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April 18, 2006

Mayor Shirley Franklin
City Hall, Suite 2400
55 Trinity Avenue, SW
Atlanta, Georgia 30335

Re: *AJC* Article, "Atlanta Again Lobbies Fulton to OK Quarry Sale"

Dear Mayor Franklin:

The *Atlanta Journal Constitution* reported on Saturday, April 15, 2006, that "Atlanta Again Lobbies Fulton to OK Quarry Sale," and that "time is running out for the proposed Beltline Park."

It is apparent from Chairman Handel's letter to you of January 25, 2006, that Fulton County is willing to sell the City the Bellwood Quarry on two conditions: (1) that the City sell the Municipal Court Building (which has been closed for three years and is scheduled for demolition) to the County, and (2) the City make at least 500 beds at the Atlanta Detention Center available to Fulton County under an intergovernmental agreement under which the City would operate the Detention Center as the principal intake and booking facility for Fulton County prisoners, as well as City prisoners.

You have said that "as Mayor, I [am] committed to basing public policy on facts." E-mail form Shirley Franklin to Robb Pitts, Feb. 20, 2006. I do not question for a moment your good faith or your commitment to base public policy on facts. I feel compelled, however, to point out that the reasons which you have given for your refusal to negotiate a satisfactory agreement with Fulton County are based on misinformation. It is my hope that when you are informed of the true facts, you will reconsider your opposition.

In your letters of January 18, 2006 and February 1, 2006, you state that the City cannot accommodate the County's request for 500 beds in the Atlanta Detention Center for two reasons: (1) the contract between the City and the U.S. Marshals Service, and (2) the City's own need for bed space for City prisoners. You have also indicated that the City is reluctant to sell or lease the Municipal Court Building to the County because this would require the City to acquire

approximately 1 acre of additional land for the proposed public safety building and that this acquisition or design process might result in either jeopardizing the City's contract for the sale of City Hall East, or subject the City to large damages. I believe that you have been misinformed and that all of these issues can be readily addressed.

1. The Contract With The Marshals Service

In your letter of January 18, 2006, you state that the City cannot make 500 beds available to Fulton County because of the City's own need for beds to house City prisoners and a long-term contract between the City and the U.S. Marshals Service: "The City currently leases 300 beds to the U.S. Marshal Service (USMS) and 150 beds to the Immigration Customs Enforcement Agency (ICE). We also make 50 beds available to the USMS on an as needed basis. Renegotiating or breaking this contract is not an attractive option for the City as this has been a stable source of revenue for the City."

You made the same objection in your letter of February 1, 2006, in which you stated: **"Our contract with the USMS runs through 2012, and can only be terminated with their consent,"** and in a subsequent e-mail to Robb Pitts dated February 20, 2006, in which you said: "We [the City] have **obligated** 350 beds to the Marshals and 150 to Immigration (ICE). On any given day, we have to maintain 500 beds for their use."

You have been misinformed: (1) there is no written contract between the City and the Immigration Service; (2) the contract related to the rental of jail beds is between the City and the Marshals Service; (3) that contract does not require or obligate the City to make available 300 beds or any other specific number of beds to the Marshals Service; and (4) that contract does not run through 2012, but expressly states that it can be **terminated at any time by either party on 30 days' notice.**

The 1994 contract between the City and the Marshals Service (Cooperative Agreement Plan No. 03-19-94) did obligate the City to provide the Marshals Service with a maximum of **300** beds at the Atlanta Detention Center (out of a total capacity of 1,314), and ran through 2012. The 1994 contract no longer exists (except on paper).

The 1994 contract was amended by the City and the Marshals Service, effective May 1, 1997. "Article V – Period of Performance and Bedspace Guarantee" of the 1997 contract began by essentially reiterating the terms of the 1994 contract by reciting that:

> This agreement shall remain in effect for a period of fifteen (15) years after the project(s) listed in Schedule B of CAP Agreement No. 03-19-94 is completed. The Local Government agrees to provide three-hundred (300) bedspaces for federal prisoners in USMS custody each day upon request of the USMS . . . .

The parties then added a new provision to the 1997 contract that was not contained in the 1994 CAP agreement. This new provision contradicted the first sentence in Article V by providing that the contract would "remain in effect indefinitely" as opposed to having a fixed term of 15 years. More importantly, the 1997 contract added a new provision that gave **either** party the **right to terminate on 30 days' written notice:**

> This agreement shall remain in effect **indefinitely until terminated or suspended in writing by either party.** Such notice will be provided thirty (30) days in advance of the effective date of formal **termination.**

The 1997 contract went on to distinguish between a "termination" and a "suspension" by providing that only two weeks' notice was required in the case of a "suspension . . . unless an emergency situation requires the immediate relocation of prisoners." *Id.*

On April 1, 2002, the City and the Marshals Service entered into a new contract, which superseded and replaced both the 1994 contract and the 1997 amendment to that contract. In the 2002 contract, the Marshals Service agreed to pay the City $53.07 per day, instead of the $45 daily rental specified in the 1997 contract. **The 2002 contract also eliminated any reference to the provisions in the 1994 and 1997 contracts which had obligated the City to accept up to 300 federal prisoners.** In contrast to both the 1994 contract and the 1997 contract, **the 2002 contract does not obligate the City to accept – nor does it obligate the Marshals Service to provide – any specific number of federal prisoners. The 2002 contract also says nothing about the contract running through 2012 as did the 1997 contract. To the contrary, the 2002 contract expressly provides in "Article V – Period of Performance" that either party has the right to terminate the contract at any time simply by giving 30 days' notice in writing:**

> **This agreement shall be in effect indefinitely until terminated in writing by either party.** Should conditions of an unusual nature occur making it impractical or undesirable to continue to house prisoners, the Local Government may suspend or restrict the

> use of the facility by giving written notice to the USM. **Such notice will be provided thirty (30) days in advance of the effective date of formal termination** and at least two (2) weeks in advance of a suspension or restriction of use unless an emergency situation requires the immediate relocation of the prisoners.

On February 2, 2006, the 2002 contract was amended to raise the daily rent paid by the Marshals Service for federal prisoners from the $53.07/day rate specified in the 2002 agreement to $68/day. This was the only change in the 2002 contract.

Thus, the facts are that the City is not (a) required by its contract with the Marshals Service to provide the Marshals Service (or ICE) on demand with 500 beds or any other specific number of beds, (b) the contract with the Marshals Service does not extend through 2012, (c) the contract expressly states that the term of the contract is **"indefinite"** and **can be terminated by either party on 30 days' written notice.** Thus, the City does have the legal right to terminate the contract with the Marshals Service and make the surplus beds in the Atlanta Detention Center available to Fulton County as part of an agreement to acquire the Bellwood Quarry from the County.

2. <u>The Claim that the City's Need for Beds Also Makes it Impossible for the City to Make Even 500 Beds Available to Fulton County is also Incorrect</u>

In your letter of January 18, 2006, you state the "Even if we assume that the contracts with the [USMS] were somehow voided, the City could not provide any more than 500 beds to the County based on [the City's] own needs."

I made an Open Records Act request of the City for records that would reflect the actual number of City prisoners housed in the Atlanta Detention Center during all of last year. In response to my request, the City produced charts reflecting the average daily census of City prisoners at the Detention Center for all of 2005. These charts show that the 12-month average daily population of City prisoners at the Detention Center was 459 prisoners. The high in any single month was 670, while the low in any single month was 314. Both months appear to be aberrational and are far out of line with the population trend of City prisoners.

Nevertheless, even accepting the calculations in your e-mail to Robb Pitts dated February 20, 2006, that "the City jail has a total capacity of approximately 1,300, but due to restrictions of pod design (male/female, medical, etc.), the realistic number is around 1,200, **the City would**

still have at least 520 beds available for use by Fulton County even if the City reserved a maximum number of beds (670), which were equal to the **highest** monthly average in any month in 2005. Moreover, if the City took a more reasonable approach and added 10% to the 2005 daily average of 459, the City would have at least 700 surplus beds available to lease to Fulton County.

3. The Risk of Liquidated Damages Under the City Hall East Contract

In your letter of January 18, 2006, you also expressed concern that if the City were to sell the Municipal Court Building to the County instead of demolishing it to make room for the prospective new public safety building, it could cause a delay in the City's ability to vacate City Hall East before the expiration of the 30-month deadline specified in the contract between the City and the purchaser of City Hall East and could subject the City, not only to liquidated damages, but also "the risk of further liability if the delay causes the developer to incur damages due to our delay." That concern is also unjustified and is answered in Paragraph 13(A) of the contract between the City and the Purchaser of City Hall East.

Under Paragraph 13(A) of the contract between the City and the purchaser of City Hall East, the purchaser has expressly agreed that:

> (i) In the event the Closing [*i.e.*, vacation of the premises within 30 months] does not occur in accordance with the terms of this Agreement due to the default of the [City], Purchaser shall have the right of specific performance and (**but not damages** against Seller . . .
>
> (ii) **Purchaser, as its sole right and exclusive remedy** at law or in equity for such delay **shall receive from Seller liquidated damages in the amount of $2,083.00 per calendar day of such delay . . . . [T]he aggregate amount of any and all such liquated damages shall not exceed $250,000.00.**
>
> Such delay in Closing [*i.e.*, vacation of the premises within 30 months] pursuant to the first sentence of Paragraph 13(A)(ii) **shall not relieve Purchaser of any obligations under this Agreement** so long as Seller duly and timely pays such liquidated damages to Purchaser . . . .

These provisions make it clear that even if the City is unable to relocate the people from City Hall East within the 30-month period specified in the contract for closing the sale of City Hall East, **the City's only liability – and the buyer's sole and exclusive remedy – is limited to $2,083 per day up to a maximum of $250,000.00.**

This is an insignificant price to pay for a City that was willing to spend $62 million of taxpayers' money lure the NASCAR Hall of Fame to Atlanta. I am also confident that Fulton County would be willing to reimburse the City for the full amount as a part of any agreement buy the Municipal Court Building and property from the City.

There is no reason why the City of Atlanta and Fulton County should not be able to negotiate a satisfactory agreement encompassing the Bellwood Quarry, the Municipal Court Building and the Atlanta Detention Center. Each government has something the other government desperately wants and needs. The County owns the Bellwood Quarry. The City wants to acquire the Bellwood Quarry from the County so that the City can convert the quarry into a park as a part of the Beltline development. The City has the Municipal Court Building which as been closed for over three years and is scheduled to be demolished to make room for the City's new public safety complex. Because it contains five empty courtrooms and is strategically located and connected by a secure tunnel to the Atlanta Detention Center, acquisition by the County of the Municipal Court Building would greatly benefit the County, but only if the County can also enter into an intergovernmental agreement with the City under which the City would share the beds at the Atlanta Detention Center next door and operate it as the primary intake and booking facility for people who are arrested for state offenses instead of their being booked and processed at the Rice Street jail.

The Atlanta Detention Center has a capacity for 1,314 prisoners and is about 2 ½% larger than the City needs to house City prisoners. The County jail on Rice Street was designed to hold 1,400 prisoners and is in poor condition and requires major rehabilitation. By federal court order, Fulton County is prohibited from allowing the jail population to exceed 2,250 (850 more than the capacity for which it was designed), and far below the County's actual need for jail beds, which is in the neighborhood of 3,000. Because of the security problems and physical limitations in the present Fulton County Courthouse complex – and the fact it is inconveniently located more than 4 miles from the Fulton County Jail – the obvious and most efficient solution for the County (and 90% of Atlanta citizens who live in Fulton County and pay 41% percent of the County taxes that will be required to solve the problems of jail overcrowding and courthouse security) would be for the County to acquire both the abandoned Municipal Court Building and the Atlanta Detention Center from the City – or negotiate an intergovernmental agreement under which the Atlanta Detention Center would replace the Rice Street jail as the principal intake and booking facility for individuals who are arrested and charged with state offenses, as well as City

Ordinance violations. The empty courtrooms next door could then be used to transport prisoners through the secure tunnels to the 5 courtrooms next door in the Municipal Court Building for bail and other non-jury hearings, instead of having to be bussed 4 miles from Rice Street to the Fulton County Courthouse, as is required at present.

All of the ingredients of a fair deal between the City and the County are present. Appraisals of the Municipal Court Building and of the County's interest in the Bellwood Quarry show that both facilities have been appraised at values that are approximately equal to $13 to $15 million.

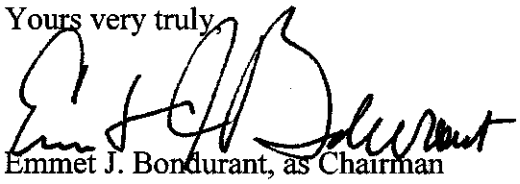
The sale of the Bellwood Quarry is not a one-way street. The City cannot expect cooperation from the County on the Beltline project, however important that may be, unless the City is prepared to cooperate with the County by assisting the County in solving the problem of overcrowding at the Fulton County Jail. The overcrowding problem at the Fulton County Jail – and the security problems at the Fulton County Courthouse – are not merely "County" problems, they are **community** problems that affect the residents of the City of Atlanta as much, if not more, than the other residents of Fulton County.

We need to get our priorities straight. The proposed park in the Beltline (like the NASCAR Hall of Fame) is an amenity. A solution to both the overcrowded conditions at the Fulton County Jail and the security problems at the Fulton County Courthouse is not an amenity – it is an urgent **necessity** that requires the cooperation of both the City and the County.

Instead of communicating at long distance through exchanges of letters or engaging in a lobbying campaign through the Beltline Partnership and statements to the press, I would again urge the City and the County to sit down in the same room and negotiate an agreement that addresses the needs of both governments – and more importantly, the needs of their respective citizens and taxpayers, many of whom are the same.

All of the ingredients of a mutually beneficial deal are there. What has been missing thus far is the willingness on the part of the City to negotiate.

Yours very truly,



Emmet J. Bondurant, as Chairman
for the Members of the Fulton County Justice Commission

Rev. Joe Beasley, Antioch Baptist Church, and
S.E. Director, Rainbow Push Coalition

Linda Coker, Chief Deputy Sheriff, Cobb County

Mr. Clark Cunningham, Georgia State University
Law School

Ray Persons, Esq., Partner, King & Spalding

Mark Trigg, Esq., Partner, Greenberg Traurig

Dr. Keith Wood, Emory University

EJB:cam

cc: Members of the Atlanta City Council
Members of the Fulton County Commission
Members of the Fulton County Justice Commission
Mr. Tom Andrews
Ms. Suzanne Alliegro