

RESOLUTION

A RESOLUTION AUTHORIZING THE EXERCISE OF THE DEKALB COUNTY POWERS OF EMINENT DOMAIN IN THE ACQUISITION OF CERTAIN INTERESTS IN PROPERTY SITUATED IN DEKALB COUNTY, GEORGIA, FOR PUBLIC WATER OR SEWER SYSTEM PURPOSES

WHEREAS, pursuant to Article 9, Section 2, Paragraph 5 of the Georgia Constitution, counties may acquire private property in fee simple or in any lesser interest by eminent domain for public purposes; and,

WHEREAS, the governing authority of DeKalb County, Georgia, a political subdivision of the State of Georgia, has determined that the circumstances of this matter are such that there is a necessity for exercising its powers of eminent domain pursuant to O.C.G.A. §§ 22-3-140 and 32-3-1, *et seq.* in the acquisition of certain interests in property for county water or sewer system purposes:

NOW THEREFORE, BE IT AND IT IS HEREBY RESOLVED, that the DeKalb County Attorney, or her designee, is ordered and directed to institute proceedings in rem pursuant to O.C.G.A. §§ 22-3-140 and 32-3-1, *et seq.* in the DeKalb County Superior Court in order to condemn that certain property and interests therein more particularly described in Exhibit "A" which is attached hereto and made a part hereof by reference as though fully set forth at this point, all to the use of DeKalb County, said property now or formerly vested in SMP LL, LLC, Georgia Power Company, Georgia Department of Transportation, Quicktrip Corporation, SMIP LL, LLC, and Bank of America, N.A., as well as their successors or assigns. It is further resolved that payment of just and adequate compensation in the amount of five thousand four hundred seventeen dollars (\$5,417.00) be made to the person or persons entitled to such payment. The Chief Executive Officer, Interim Chief Executive Officer, or the Presiding Officer may sign any documents and/or pleadings required for proper filing under the

aforementioned code sections including a Declaration of Taking and Order of the Board of Commissioners.

ADOPTED by the DeKalb County Board of Commissioners this _____ day of _____, 2017.

DEKALB COUNTY BOARD OF COMMISSIONERS:

[INSERT NAME]
Presiding Officer
Board of Commissioners
DeKalb County, Georgia


APPROVED by the Chief Executive Officer of DeKalb County this _____ day of _____, 2017.

MICHAEL L. THURMOND
Chief Executive Officer
DeKalb County, Georgia

Attest:

[INSERT NAME]
Presiding Officer
Clerk to the Board of Commissioners
and Chief Executive Officer
DeKalb County, Georgia

APPROVED AS TO FORM:



Benjamin W. Cheesbro

Ga. Bar No. 648368

CAPLAN COBB LLP

75 Fourteenth Street, NE, Suite 2750

Atlanta, Georgia 30309

Tel: (404) 596-5600

Fax: (404) 596-5604

bcheesbro@caplancobb.com

Counsel for DeKalb County, Georgia

EXHIBIT "A"

DECLARATION OF TAKING

WHEREAS, DeKalb County, Georgia has made and passed a Resolution, and entered an Order, finding that the circumstances in connection with acquiring certain interests in property and easements for public (county) water and/or sewer purposes are such that it is necessary to acquire title, estate, or interest in the lands fully described in said order to condemn contained in the Resolution. The order is attached to this Declaration as Appendix A and made a part hereof, under O.C.G.A. §§ 32-3-1, *et seq.* and O.C.G.A. § 22-3-140; and

WHEREAS, said interests in property and easements are for public purposes upon, across and over the tract of land in said county, as fully described in the attachment hereto identified as Appendix B and made a part hereof; and

WHEREAS, DeKalb County, Georgia has caused an investigation and report to be made by a competent land appraiser upon which to estimate the sum of money to be deposited in the Court as just and adequate compensation for the easements, above-referenced to, a copy of the appraiser's sworn statement being attached hereto identified as Appendix C and made a part hereof; and

WHEREAS, in consequence of the sworn statement, Appendix C, DeKalb County, Georgia estimates \$5,417.00 as just and adequate compensation to be paid for said easements, as fully described in Appendix B which is attached hereto and made a part hereof and now deposits said sum in the Court to the use of the persons entitled thereto.

NOW THEREFORE, the premises considered, DeKalb County, Georgia, under authority of the Official Code of Georgia Annotated § 22-3-140 and O.C.G.A. §§ 32-3-1, *et seq.*, hereby declares that the property and interests as described in Appendix B, which is attached hereto and

made a part hereof of this Declaration, is taken for purposes of locating, constructing, maintaining, repairing, replacing, extending, expanding, and/or installing infrastructure for a public (county) water and/or sewer purposes.

DEKALB COUNTY BOARD OF COMMISSIONERS:

[INSERT NAME]
Presiding Officer
Board of Commissioners
DeKalb County, Georgia

APPROVED by the Chief Executive Officer of DeKalb County this _____ day of _____, 2017.

MICHAEL L. THURMOND
Chief Executive Officer
DeKalb County, Georgia

Attest:

[INSERT NAME]
Presiding Officer
Clerk to the Board of Commissioners
and Chief Executive Officer
DeKalb County, Georgia

APPROVED AS TO FORM:



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Fax: (404) 596-5604

bcheesbro@caplancobb.com

Counsel for Condemnor

**ORDER OF THE DEKALB COUNTY BOARD OF COMMISSIONERS TO CONDEMN
PROPERTY FOR PURPOSES OF CONSTRUCTING AND IMPROVING A PUBLIC
WATER AND/OR SEWER**

WHEREAS, the Board of Commissioners of DeKalb County has laid out and determined to construct and improve a public water and/or sewer project for DeKalb County at that certain parcel identified for tax purposes as parcel identification number 18-170-04-001 by the DeKalb County Board of Tax Assessors, the same being more fully described and shown in the description and drawing attached as Appendix B to the Declaration of Taking.

WHEREAS, the tract of property and other rights as herein described and listed below shown of record as owned by the persons named herein, all as described and shown in Appendix B to the Declaration of Taking incorporated herein by reference and made a part of this Order are essential for the construction of said project:

Property/Rights:	4,015 Square Feet of Permanent Utility Easement 2,989 Square Feet of Temporary Construction Easement 1,009 Square Feet of Temporary Construction Easement
Owner:	SMP LL, LLC
Potentially Interested Parties:	Georgia Power Company Georgia Department of Transportation Quicktrip Corporation SMIP LL, LLC Bank of America, N.A.,

NOW THEREFORE, in accordance with O.C.G.A. §§ 22-3-140 and 32-3-6(b)(6) and (c), it is hereby found by the Board of Commissioners of DeKalb County that the circumstances are such that it is necessary that the property as described in Appendix B to Exhibit "A" of the Declaration of Taking be acquired by condemnation under the provisions of O.C.G.A. §§ 22-3-140 and 32-3-6, *et seq.* for public water and/or sewer system purposes.

**ORDER OF THE DEKALB COUNTY BOARD OF COMMISSIONERS TO CONDEMN
PROPERTY FOR PURPOSES OF CONSTRUCTING AND IMPROVING A PUBLIC
WATER AND/OR SEWER**

WHEREAS, the Board of Commissioners of DeKalb County has laid out and determined to construct and improve a public water and/or sewer project for DeKalb County at that certain parcel identified for tax purposes as parcel identification number 18-170-04-001 by the DeKalb County Board of Tax Assessors, the same being more fully described and shown in the description and drawing attached as Appendix B to the Declaration of Taking.

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Owner:	SMP LL, LLC
Potentially Interested Parties:	Georgia Power Company Georgia Department of Transportation Quicktrip Corporation SMIP TT, LLC Bank of America, N.A.,

NOW THEREFORE, in accordance with O.C.G.A. §§ 22-3-140 and 32-3-6(b)(6) and (c), it is hereby found by the Board of Commissioners of DeKalb County that the circumstances are such that it is necessary that the property as described in Appendix B to Exhibit "A" of the Declaration of Taking be acquired by condemnation under the provisions of O.C.G.A. §§ 22-3-140 and 32-3-6, *et seq.* for public water and/or sewer system purposes.

IT IS ORDERED, that DeKalb County proceed to acquire the title, estate or interest in the lands hereinafter described as Appendix B of the Declaration of Taking by condemnation under the provisions of said Code, and the County Attorney, or his or her designees, are authorized and directed to file condemnation proceedings, including a Declaration of Taking, to acquire said title, estate or interest in said lands and to deposit in the Court the sum estimated as just compensation all in accordance with the provisions of said law.

SO ORDERED by the DeKalb County Board of Commissioners, this _____ day of _____, 2017.

DEKALB COUNTY BOARD OF COMMISSIONERS:

[INSERT NAME]
Presiding Officer
Board of Commissioners
DeKalb County, Georgia

APPROVED by the Chief Executive Officer of DeKalb County this _____ day of _____, 2017.

MICHAEL L. THURMOND
Chief Executive Officer
DeKalb County, Georgia

Attest:

[INSERT NAME]

Presiding Officer
Clerk to the Board of Commissioners
and Chief Executive Officer
DeKalb County, Georgia

APPROVED AS TO FORM:



Benjamin W. Cheesbro
Ga. Bar No. 648368

CAPLAN COBB LLP

75 Fourteenth Street, NE, Suite 2750

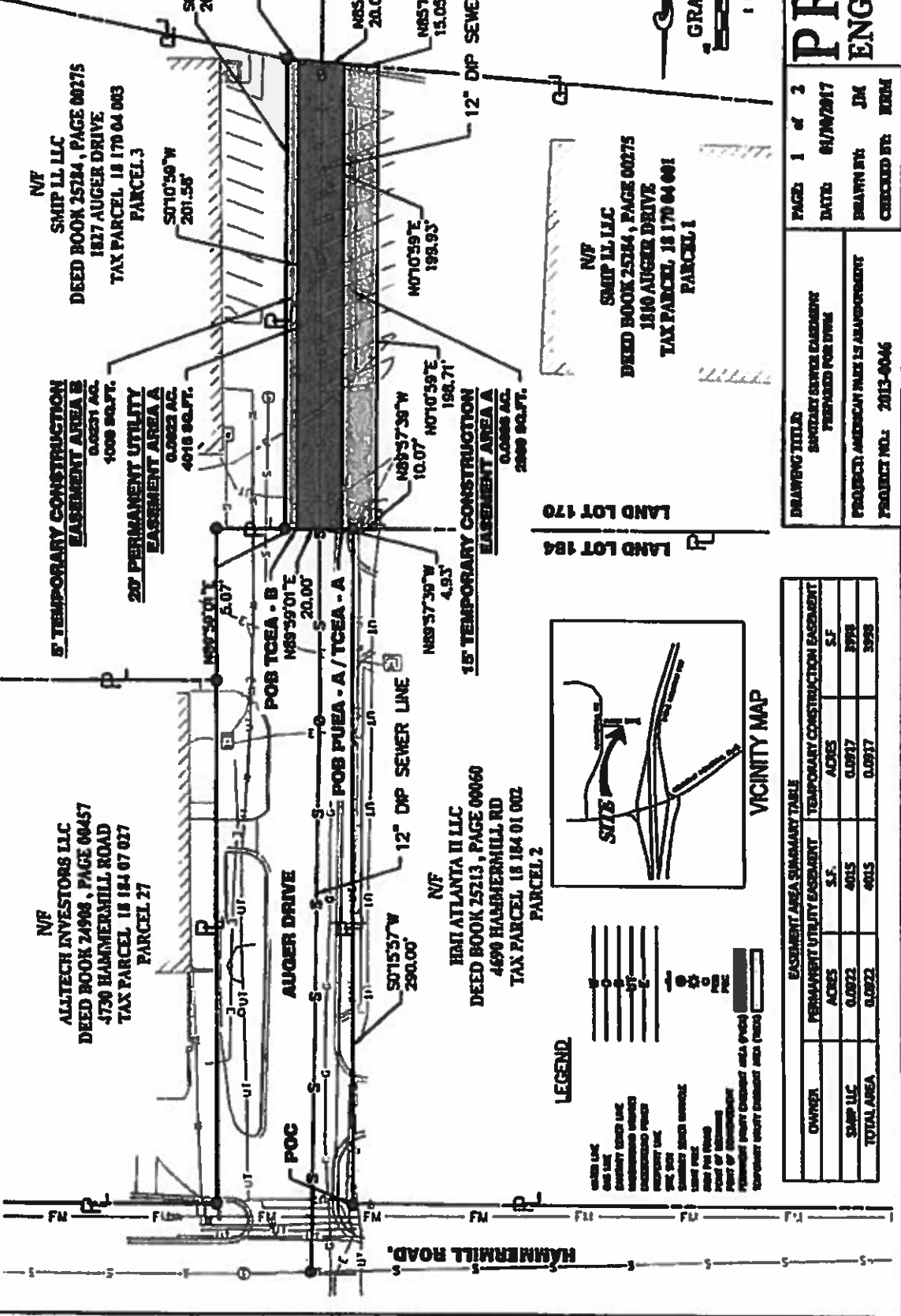
Atlanta, Georgia 30309

Tel: (404) 596-5600

Fax: (404) 596-5604

bcheesbro@caplancobb.com

Counsel for Condemnor



N/F
SMIP LL LLC
DEED BOOK 25284, PAGE 00275
1827 AUGER DRIVE
TAX PARCEL 18 170 04 003
PARCEL 3

5' TEMPORARY CONSTRUCTION
EASEMENT AREA B
0.0031 AC.
1008 SQ.FT.

20' PERMANENT UTILITY
EASEMENT AREA A
0.0021 AC.
4018 SQ.FT.

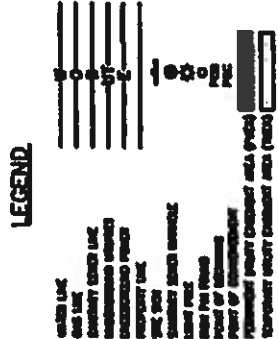
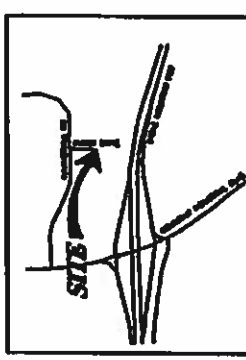
N/F
ALLTECH INVESTORS LLC
DEED BOOK 24908, PAGE 00457
4730 HAMMERMILL ROAD
TAX PARCEL 18 184 07 037
PARCEL 27

N/F
HMI ATLANTA II LLC
DEED BOOK 25213, PAGE 00060
4690 HAMMERMILL RD
TAX PARCEL 18 184 01 002
PARCEL 2

N/F
SMIP LL LLC
DEED BOOK 25284, PAGE 00275
1810 AUGER DRIVE
TAX PARCEL 18 170 04 001
PARCEL 1

LAND LOT 170

LAND LOT 184



EASEMENT AREA SUMMARY TABLE

OWNER	PERMANENT UTILITY EASEMENT ACRES	TEMPORARY CONSTRUCTION EASEMENT ACRES	S.F.
SMIP LLC	0.0922	0.0917	8798
TOTAL AREA	0.0922	0.0917	8998

DRAWING TITLE: SECONDARY SEWER EASEMENT PREPARED FOR DWA

PROJECT: AMERICAN INDIAN IS AMENDMENT

PROJECT NO.: 2013-0046

PAGE: 1 of 2

DATE: 01/10/17

DRAWN BY: JM

CHECKED BY: BDB

PRIME ENGINEERING

20' PERMANENT UTILITY EASEMENT AREA A
(SHP LL LLC)

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOT 170 OF THE 18TH DISTRICT OF DEKALB COUNTY, GEORGIA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT AT THE INTERSECTION OF THE WESTERN RIGHT OF WAY OF AUGER DRIVE (HAVING A 60 FOOT RIGHT OF WAY) WITH THE SOUTHERN RIGHT OF WAY OF HAMMERMILL ROAD (HAVING A 60 FOOT RIGHT OF WAY), THENCE SOUTH ALONG THE WESTERN RIGHT OF WAY OF AUGER DRIVE 200.00 FEET TO THE NORTH LINE OF LAND LOT 170, THENCE EAST ALONG SAID NORTHERN LAND LOT LINE A DISTANCE OF 4.93 FEET TO A POINT FOUND, SAID POINT BEING THE TRUE POINT OF BEGINNING.

FROM SAID POINT OF BEGINNING NORTH 88 DEGREES 59 MINUTES 01 SECONDS EAST FOR A DISTANCE OF 20 FEET TO A POINT, THENCE SOUTH 0 DEGREES 10 MINUTES 50 SECONDS WEST A DISTANCE OF 201.58 FEET TO A POINT ON THE NORTHERN RIGHT OF WAY OF STATE ROUTE 78, THENCE NORTH 85 DEGREES 18 MINUTES 24 SECONDS WEST FOR A DISTANCE OF 20.08 FEET TO A POINT, THENCE NORTH 0 DEGREES 10 MINUTES 59 SECONDS EAST FOR A DISTANCE OF 199.83 FEET TO A POINT, SAID POINT BEING THE TRUE POINT OF BEGINNING.

SAID TRACT OR PARCEL CONTAINS 0.0822 ACRES/4015 SQ.FT.

15' TEMPORARY CONSTRUCTION EASEMENT AREA A
(SHP LL LLC)

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOT 170 OF THE 18TH DISTRICT OF DEKALB COUNTY, GEORGIA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT AT THE INTERSECTION OF THE WESTERN RIGHT OF WAY OF AUGER DRIVE (HAVING A 60 FOOT RIGHT OF WAY) WITH THE SOUTHERN RIGHT OF WAY OF HAMMERMILL ROAD (HAVING A 60 FOOT RIGHT OF WAY), THENCE SOUTH ALONG THE WESTERN RIGHT OF WAY OF AUGER DRIVE 290.00 FEET TO THE NORTH LINE OF LAND LOT 170, THENCE EAST ALONG SAID NORTHERN LAND LOT LINE, A DISTANCE OF 4.93 FEET TO A POINT, SAID POINT BEING THE TRUE POINT OF BEGINNING.

FROM SAID POINT OF BEGINNING SOUTH 0 DEGREES 10 MINUTES 59 SECONDS WEST FOR A DISTANCE OF 199.83 FEET TO A POINT ON THE NORTHERN RIGHT OF WAY OF STATE ROUTE 78, THENCE NORTH 85 DEGREES 18 MINUTES 24 SECONDS WEST A DISTANCE OF 15.05 FEET TO A POINT, THENCE NORTH 0 DEGREES 10 MINUTES 59 SECONDS EAST FOR A DISTANCE OF 198.71 FEET TO A POINT, THENCE NORTH 89 DEGREES 59 MINUTES 01 SECONDS EAST FOR A DISTANCE OF 10.07 FEET TO A POINT, SAID POINT BEING THE TRUE POINT OF BEGINNING.

SAID TRACT OR PARCEL CONTAINS 0.0888 ACRES/2380 SQ.FT.

5' TEMPORARY CONSTRUCTION EASEMENT AREA B
(SHP LL LLC)

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOT 170 OF THE 18TH DISTRICT OF DEKALB COUNTY, GEORGIA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT AT THE INTERSECTION OF THE WESTERN RIGHT OF WAY OF AUGER DRIVE (HAVING A 60 FOOT RIGHT OF WAY) WITH THE SOUTHERN RIGHT OF WAY OF HAMMERMILL ROAD (HAVING A 60 FOOT RIGHT OF WAY), THENCE SOUTH ALONG THE WESTERN RIGHT OF WAY OF AUGER DRIVE 200.00 FEET TO THE NORTH LINE OF LAND LOT 170, THENCE EAST ALONG SAID NORTHERN LAND LOT LINE A DISTANCE OF 20.03 FEET TO A P.M., SAID POINT BEING THE TRUE POINT OF BEGINNING.

FROM SAID POINT OF BEGINNING NORTH 89 DEGREES 59 MINUTES 01 SECONDS EAST FOR A DISTANCE OF 5.00 FEET TO A POINT, SOUTH 0 DEGREES 10 MINUTES 59 SECONDS WEST FOR A DISTANCE OF 201.99 FEET TO A POINT ON THE NORTHERN RIGHT OF WAY OF STATE ROUTE 78, THENCE NORTH 85 DEGREES 18 MINUTES 24 SECONDS WEST A DISTANCE OF 5.02 FEET TO A POINT, THENCE NORTH 0 DEGREES 10 MINUTES 59 SECONDS EAST FOR A DISTANCE OF 201.58 FEET TO A POINT, SAID POINT BEING THE TRUE POINT OF BEGINNING.

SAID TRACT OR PARCEL CONTAINS 0.0231 ACRES/1009 SQ.FT.



PRIME ENGINEERING

PAGE: 2 of 2
DATE: 01/10/2017
DRAWN BY: JM
CHECKED BY: RBM

DRAWING TITLE:
SUPPORTIVE EASEMENT
LEGAL PREPARED FOR DWA
PROJECT: AMERICAN RAIL US ABANDONMENT
PROJECT NO.: 2013-0046

STATE OF GEORGIA
DEKALB COUNTY

AFFIDAVIT OF APPRAISER

Personally comes Cheryl Worthy-Pickett, residing at 2129 Briarlake Trace NE, Atlanta, Georgia 30345, and states the following:

1. Affiant was employed by DeKalb County Watershed Management, to appraise the property owned by SMIP LL, LLC, in Land Lot 170 of the 18 District of DeKalb County, Parcel No. 01, on the American Fare Lift Station Abandonment Project, containing 0.0 square feet of right of way acquisition, 4,015.0 square feet of a permanent sewer-easement, and 3,998.0 square feet of temporary construction easement, required for the public purpose of sanitation in DeKalb County, Georgia. Affiant makes this sworn statement to be used in connection with condemnation proceedings under the Official Code of Georgia Annotated Sections 32-3-4 through 32-3-19, for the acquisition of said parcel.

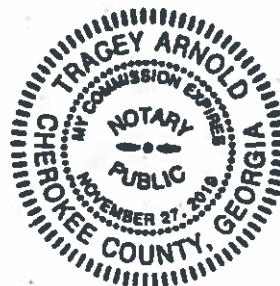
2. Affiant is familiar with real estate values in said county and in the vicinity where said parcel is located. Affiant has personally inspected the property or right condemned and in appraising said parcel affiant took into consideration the fair market value of said parcel, as well as any consequential damages to remaining property of the Condemnees by reason of taking and use of said parcel and other rights for public road construction and improvement and any consequential benefits which may result to such remaining property by reason of such taking and use (consequential benefits not, however, considered except as offsetting consequential damages). After said investigation and research, affiant has thus estimated that the just and adequate compensation considered, is in the amount of Five thousand four-hundred-seventeen and 00/100 Dollars (\$5,417.00).

Cheryl Worthy-Pickett

Appraiser Name: Cheryl Worthy-Pickett
Georgia Certified R.E. Appraiser No. 211009

Sworn to and subscribed before me
this 16 day of April, 2017.

Jenny Ornel
Notary Public
My commission expires: 11-27-19





DeKalb County
GEORGIA

June 27, 2017

770.621.7200 (o)

770.621.7271 (f)

DeKalbCountyga.gov

Watershed Management

1580 Roadhaven Drive

Stone Mountain, GA 30083

Chief Executive Officer
Michael Thurmond

Board of Commissioners

District 1
Nancy Jester

District 2
Jeff Rader

District 3
Larry Johnson

District 4
Stephen Bradshaw

District 5
Mereda Davis Johnson

District 6
Kathie Gannon

District 7
Gregory Adams Sr.

SMIP LL, LLC
Ms. Diane Leckenby, Representative
10 Glenlake Parkway, South Tower
Suite 1000
Atlanta, GA 30328

Re: Intent to Condemn-DeKalb County, American Fare Lift Station Abandonment Project
Parcel:1
Land Lot 170, 18th District, DeKalb County, Georgia

Dear Ms. Leckenby:

As you are aware, DeKalb County is acquiring easement rights along property(ies) needed to complete the above-referenced project. Portions of your property, as previously identified, are needed in conjunction with the construction. While discussions and negotiations between you and the county have been ongoing, because of certain factors related generally to the timing for construction and completion, the county must certify ownership of the property and/or interests in property without further delay. I have been advised that certain outstanding issues regarding acquisition of your property rights are still pending. Accordingly, we are initiating the eminent domain process authorized by Georgia law in order to prevent further delay.

The eminent domain statute empowers DeKalb County to acquire private property for public use by payment of just and adequate compensation for that property. DeKalb has employed an appraiser to estimate compensation and, based on that analysis, is offering payment to you in the amount of Five Thousand, Four Hundred Seventeen Dollars (\$5,417.00). If this offer is acceptable, please contact Cassandra Marshall at 770.621.7280 or via email at cmmarshall@dekalbcountyga.gov.

Should you wish to contest this matter, the eminent domain procedures guarantee that a property owner has the right to present evidence of value in a condemnation proceeding and the right of appeal for a jury trial.

The DeKalb County Board of Commissioners will consider a resolution to authorize condemnation of your property at its regularly scheduled meeting to be held July 11, 2017, at 10:00 a.m. at the Manuel J. Maloof Center for DeKalb County Government Administration, 1300 Commerce Drive. While your presence at this meeting is not required, you may attend if you desire. Should the Board vote to authorize condemnation of your property, you will be notified.

Sincerely,

Scott A. Towler, Director, P. E.
Department of Watershed Management

U.S. Postal Service
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
 OF THE RETURN ADDRESS, FOLD AT DOTTED LINE

CERTIFIED MAIL™

7013 3020 0001 2096 9325
 7013 3020 0001 2096 9325



Postage \$	
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	

Postmark
Here

To
 SMIP LL, LLC
 Ms. Diane Leckemby, Representative
 10 Glenlake Parkway, South Tower
 Suite 1000
 Atlanta, GA 30328

PS Form 3811, February 2004

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

SMIP LL, LLC
 Ms. Diane Leckemby, Representative
 10 Glenlake Parkway, South Tower
 Suite 1000
 Atlanta, GA 30328

2. Article Number
 (Transfer from service label)

7013 3020 0001 2096 9325

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-04-16-00

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X Agent Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type

- Certified Mail
- Registered
- Insured Mail
- Express Mail
- Return Receipt for Merchandise
- C.O.D.

4. Restricted Delivery? (Extra Fee) Yes