CITY OF ATLANTA

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SHIRLEY FRANKLIN
MAYOR

January 18, 2006

Via Hand Delivery

Chairman Karen Handel
Board of Commissioners of Fulton County
Fulton County Government Center
141 Pryor Street, S.W.
Atlanta, GA 30303

Re: Offer for City Facilities

Dear Chairman Handel:

I am in receipt of your letter of December 30, 2005 regarding the County's offer to purchase the old Atlanta Municipal Court building and lease beds in the City Detention Center.

At the outset, please understand that the City of Atlanta is willing to pursue in good faith a mutually agreeable solution to the issues involving the Atlanta Municipal Court building. As you know, the City and the County have worked cooperatively on a number of issues in recent years – the Beltline, E911 consolidation, courts consolidation – and we are very interested in supporting the County in any way that we can to advance the interests of the public we mutually serve. In the case of the Municipal Court building, we unfortunately find ourselves in the midst of a complex set of transactions that makes what may seem to be a simple transaction a very complicated one. Below we outline two counter proposals, each of which reflect these complexities.

Through this response, I hope I can make clear how very difficult it would be for the City to accommodate what you are asking us to do. In light of all of our planning, the simple response to your offer would have been to just say "no." We can easily support the position that we are too far down the road with our plans to address our facility needs to even consider your offer. We can justify such a response that we have too much at stake in our efforts in fighting crime, with the recognition that public safety is our number one priority. Our reform efforts related to public safety, of which the new public safety headquarters is an integral part, have been underway for four years. However, rather than taking this simple and perhaps most logical approach, in an effort to try to assist Fulton County with its situation, we are instead providing in this response two options for you to consider.

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The two critical elements of our counter proposals relate to the major uncertainties that the City would encounter should we proceed with the sale of the old Municipal Court building to the County. They are:

- the task of acquiring property that the City will need to move its planned headquarters, and;
- potential damages that the City might incur for its failure to vacate City Hall East in the timeframe we now are contractually obligated to execute.

Although there are several additional aspects of the counter proposal that we include below, we anticipate that these two elements will be particularly difficult to work through. We offer two options. Under the first proposal, the County takes on the risks (mostly financial) associated with these two issues. Under the second proposal, the City bears those risks and is compensated through an upfront cash payment of $30 million from Fulton County.

The Site of the Old Municipal Court

In order to put your request and our response in proper context, it is important to briefly review information that has been previously conveyed to you regarding the City's planned use for the site of the old Municipal Court. As I discussed in my November 2, 2005 letter to Emmet Bondurant, which was copied to you, the City has been planning how to address its very serious needs regarding adequate space for our public safety agencies for more than two years and working on improving public safety for four years. After much study, we concluded that we must move our public safety agencies to more appropriate facilities than City Hall East. The current facilities for our agencies adversely affect recruitment, retention and morale. With this important objective in mind, we have developed plans for the reuse and development of City Hall East, and the City is now under contract to sell the facility to Ponce Park, LLC, a redevelopment group. The process through which we have gotten to this point has been long, thorough, carefully planned, and based on specific research and data. The redevelopment of City Hall East is also important to this Atlanta and Fulton County neighborhood. The current use and condition of the property is not a positive for the neighborhood, and the citizens around this facility are eagerly awaiting this redevelopment, which resides within the Beltline Tax Allocation District.

A critical aspect of our contractual obligation to the Ponce Park team is that the City must vacate City Hall East no later than August 2008. This obligation requires that we complete the new public safety headquarters we are planning to build on the site of the old Municipal Court building by May 2008 to allow for adequate time to move the public safety agencies with no disruption in service. To complete the construction of this facility in this time frame requires that we begin site preparation no later than May 2006. Even starting at this time presents serious time constraints for the City. If we miss the deadline for vacating City Hall East, we incur liquidated damages under the terms of our contract and run the risk of further liability if the delay causes the developer to incur damages due to our delay. In order to meet this timeframe, the City has been working for

many months on site plans and architectural drawings based on the proposed site of the public safety headquarters that includes the old Municipal Court building.

If the City were to convey the old Municipal Court building to the County, that conveyance would require that we change the site plan for the public safety headquarters. The City performed an extensive search within the City for an appropriate location for this building, based on the specific needs of the public safety agencies and the economics of all aspects of our plans. We have concluded that there is not another location that readily meets our needs. Part of the attractiveness of this site is that the City already owns the property on which the old Municipal Court is located. Combined with the closure of Garnett Street on that block, we only need to acquire several surface parking lots and a small office building, the acquisition of which is already underway. If we do not use the portion of the property on which the old Municipal Court building is located, it would be necessary to acquire several parcels to the north.

Following the receipt of your letter, we asked our architectural consultants to evaluate the option of moving our site to north, eliminating the old Municipal Court site and adding the potential property to the north. Their preliminary conclusions are that the option can be made to work, although it is somewhat less ideal because the site it about 1/3 of an acre smaller that the current site.

However, in order for that plan to proceed, the parcels to the north would have to be acquired. These parcels include a large, relatively new, office complex that houses over a dozen business enterprises. Under Georgia law, those businesses may be eligible for compensation related to the business loss resulting from the condemnation of that property. For this reason, we must consider the risk associated with such claims.

Use of the Detention Center

Your offer states that you must lease "no less than 800 beds" in the City Detention Center at the rate of $55/day. The City will find it difficult to accommodate these terms.

As you are aware, 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 an additional 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 as stable source of revenue for the City and is an important relationship for us. In addition, the per diem rate is currently being re-negotiated; the City has requested an increase to $72 per day.

Even if we assume that the contracts with the federal agencies were somehow voided, the City could not provide any more than 500 beds to the County based on our own needs. The City needs to be in a position to respond to fluctuations in its own arrest patterns and cannot place itself in a position where it could not house it own inmates. Therefore, assuming the existing contracts with the federal agencies could be canceled, the City could only commit to 500 beds to the County at a rate approaching $72 per day.

Another issue that would have to be discussed, if we were to proceed with your proposal to use the City Detention Center, is how the intake and processing would actually work and how it would be staffed. We assume that the County staff is, simultaneous with considering its facility needs, also pursuing a review of the processes through which intake and handling of arrestees and prisoners are managed. Business process review has been used successfully by a number of governments in evaluation of needs and problem solving, and it seems to us that any review you may be doing would be important in understanding how intake of Fulton County arrestees would be handled in the City Detention Center.

Our Counter Proposal

We have taken a careful look at your offer and make the following response. There are fundamentally three responses to your offer (and two counter proposals) by the City: (1) we could reject the offer and on a very real basis say we are too far down the road to change our plans; (2) we could propose a set of steps that Fulton County would have to take within a very short timeframe to address the issues created by the change in plans; or (3) the City could take on the steps needed to address the issues created by the change in plans but be compensated by Fulton County for the associated risks through an upfront cash payment. Because we are not rejecting your offer at this time, we ask you to consider the two counter proposals discussed below.

Counter Proposal One:

Under our first counter proposal, if we were to proceed with a deal, the terms would have to be consistent with those that follow:

1. ***Simultaneous Development of Plans for the Alternative Site:*** Because of our contractual obligations and the time constraints associated with our construction plans, we cannot wait to develop alternative plans for a site that does not include the site of the old Municipal Court building. Rather, we would have to require that our architects create two sets of plans (and two RFPs) for the public safety headquarters – continue with the one we have been developing using the site of the old Municipal Court building and create a separate set of plans for the site to the north that does not include the Municipal Court building (the "Alternative Site"). As part of its offer, Fulton County would have to compensate the City for all additional expenses incurred by the City to develop this second set of plans for the Alternative Site. The development of the plans for the Alternative Site would have to begin no later than February 15, 2006.
2. ***Timing of Decision on Site:*** We must have 30% drawings complete by April 1, in order to issue the design/build RFP we are using to procure the team that will build this site. In order to proceed with the RFP process, the decision on which site would be used for the public safety headquarters would have to be made before this date. Therefore, if the Alternative Site were to be used, the additional property would have to be determined to be available and suitable for this purpose no later than April 1, 2006.

3. ***Acquisition of the Additional Property:*** In order to allow the City to proceed with the Alternative Site, Fulton County would have to acquire and convey to the City (at no cost to the City) the additional parcels needed by the City to construct the public safety headquarters on the Alternative Site. These parcels would have to be under firm contract no later than March 1, 2006. The City would have to have access to the property no later than February 15 in order to begin our due diligence to determine if the site is suitable and to rule out any environmental or other site-related issues. To the extent that the purchase of these properties by Fulton County is less than the $11.1 million appraised value (or other value determined by additional appraisals) of the old Municipal Court building, the balance would be paid in cash to the City.
4. ***Timing of Availability of the Alternative Site:*** Our timeframe requires that we begin site work in May 2006, and we cannot delay beyond that date. The acquisition by Fulton County would have to close no later than May 15, 2006. If the County determines that the acquisition of the additional property is not feasible within this time frame, the parties would agree that the deal is no longer viable. The City would immediately stop developing plans for the Alternative Site and would stop any due diligence that is underway. The County would only be required to pay for the work performed up to the date that the County notified the City that the Alternative Site would not be available within the required time frame.
5. ***Additional Expenses Incurred by the City related to the Alternative Site:*** All additional expenses incurred by the City as a result of acquiring this additional property, including but not limited to geotechnical evaluation and environmental due diligence and remediation, would be paid by Fulton County.
6. ***Indemnification:*** Fulton County would fully indemnify the City for any causes of action, penalties, expenses, costs, and/or judgments resulting from this change in plans, in particular the City's inability to move out of City Hall East in accordance with the terms of our contract with Ponce Park, LLC, including the City's attorneys' fees associated with any such causes of action, penalties, expenses, costs, and/or judgments.
7. ***Federal Agencies Contract with the City:*** Fulton County would discuss with the federal agencies now leasing space in the City Detention Center the need for the City and those agencies to terminate the relationship and develop terms by which the federal agencies would agree to such an arrangement and would cover all costs and any penalties or other expenses associated with termination of that contract.
8. ***Bed Availability in the City Detention Center:*** Fulton County would agree that, even if we were to reach terms with the federal agencies, the maximum number of beds provided by the City would not exceed 500. The cost to lease these beds would be $72 per day.
9. ***Legislative Approval:*** In order for this timing to work, it appears that this agreement would have to be drafted and approved by the Fulton County Board of Commissioners and the Atlanta City Council no later than the first meeting in February for both governments.

Counter Proposal Two:

An alternative to this complex set of steps is for the County to provide a higher level of compensation to the City in exchange for the City taking on the responsibility for both executing the steps described in 1-7 above and the associated risks. Based on factors associated with the need to acquire additional property and the accompanying uncertainties in that process; the increased costs to the City to change its plans at this late date, including additional due diligence, revision of architectural plans and specifications; payment to the federal agencies for jail beds; and the risk associated with delay in this project and our ability to vacate City Hall East, we believe a good faith estimate of the required compensation is $30 million. Under the terms of this counteroffer, we would do the following:

1. The City would assume the responsibility and the risk associated with the items listed in items 1 through 6 above.
2. We would also assume the responsibility to attempt to renegotiate the contracts with the federal agencies. Please keep in mind, however, that the City cannot provide more than 500 beds in its Detention Center. In addition, if the federal agencies would not agree to a change in the contract terms, the City and County would agree that the deal is off, and the City would revert to its plan to use the site of the old Municipal Court.
3. Legislative approval would have to proceed immediately, as in Proposal One, because we would have to have authority to proceed.

We understand the situation that you face with regard to the County jail and understand the difficulty associated with finding a proper solution. Please understand, however, that for the City to change its plans at this late date, after years of careful planning, creates significant risk for the City, and we must consider how to respond in a manner that addresses this level of risk. This offer is made in good faith, and I am available to discuss the terms with you at your earliest convenience. Because of the time frames associated with this offer, it is necessary that I hear from you as soon as possible. I propose that senior staff members from the City and Fulton County get together in the next several days to discuss these issues and determine the next steps. Please let me know as soon as you can whether you would like this meeting to occur.

Sincerely,

Shirley Franklin

cc: Fulton County Commissioners
President Lisa Borders and City Council Members
Tom Andrews
Lynnette Young
O.V. Brantley
Linda DiSantis
David Edwards