridge replacement over the Chattahoochee River, such project identified as GDOT Project No. BHFST-0001-05(024), P.I. No. 720125 (the "Project"); and

WHEREAS, accomplishment of the Project requires the acquisition of certain property rights and interests lying within the jurisdiction of the City of Atlanta, a municipal of the State of Georgia (the "City"), including, but not limited to, private property, rights of way and easements; and

WHEREAS, the City and Cobb have negotiated a certain Intergovernmental Agreement (the "IGA") allowing Cobb to exercise the eminent domain provisions pursuant to Section 32-3-1 et seq. of the Official Code of Georgia Annotated, as necessary, to effect the acquisition of the aforementioned property rights and interests; and

WHEREAS, pursuant to the IGA, the City will incur no costs and bear no liability otherwise in relation to the land acquisition, land improvement, contracted property management and other related activities pertaining to the Project; and

WHEREAS, continual maintenance and repair of the Project, including, without limitation, street improvements and bridge replacement, shall be borne by GDOT or assigned through GDOT's customary maintenance procedures; and

WHEREAS, the improved transportation facility resulting from the completion of the Project will be beneficial to the residents of the City.

THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA, HEREBY RESOLVES, that the Mayor is authorized to enter into the IGA with Cobb allowing Cobb to exercise the right of eminent domain pursuant to Section 32-3-1 et seq. of the Official Code of Georgia Annotated within the jurisdiction of the City to the extent such exercise is directly related to the Project.

BE IT FURTHER RESOLVED, that the City Attorney or her designee is directed to prepare the IGA for execution by the Mayor.

BE IT FINALLY RESOLVED, that the IGA will not become binding on the City, and the City will incur no liability under it until it has been approved by the City Attorney as to form, executed by the Mayor, attested to by the Municipal Clerk and delivered to Cobb.

TRANSMITTAL FORM FOR LEGISLATION

TO: MAYOR'S OFFICE **ATTN: CANDACE L. BYRD**

Dept.'s Legislative Liaison: Perceta Alexander

Contact Number: 404-330-6569

Originating Department: OEAM

Committee(s) of Purview: Finance/Executive Committee

Chief of Staff Deadline: 5/27/2011

Anticipated Committee Meeting Date(s): 6/14/2011

Anticipated Full Council Date: 6/20/2011

Legislative Counsel's Signature:

Commissioner Signature:

Chief Procurement Officer Signature:

CAPTION

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH COBB COUNTY FOR CERTAIN IMPROVEMENTS TO STATE ROUTE 3 AND U.S. HIGHWAY 41; AND FOR OTHER PURPOSES.

FINANCIAL IMPACT (if any): Revenue generating

Mayor's Staff Only

Received by CPO: _____ (date)

Received by LC from CPO: _____ (date)

Received by Mayor's Office: 5/27/11 (date)

Reviewed by: _____ (date)

Submitted to Council: _____ (date)

293887-1

Part II: Legislative White Paper: (This portion of the Legislative Request Form will be shared with City Council members and staff)

A. To be completed by Legislative Counsel:

Committee of Purview: City Utilities

Caption: **A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH COBB COUNTY FOR CERTAIN IMPROVEMENTS TO STATE ROUTE 3 AND U.S. HIGHWAY 41; AND FOR OTHER PURPOSES.**

Council Meeting Date: June 14, 2011

Requesting Dept.: Office of Enterprise Assets Management

B. To be completed by the department:

1. Please provide a summary of the purpose of this legislation? The purpose of this Resolution is to enter into an intergovernmental agreement with Cobb County in order to acquire certain property rights and interests lying within the jurisdiction of the City of Atlanta, including, but not limited to, private property, rights of way and easements and allow Cobb County to exercise the eminent domain provision pursuant to Section 32-2-1 et seq. of the Official Code of Georgia Annotated, as necessary, to effect the acquisition of said property rights and interests lying within the jurisdiction of the City of Atlanta. The acquisitions being for certain improvement to State Route 3 and U. S. Highway 41 from Northgate Drive to Paces Mill Road, including bridge replacement over the Chattahoochee River on GDOT Project No. BHFST-0001-05(024), P. I. No. 720125.

2. Please provide background information regarding this legislation.
This is a Georgia Department of Transportation (GDOT) project and a Cobb County 2005 SPLOST project. Cobb County and GDOT entered into a Project Framework Agreement and a Contract for Right-of-Way Acquisition, whereby Cobb County is responsible for acquiring the necessary rights-of-way and easements at no cost to GDOT.

A portion of the project is located south of the Chattahoochee River within the jurisdiction of the City of Atlanta. There are three (3) parcels that will be affected by this project – parcels 5, 5A/5B and 9. Parcel 5 has already been acquired by GDOT. Parcels 5A/5B and 9 are remaining and will need to be acquired by Cobb County. The City will incur no costs and bear no liability otherwise in

relation to the land acquisition, land improvement, contracted management and other related activities pertaining to the project. Maintenance and repair of the project shall be the responsibility of GDOT or its assignees.

3. **<u>If Applicable/Known:</u>**

(a) **Contract Type:**

(b) **Source Selection**:

(c) **Bids/Proposals Due**:

(d) **Invitations Issued:**

(e) **Number of Bids**:

(f) **Proposals Received:**

(g) **Bidders/Proponents:**

(h) **Term of Contract**:

4. **Fund Account Center:** N/A

5. **Source of Funds:** N/A

6. **Fiscal Impact:** N/A

7. **Method of Cost Recovery:** N/A

This Legislative Request Form Was Prepared By: Cheryl Glenn-Snooks, Commercial Leasing and Property Manager, 404-330-6849.