

TO: John McDonough, City Manager

FROM: Thomas Black, Public Works Director

DATE: April 12, 2011 for Submission onto the Consent Agenda of the April 19, 2011, City Council Meeting

ITEM: Acceptance of Encroachment and Indemnification Agreement located at 6860 Peachtree Dunwoody Road, Land Lot 20 of the 17th District for the Kadampa Meditation Center New York.

Public Works Department's Recommendation:

Public Works Staff recommends that the Mayor and City Council approve the Encroachment and Indemnification Agreement between the Kadampa Meditation Center New York and the City of Sandy Springs and the City of Sandy Springs which will allow the Kadampa Meditation Center New York to maintain and encroach on the city's right of way, from time to time as needed, for the purpose of maintaining the encroachment located within the city right-of-way along Roswell Road.

Background:

The proposed agreement relinquishes the City of any liability pertaining to the sign's partial existence in the City's rights of way and its existence doesn't create any unsafe traffic/visibility issues.

Discussion:

Kadampa Meditation Center New York must provide verification to the City's Public Works Department that its maintenance activities will not adversely impact the right-of-way; performing all work on the right-of-way in a good workmanlike manner and in compliance with all applicable governmental laws, ordinances and regulations.

Alternatives:

The Council could not approve this Encroachment and Indemnification Agreement.

Financial Impact:

There is no financial impact to the city.

Attachment:

- I. Resolution
- II. Aerial Location Maps
- III. GIS Location Maps
- IV. Warranty Deed

*Public
Works*

STATE OF GEORGIA
COUNTY OF FULTON

**A RESOLUTION TO APPROVE THE ENCROACHMENT AND INDEMNIFICATION AGREEMENT
LOCATED AT 6670 WRIGHT ROAD IN LAND LOTS 20, OF THE 17TH DISTRICT, CITY OF
SANDY SPRINGS, FULTON COUNTY, GEORGIA**

WHEREAS, it is necessary, from time to time, to establish policies, procedures and guidelines consistent with the administration of a municipal government consistent with the US Constitution, Federal Statutes, alignment with Federal, Georgia's State Constitution, and the Charter for the City of Sandy Springs, and

WHEREAS, the City Manager directed the Department of Public Works to develop standard policies for recurring matters, to establish appropriate internal controls and legal compliance, and to provide for an efficient and effective means to serve constituents; and

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SANDY SPRINGS, GEORGIA

That the City of Sandy Springs Mayor and City Council accept the Encroachment and Indemnification Agreement of the following property: the Kadampa Meditation Center New York.
6860 Peachtree Dunwoody Road, Sandy Springs, Georgia in Land Lot 20 of the 17th District.

RESOLVED this the 19th day of April, 2011.

Approved:

Eva Galambos, Mayor

Attest:

Michael Casey, City Clerk
(Seal)



0 94 188 282 ft

PEACHTREE DUNWOODY CT
DUNWOODY

PEACHTREE DUNWOODY RD

PEACHTREE DUNWOODY RD

DUNWOODY PARK

HUNTERS KILL

GLENTOWN WY

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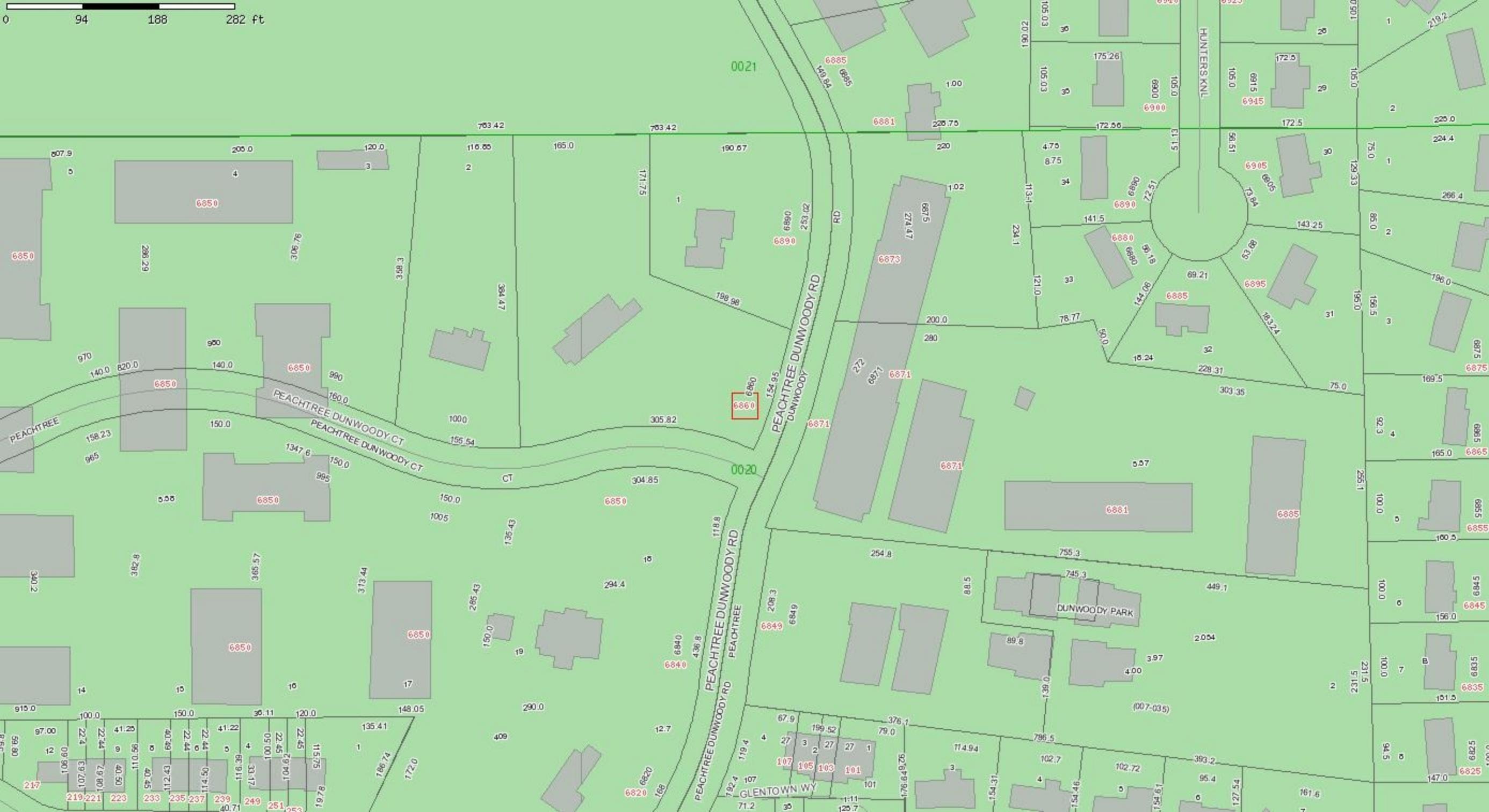
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ENCROACHMENT AND INDEMNIFICATION AGREEMENT

THIS AGREEMENT, made this 7 day of March 2011, between Kadampa Meditation Center New York, located at 6860 Peachtree Dunwoody Road within the City of Sandy Springs, Georgia, their successors, affiliates and assigns, as Indemnitors and the City of Sandy Springs, a political subdivision of the State of Georgia ("the City").

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

1.

The City of Sandy Springs grants Kadampa Meditation Center New York the right to enter within a portion of its right-of-way as referenced in and recorded at Plat Book ___ page ___. Land Lot 20, 17th District of Fulton County, Georgia records, as more fully described in Exhibit "A" which is attached hereto and incorporated herein. The License granted to Kadampa Meditation Center New York allows it to maintain and encroach on the city's right-of-way, from time to time as may be needed, for the purpose of maintaining the encroachment located within the city right-of-way along Roswell Road.

2.

With respect to this License, Kadampa Meditation Center New York shall maintain the encroachment within the city's rights-of-way in a manner which complies with all state, local and City of Sandy Springs laws and regulations, including, but not limited to, all current state, local and City of Sandy Springs laws and regulations governing monuments and/or signs, fences, and walls. Kadampa Meditation Center New York will at all times adhere to best management practice procedures to protect the environment and public motorist in connection with the maintenance of the right-of-way.

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 City

4.

Kadampa Meditation Center New York may terminate this License and Agreement by written notice to the City and shall return the area to its natural vegetative state.

5.

Kadampa Meditation Center New York must provide verification to the City's Public Works Department that its maintenance activities will not adversely impact the right-of-way. Kadampa Meditation Center New York and/or their employees, agents or assigns shall perform all work on the right-of-way in a good workmanlike manner and in compliance with all applicable governmental, laws, ordinances, and regulations.

6.

City of Sandy Springs personnel and/or agents shall have free access to and across the right-of-way to perform routine maintenance and any emergency repairs to the existing drainage easement right-of-way when needed to protect the health, safety and general welfare of the public.

7.

Kadampa Meditation Center New York shall be solely responsible for the maintenance, repair and replacement of the fence, brick columns, and wall within the county's right-of-way and the City grants Kadampa Meditation Center New York a right of access in order to carry out these obligations.

8.

Notwithstanding any other provisions, in the case of an emergency, the City of Sandy Springs 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 Kadampa Meditation Center New York, the City of Sandy Springs 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, Kadampa Meditation Center New York must cure all defects specified by the City in its notice and within the time reasonably specified by the City. Failure on the part of Kadampa Meditation Center New York to cure any defects within the allotted time will be grounds for the City to terminate the License. Alternately, the City may, but shall not be required to, cure any such defect at the sole cost and expense to Kadampa Meditation Center New York. The City may elect to terminate the License at will without liability for terminating this agreement.

9.

Kadampa Meditation Center New York hereby agrees to indemnify the City of Sandy Springs and hold the City of Sandy Springs harmless from any and all damages which the City of Sandy Springs 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 Kadampa Meditation Center New York and their employees, subcontractors, or assigns in the performance of this License or Agreement.

10.

Kadampa Meditation Center New York agrees to repair or replace in a manor 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 At its election the City may repair or replace the damaged utility and assess all costs against Kadampa Meditation Center New York.

11.

This License and Agreement shall be binding upon Kadampa Meditation Center New York its 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.

12.

Except as otherwise provided herein, Kadampa Meditation Center New York shall not assign, transfer or otherwise vest in any other entity or person any rights or obligations under this License or Agreement without the prior written consent of the City and this consent shall not be unreasonably withheld.

13.

This License and Agreement shall be recorded in the real property records of Fulton County, Georgia and shall be binding upon all subsequent purchases and/or transfers of Kadampa Meditation Center New York business or interest, unless otherwise terminated according to the provisions set forth herein.

14.

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:

CITY: City of Sandy Springs
Director of Public Works
7840 Roswell Road
Building 500
Sandy Springs, GA 30350

WITH A COPY TO: City of Sandy Springs
Office of the City Attorney
7840 Roswell Road
Building 500
Sandy Springs, GA 30350

OWNER: Kadampa Meditation Center New York
6860 Peachtree Dunwoody Road
Sandy Springs, Georgia 30328

By:  pp Mayra Cusuma (SEAL)
Property Owner Kawma King
Date: 03/07/2011

By: _____ (SEAL)

Date: _____

ATTEST:



ATTEST:
