#14

Joyce Shepherd

10-O-2104

(Do Not Write Above This Line)

AN ORDINANCE

BY COUNCILMEMBER MICHAEL JULIAN BOND

AN ORDINANCE AUTHORIZING THE MAYOR, ACTING ON BEHALF OF THE CITY, TO EXECUTE ALL DOCUMENTS NESSARY TO ACCEPT THE DONATION OF 5.807 ACRES LOCATED AT THE CORNER OF MARIETTA ST. NW AND FARLIE ST. NW, COMMONLY KNOWN AS 72 MARIETTA ST. NW, ATLANTA, GEORGIA, THE FORMER FACILITY OF THE ATLANTA JOURNAL-CONSTITUTION; TO AUTHORIZE THE CHIEF FINANCIAL OFFICER OR HER DESIGNEE TO SIGN THE APPROPRIATE IRS FORMS ACKNOWLEDGING THAT THE CITY OF ATLANTA IS A QUALIFIED ORGANIZATION UNDER IRS REGULATIONS TO ACCEPT THIS NON-CASH CHARITABLE CONTRIBUTION; AND FOR OTHER PURPOSES.

AS AMENDED ADOPTED BY

DEC 06 2010

COUNCIL

- ☐ CONSENT REFER
- ☐ REGULAR REPORT REFER
- ☐ ADVERTISE & REFER
- ☐ 1st ADOPT 2nd READ & REFER
- ☑ PERSONAL PAPER REFER

Date Referred 11/15/2010

Referred To: Finance/Exec

Date Referred

Refferred To:

Date Referred

Referred To:

489536-1

First Reading

Committee

Date

Chair

Referred To

Committee	Committee
Finance/Executive	
Date 12/1/10	Date
Chair	Chair
Action: Fav, Adv, Hold (see rev. side)	Action: Fav, Adv, Hold (see rev. side)
Other as amended	Other
Members	Members
Refer To	Refer To

Committee	Committee
Date	Date
Chair	Chair
Action: Fav, Adv, Hold (see rev. side)	Action: Fav, Adv, Hold (see rev. side)
Other	Other
Members	Members
Refer To	Refer To

FINAL COUNCIL ACTION

☐ 2nd ☐ 1st & 2nd Readings ☐ 3rd

☐ Consent ☐ V Vote ☑ RC Vote

CERTIFIED

CERTIFIED

DEC 06 2010

ATLANTA CITY COUNCIL PRESIDENT

CERTIFIED

DEC 06 2010

Rhonda Dauphin Johnson

MUNICIPAL CLERK

MAYOR'S ACTION

APPROVED

DEC 09 2010

MAYOR

CITY COUNCIL
ATLANTA, GEORGIA

AN ORDINANCE **10- O -2104**

BY COUNCILMEMBER MICHAEL JULIAN BOND

AN ORDINANCE AUTHORIZING THE MAYOR, ACTING ON BEHALF OF THE CITY, TO EXECUTE ALL DOCUMENTS NESSARY TO ACCEPT THE DONATION OF 5.807 ACRES LOCATED AT THE CORNER OF MARIETTA ST. NW AND FARLIE ST. NW, COMMONLY KNOWN AS 72 MARIETTA ST. NW, ATLANTA, GEORGIA, THE FORMER FACILITY OF THE ATLANTA JOURNAL-CONSTITUTION; TO AUTHORIZE THE CHIEF FINANCIAL OFFICER OR HER DESIGNEE TO SIGN THE APPROPRIATE IRS FORMS ACKNOWLEDGING THAT THE CITY OF ATLANTA IS A QUALIFIED ORGANIZATION UNDER IRS REGULATIONS TO ACCEPT THIS NON-CASH CHARITABLE CONTRIBUTION; AND FOR OTHER PURPOSES.

WHEREAS, Cox Enterprises, Inc. has offered to donate to the City of Atlanta ("City") the property described in Exhibit "A" attached hereto, which is the former facility of the Atlanta-Journal Constitution: and

WHEREAS, the Office of Enterprise Asset Management has determined that the acquisition of the donated parcel will help satisfy City needs in regard to office, warehouse, parking and training space; and

WHEREAS, the proposed donation from Cox Enterprises, Inc. is one of the largest charitable contributions to the City in recent history; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA, as follows:

SECTION 1: The Mayor, on behalf of the City, is authorized to accept the donation from Cox Enterprises, Inc. of a 5.807 acre tract that is more particularly described in Exhibit "A" attached hereto.

SECTION 2: The Mayor, on behalf of the City, is authorized to execute all documents necessary to complete the acceptance of the Cox Enterprises, Inc. donation ("Donation Documents").

SECTION 3: The Donation Documents shall not become binding on the City, and the City will incur no obligation or liability thereunder, until the Donated Documents have been approved by the City Attorney, or her designee as to form, fully executed by the Mayor, and delivered to Cox Enterprises, Inc.

SECTION 4: The City Attorney, or her designee, is authorized to monitor and supervise the closing transaction with Cox Enterprises, Inc.

SECTION 5: The Chief Financial Officer, or her designee, is authorized to sign the necessary IRS forms which acknowledge that the City of Atlanta is a qualified organization under IRS regulations to accept this non-cash charitable contribution.

SECTION 6: That any significant findings as it relates to the physical and environmental condition of the property discovered prior to closing shall be reported to the Council prior to said closing. In addition that the terms and conditions of the donation agreement attached hereto be amended to be consistent with those terms discussed in executive session during the December 6, 2010 City Council meeting including but not limited to the acquisition of title insurance and an environmental insurance policy.

SECTION 7: All Ordinances or parts of Ordinances in conflict with this Ordinance are waived for this Ordinance only, and only to the extent of the conflict.

A true copy,

Deputy Clerk

ADOPTED as amended by the Council **DEC 06, 2010**
APPROVED by Mayor Kasim Reed **DEC 09, 2010**

10-0-2104

DONATION AGREEMENT

This Donation Agreement (this "**Agreement**") dated _____, 2010 (the "**Effective Date**") is by and between **COX ENTERPRISES, INC.**, a Delaware corporation ("**Donor**"), and the **CITY OF ATLANTA, GEORGIA**, a municipal corporation organized under the laws of the State of Georgia ("**Donee**").

RECITALS

A. The addresses and telephone numbers of the parties to this Agreement are as follows. Telephone numbers are included for information only.

DONOR:

COX ENTERPRISES, INC.
6205 Peachtree Dunwoody Road
Atlanta, Georgia 30328
Attention: Cody L. Partin
Telephone: 678-645-0160
Telecopier: _____

With a copy to:
David L. Lester, Esq.
Dow Lohnes PLLC
Six Concourse Parkway, Suite 1800
Atlanta, GA 30328
Telephone: 770-901-8968
Telecopier: 770-901-8874

DONEE:

CITY OF ATLANTA
Suite 4100 City Hall Tower
68 Mitchell Street, SW
Atlanta, Georgia 30303
Attention: City Attorney
Telephone: 404-330-6400
Telecopier: 404-658-6894

with a copy to:
Chief Operating Officer
City of Atlanta
Suite 2400
55 Trinity Avenue, SW
Atlanta, Georgia 30303
Telephone: 404-330-6100
Telecopier: 404-658-7285

B. Donor desires to make a charitable contribution of certain real property owned by Donor and commonly referred to as 72 Marietta Street, Atlanta, Georgia, such real property being more particularly described on **Exhibit A** attached hereto and made a part hereof by reference, together with all improvements located thereon and all easements and all rights, tenements, hereditaments, members, privileges, licenses and appurtenances thereto, all utility reservations, strips and gores of land, rights-of-way, fixtures located thereon, all timber, all mineral interests, all governmental licenses, permits and certificates applicable thereto, and all of Donor's right, title, and interest in and to all public and private ways adjoining or serving the same, and all riparian rights and interests in waterbodies and the beds of waterbodies, on or adjacent to the described lands (collectively, the "**Real Property**") and all equipment, materials and all other personal property of Donor located thereon as of the date of Closing (collectively, the "**Personal Property**"; the Real Property and the Personal Property hereinafter collectively referred to as the "**Donated Assets**").

C. The Donee desires to accept such charitable contribution of the property and take title to the Donated Assets upon the terms and conditions hereinafter set forth.

AGREEMENT

In consideration of the mutual promises and covenants contained herein, Donor and Donee, intending to be legally bound, hereby agree as follows:

1. Charitable Contribution. Subject to the terms and conditions of this Agreement, Donor agrees to make a charitable contribution of, and Donee agrees to accept, the Donated Assets.

2. Due Diligence Inspection. Subject to the terms and conditions of this Agreement, Donee shall have the right to conduct any inspections or investigations of the Donated Assets that the Donee deems necessary, provided such inspections or investigations are completed on or prior to December 10, 2010 (the "**Due Diligence Period**"). Notwithstanding the foregoing or anything herein to the contrary, Donee shall have no right to conduct any borings, drillings or other invasive testing or procedures with respect to the Donated Assets whatsoever, including, without limitation, any "Phase II" environmental assessment, without the prior written consent of Donor. In the event that the Donee determines that the Donated Assets are unacceptable for any reason, the Donee's sole option shall be to terminate this Agreement by delivery of written notice thereof to Donor on or before the expiration of the Due Diligence Period. **Failure by the Donee to deliver written notice of its election to terminate this Agreement to Donor prior to the expiration of the Due Diligence Period shall constitute and be deemed Donee's acceptance of the Donated Assets AS-IS, WHERE-IS, WITH ALL FAULTS.**

3. Closing. Subject to the provisions of Section 23 below, the Closing of the Donor's charitable contribution by transfer of the Donated Assets to the Donee shall occur on or before December 17, 2010 (the "**Closing Date**") at a time and place mutually agreeable to the parties (the "**Closing**"). The parties agree that the Closing may take place by mail. In the event that the Closing shall not occur on or before the Closing Date, then Donor may elect to terminate this Agreement by

delivery of written notice thereof to Donee. Donor shall deliver to Donee at the Closing a quitclaim deed to the Subject Property including the record legal description in substantially the form attached hereto as **Exhibit B** (the "**Deed**") and a bill of sale with respect to the Personal Property in substantially the form attached hereto as **Exhibit C** (the "**Bill of Sale**"). Possession of the Donated Assets shall pass to the Donee at the time of the Closing.

4. Title. Donor shall have no obligation to remove any exceptions or objections to title made by Donee, or to undertake any other title curative measures of any nature whatsoever; provided, notwithstanding the foregoing, upon receipt of a written request from Donee, Donor shall use commercially reasonable efforts, at Donee's sole cost and expense, to cure any objections to title identified by Donee. Donee's failure to terminate this Agreement pursuant to Section 2 above shall constitute and be deemed Donee's election to waive any title objections and to take title to the Donated Assets in their existing condition and subject to all matters of record.

5. Closing Expenses and Prorations. Donee shall, to the extent applicable, pay all transfer taxes and recording fees required in conjunction with the transfer of the Donated Assets to the Donee. To the extent Donee elects to obtain the same, Donee shall also pay all costs associated with any survey, environmental assessment, appraisal, title examination, preparation of any title insurance commitment, owner's title insurance premium, and the preparation and delivery of the owner's title insurance policy. Other fees and charges shall be allocated in accordance with the laws of the State of Georgia and the customary practice in the metro Atlanta area. All other expenses, including, without limitation, attorneys' fees, shall be paid by the party incurring the same.

6. Cooperation Regarding Charitable Contribution. Donor and Donee acknowledge that the Donated Assets are being contributed by Donor to Donee, and that the fair market value of the Donated Assets will, therefore, be a charitable contribution from Donor to Donee on the date of Closing. Charitable contributions to Donee are generally tax deductible subject to the limitations imposed by the IRS. Donee represents that it is an organization described under Sections 170(c)(1) or 170(c)(2) of the Internal Revenue Code of 1986, as amended, but otherwise makes no representation as to the tax deductibility of the donation. Donee agrees to cooperate with Donor by completing and executing corresponding sections of IRS Form 8283 in connection with this transaction and by completing and executing such other tax forms and providing such other written substantiation of the charitable contribution as are required of the Donee by law.

7. Donor's Representations and Warranties. Donor represents and warrants to the Donee that:

a) Donor has the right, power and authority to enter into this Agreement; and

b) Donor is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code. Donor's Taxpayer Identification Number is 58-1035149.

8. **Donee's Representations**. Donee hereby represents and warrants to Donor that it has full power and authority to enter into and perform under this Agreement and the person or persons signing this Agreement for the Donee has (have) full power and authority to sign for the Donee and to bind it to this Agreement pursuant to legislation # _____ approved by the Atlanta City Council on _____ and signed by the Mayor on _____.

9. **Access to the Subject Property.** Between the Effective Date of this Agreement and the Closing, Donor shall allow Donee to have access to the Donated Assets at all reasonable hours, through its representatives, agents and employees, for the purpose of inspecting the Donated Assets and causing, to the extent permitted hereunder and expressly subject to the restrictions set forth in Section 2 above, any necessary appraisals, audits, surveys and other inspections to be made, provided always that Donee shall not interfere with the rights of any owner, lessees or licensees of the Donated Assets. Donee agrees to be responsible for any damages to property or persons it may cause as a result of the Donee's or its agents' presence on the Donated Assets for the purpose of making the inspections provided for herein.

10. **Notices.** All notices, demands, requests or other communications permitted or required by this Agreement shall be in writing and shall be deemed to have been duly given if delivered by hand by the date called for under this Agreement, by nationally-recognized, overnight express delivery service, by certified or registered mail, or by hand-delivery, to the addresses set forth in Recital A. Any notice or other communication mailed as hereinabove provided shall be deemed effectively given or received on the date of delivery, except fax notices shall be deemed effectively received when sent or, if sent after 5:00 p.m. eastern time, shall be deemed received at 9:00 a.m. Eastern Standard Time on the first business day following actual receipt by the addressee.

11. **"As Is" Conveyance**. Notwithstanding anything herein to the contrary, Donor makes no representations or warranties of any nature whatsoever regarding the condition of the Donated Assets. If Donee does not terminate this Agreement pursuant to Section 2 above, Donee agrees to accept the Donated Assets "as is," in their then condition, subject to all use, wear and tear, and deterioration of any kind in, of, or to the Donated Assets. The above provisions of this Section shall survive Closing. Donor shall have the right, but not the obligation, to remove any personal property, equipment and/or materials from the Real Property prior to the Closing Date.

12. **Environmental Covenants of Donee**. Donee hereby agrees that, from and after the date of Closing, the following covenants and obligations of Donee with respect to the environmental condition of the Donated Assets shall irrevocably apply and be in full force and effect. Donee hereby expressly acknowledges that such covenants and obligations of Donee constitute an essential element of consideration under this Agreement for Donor's charitable contribution of the Donated Assets to the Donee, and without such covenants and obligations, Donor would not have made such charitable contribution.

(a) Assumption of Known Remediation Obligations. Prior to the date hereof, Donor has informed Donee of certain on-going Hazardous Materials (hereinafter defined) remediation

obligations with respect to the Donated Assets which are required pursuant to that certain Corrective Action Plan, Part-B (Facility Id. 0600025*1) applicable to or affecting all or a portion of the Real Property (the "**CAP**"), and Donor has delivered to Donee certain Quarterly Free-Product Monitoring Reports prepared by American Containment Services, Inc. for the period beginning with the third quarter of 2008 and ending with the second quarter of 2010, all of which have been filed with the Georgia Department of Natural Resources by or on behalf of Donor with respect to the Donated Assets (all such on-going remediation obligations, including, without limitation, those under the CAP, herein collectively referred to as the "**Known Remediation Obligations**"). Donee has also performed or has had the opportunity to perform such additional testing, investigations and diligence with respect to the Known Remediation Obligations as it deemed necessary or appropriate to be fully informed with respect thereto. With full knowledge of the risks and liability associated therewith, Donee hereby assumes all obligations, responsibility and liability with respect to, and agrees to timely perform, all such Known Remediation Obligations, and further agrees to satisfy any additional requirements or obligations which may hereafter arise in conjunction with such Known Remediation Obligations, all in full compliance with applicable Environmental Laws. For purposes of this Agreement, "**Hazardous Materials**" shall mean oil, flammable explosives, asbestos, urea formaldehyde insulation, radioactive materials, hazardous wastes, fungus, mold, mildew, spores or other biological or microbial agents the presence of which may affect human health, impair occupancy or materially affect the value or utility of the Donated Assets; toxic or contaminated substances or similar materials.

(b) General Assumption of Environmental Liability. Prior to the date hereof, Donor has informed Donee of other Hazardous Materials which may exist or have previously existed on, in, under or about the Donated Assets, including providing Donee with a copy, in draft form, of that certain Phase I Environmental Site Assessment dated May 16, 2008 prepared by Higgins & Associates Environmental Consultants with respect to the Donated Assets. Donee has also performed or has had the opportunity to perform such additional testing, investigations and diligence with respect to Hazardous Materials on, in, under or about the Donated Assets as it deemed necessary or appropriate to be fully informed with respect thereto (all Hazardous Materials or other environmental conditions previously, currently and/or hereafter present on, in, under or about the Donated Assets, whether known or unknown, existing or potential, herein collectively referred to as the "**Environmental Conditions**"). With full knowledge of the risks and liability associated therewith, Donee hereby assumes all obligations, responsibility and liability with respect to the Environmental Conditions, and further agrees to use, operate and maintain the Donated Assets in full compliance with applicable Environmental Laws. In the event that any remediation of any such Environmental Conditions is now or hereafter required pursuant to applicable Environmental Laws, Donee shall perform such remediation in full compliance with such Environmental Laws without recovery or recourse of any kind from or against Donor or any of the other Donor Parties (hereinafter defined). For purposes of this Agreement, "**Donor Parties**" shall mean Donor and its prior, current and future parent company, subsidiaries and affiliates, and each of their respective predecessors, successors and assigns, and each past and present, direct and indirect, parent, subsidiary and affiliated entity of each of the foregoing, and each past and present employee, agent, attorney-in- fact, attorney-at-law, representative, officer, director, shareholder, partner, participant and joint venturer

of each of the foregoing, and each heir, executor, administrator, successor and assign of each of the foregoing; references in this paragraph to "any" of such parties shall be deemed to mean "any one or more" of such parties; and references in this sentence to "each of the foregoing" shall mean and refer cumulatively to each party referred to in this sentence up to the point of such reference

(c) Environmental Insurance. At Donee's sole cost and expense, Donee shall obtain and maintain in effect for a period of fifty (50) years following the Closing Date (the "**Environmental Insurance Term**") insurance policies with respect to the Donated Assets insuring the Donor Parties against all environmental liability and environmental remediation arising from or related to, either directly or indirectly, the Donated Assets as more particularly set forth on **Exhibit D** attached hereto and made a part hereof (the "**Environmental Insurance**"), such policies to be delivered to Donor at, and effective as of, the Closing Date. Donee shall prepay the premium for such insurance for the full Environmental Insurance Term at Closing. To the extent that the Environmental Insurance is not available for a single term equivalent to the Environmental Insurance Term, Donee shall obtain and maintain such Environmental Insurance for the maximum term available and shall thereafter renew such policies of Environmental Insurance for such consecutive terms as necessary to provide uninterrupted coverage for the entire Environmental Insurance Term. In the event that such Environmental Insurance shall lapse for any reason prior to the expiration of the Environmental Insurance Term, Donor shall have the right to obtain reasonably equivalent environmental insurance policies to accomplish the intent of this paragraph, and Donee shall reimburse Donor for all costs incurred by Donor in conjunction therewith within thirty (30) days of Donee's receipt of one or more invoices therefor.

(d) Environmental Laws. Donee shall comply and cause the Donated Assets to comply with all laws, ordinances and regulations relating to Hazardous Materials (collectively, the "**Environmental Laws**").

(e) Notices. Donee shall promptly notify Donor in writing of: (i) the discovery of any Hazardous Materials on, in, under or about the Donated Assets or any portion thereof; (ii) any knowledge by Donee that any portion of the Donated Assets do not comply with any Environmental Laws (other than with respect to the Known Remediation Obligations); and (iii) any claims or actions related, either directly or indirectly, to the Donated Assets (collectively, "**Environmental Claims**") pending or threatened against Donee or the Donated Assets by any governmental entity or agency or any other person or entity relating to Hazardous Materials or pursuant to Environmental Laws. For purposes of this Paragraph 12(e), prompt notice shall mean no more than seven (7) business days following the occurrence of the event which triggered such obligation to deliver notice. In the event that Donee shall sell or otherwise transfer title to the Real Property in its entirety to a third party buyer or transferee, then Donee shall be released of its obligation to provide notice to Donor under this Paragraph 12(e), provided such buyer or transferee shall (i) commit in writing to assume Donee's obligation to provide such notice and to cause any successor in interest to likewise assume in writing such obligation to provide such notice, and (ii) deliver a copy of such written assumption of Donee's obligation to Donor.

(f) Remedial Action. In response to the presence of any Hazardous Materials on, in, under or about the Donated Assets or any portion thereof, Donee shall immediately take, at Donee's sole cost and expense, all remedial action required by any Environmental Laws or any final judgment, consent decree, settlement or compromise in respect to any Environmental Claims (collectively, "**Required Remedial Action**"). In addition, Donee shall cause the Donor Parties to be expressly referenced and deemed a third party beneficiary in and to all agreements with contractors and consultants with respect to all remediation activities performed by or on behalf of Donee with respect to the Donated Assets, including, without limitation, each Required Remedial Action. In the event that Donee shall fail to timely commence any Required Remedial Action required by any Environmental Laws, Donor shall have the right, but not the obligation, to enter upon the Donated Assets and to perform or cause to be performed such Required Remedial Action, and Donee shall cooperate fully, and shall reimburse Donor for all costs and expenses incurred in conjunction, therewith within a reasonable period of time from the date of receipt of written demand therefor. In the event that Donor elects to enter upon the Donated Assets to exercise any of Donor's rights under this Paragraph 12(f), Donor shall deliver at least thirty (30) days prior written notice thereof to Donee. In the event that Donee shall sell or otherwise transfer title to the Real Property in its entirety to a third party buyer or transferee, then Donee shall have the right to assign its obligations under this Paragraph 12(f) which accrue from and after the date of such sale or transfer of title, provided Donee shall thereafter remain primarily liable to Donor for all obligations under this Paragraph 12(f) and in no event shall Donee be released of such obligations as a result of such assignment. This Paragraph 12(f) shall terminate at the expiration of the Environmental Insurance Term.

13. General Covenants of Donee. Donee hereby agrees that, from and after the date of Closing, the following additional covenants and obligations of Donee with respect to the Donated Assets shall irrevocably apply and be in full force and effect. Donor hereby expressly acknowledges that such covenants and obligations of Donee constitute an essential element of consideration under this Agreement for Donor's charitable contribution of the Donated Assets to the Donee, and without such covenants and obligations, Donor would not have made such charitable contribution.

(a) Restrictions on Transfer of Donated Assets. For a period of at least three (3) years following Closing, in addition to the other terms and restrictions set forth herein with respect to transfers of any interest in the Real Property, Donee shall not sell, convey or otherwise transfer all or any portion of the Real Property, or any interest therein, nor shall Donee lease, sublease, license or otherwise authorize or permit the use or occupancy of the Donated Assets for any purpose other than City Uses (hereinafter defined). For purposes of this Agreement, "**City Uses**" shall mean use by the City of Atlanta, its departments, authorities, agencies, and affiliates, including the State of Georgia or the United States Government, in accordance with all powers, duties or authority granted by the State of Georgia or the United States Government for city, state or federal business purposes or uses directly related thereto. Further, commencing at the expiration of such three (3) year period following Closing and continuing for an additional seventeen (17) years thereafter, in the event that Donee desires to sell, convey or otherwise transfer all or any portion of the Real Property, or any interest therein, or to lease, sublease, license or otherwise authorize or permit the use or occupancy of the Donated Assets for any purpose other than City Uses, Donee shall first obtain Donor's prior written consent thereto (which consent may be granted or withheld in Donor's sole discretion), and

failing which, any such sale, conveyance, transfer, lease, sublease, license or other authorization or permission to use or occupy the Donated Assets shall be null and void. In addition, and without limiting the generality of the foregoing, commencing at the expiration of the three (3) year period following Closing and continuing for an additional seventeen (17) years thereafter unless Donee shall obtain and deliver to Donor a Transferee Release (hereinafter defined) from the intended Transferee (hereinafter defined), Donee shall also not lease, sublease, license or otherwise authorize or permit the use or occupancy of the Donated Assets by any party without first obtaining Donor's written consent thereto (which consent may be granted or withheld in Donor's sole discretion), in each such case.

(b) Claims; Settlements; Judgments. Donee shall not, without the prior written consent of Donor (which consent shall not be unreasonably withheld or delayed): (a) settle or compromise any action, suit, proceeding, or claim related to, whether directly or indirectly, the Donated Assets in which Donor or any of the other Donor Parties are named as a party or consent to the entry of any judgment in such a matter that does not include as an unconditional term thereof the delivery by the claimant or plaintiff to Donor of a written release of Donor and each of the other Donor Parties (in form, scope and substance satisfactory to Donor in its sole discretion) from all liability in respect of such action, suit, or proceeding; or (b) settle or compromise any action, suit, proceeding, or claim related to, whether directly or indirectly, the Donated Assets and in which Donor or any of the other Donor Parties are named as a party in any manner that may materially and adversely affect Donor or any of the other Donor Parties as determined by Donor in its sole discretion.

(c) Release; Covenant Not to Sue. Donee, on behalf of itself and its representatives, agents, employees, officers, affiliates, successors and assigns (collectively, the "**Releasors**"), does hereby unconditionally release and forever discharge the Donor Parties from, and covenants not to sue the Donor Parties for, any and all liabilities, debts, actions, causes of action, liens, rights, suits, damages, accounts, bonds, covenants, contracts, agreements, promises, guarantees, representations, judgments, demands or claims of any kind now known or hereafter discovered, both at law and in equity, which is any way related to, connected with or arising out of, whether directly or indirectly, the Donated Assets or the occurrences and dealings between or among any or all of the Releasors and the Donor Parties prior to the date of this Agreement. Releasors understand and agree that the releases provided herein extend to all claims of any nature and kind, whether known or unknown, suspected or unsuspected, which are described in the preceding sentence as claims. It is the intention of Releasors, through this Agreement, and with the advice of counsel, to fully, finally and forever release all potential outstanding claims against the Donor Parties. In furtherance of such intention, the releases herein given shall be and remain in effect as full and complete releases of such matters notwithstanding the discovery of the existence of any additional claims or facts relating thereto. Donee further covenants that it shall require, as an express condition to any sale, transfer, lease, sublease, license or other conveyance or authorization for the use or occupancy of all or any portion of the Donated Assets, that each such buyer, transferee, lessee, sublessee, licenseee or other recipient of title or use of such Donated Assets (each, a "**Transferee**") execute and deliver to and in favor of the Donor Parties a written instrument containing substantially similar releases and covenants in favor of the Donor Parties as set forth in this paragraph (each, a "**Transferee Release**"); provided, however, that the failure of Donee or its successor in title to obtain such a Transferee

Release shall not render unenforceable or otherwise affect the releases granted or required to be granted under this paragraph.

(d) Donor's transfer of the Donated Assets to Donee shall be expressly subject to the restrictions set forth in this Section 13, and restrictive covenants to the same effect shall be expressly included in the Deed and Bill of Sale.

14. Survival of Covenants. The covenants, obligations and restrictions set forth in Sections 12 and 13 above shall survive the Closing.

15. Entire Agreement. This Agreement supersedes all prior discussions and agreements between the parties with respect to the Donated Assets and other matters contained herein and constitutes the sole and entire agreement and understanding between Donor and Donee with respect to the transaction contemplated hereby. This Agreement shall not be modified or amended except by an instrument in writing signed by or on behalf of both parties.

16. Applicable Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Georgia.

17. Effective Date. As used herein, the terms "date of this Agreement", "date hereof", "effective date of this Agreement", or "Effective Date", shall mean the date set forth in the first paragraph of this Agreement.

18. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, and all of which counterparts together shall constitute but one and the same instrument. Legible fax copies and photocopies of documents signed by either party are deemed to be equivalent to originals.

19. Parties Bound. All of the terms, covenants and conditions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

20. Attorney's Fees. In the event of any litigation, including appellate proceedings, arising out of this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and costs from the non-prevailing party.

21. Headings; Rules of Construction. The headings used in this Agreement are for convenience of reference only and shall not operate or be construed to alter or affect the meaning of any of the provisions hereof. All references herein to the singular shall include the plural, and vice versa. The parties agree that this Agreement is the result of negotiation by the parties, each of whom was represented by counsel, and thus, this Agreement shall not be construed against either party because of authorship.

22. Assignability. Donee may not assign its interests under this Agreement without the written consent of Donor.

23. Time of Essence. TIME IS OF THE ESSENCE OF THIS AGREEMENT.

24. Severability. Each provision of this Agreement is severable from any and all other provisions of this Agreement. Should any provision of this Agreement be for any reason unenforceable, the balance shall nonetheless remain in full force and effect, but without giving effect to such provision.

25. No Waiver. Neither the failure of either party to exercise any power given such party hereunder or to insist upon strict compliance by the other party with its obligations hereunder, nor any custom or practice of the parties at variance with the terms hereof shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.

26. Miscellaneous. In the event that any of the deadlines set forth herein end on a Saturday, Sunday or legal holiday, such deadline shall be extended automatically to the next business day that is not a Saturday, Sunday or legal holiday. The term "business days" as may be used herein shall mean all days that are not on a Saturday, Sunday or legal holiday. Notwithstanding any other term of this Agreement, all dates for the performance of obligations of the parties shall be extended automatically for a reasonable time period if any event, including but not limited to, natural disasters, strikes, civil disorder, war, national or local days of mourning, cause the county courthouse and/or major public services to be closed or suspended in the County's locale.

27. Confidentiality. Donee and its representatives shall hold in strictest confidence all data and information obtained from Donor or the other Donor Parties with respect to the Donated Assets until the Closing occurs, provided, however, either party shall be permitted to make such disclosures as may be required in order to comply with all financial reporting, securities laws and other legal requirements applicable to such party. In the event this Agreement is terminated or Donee fails to perform hereunder, Donee shall promptly return to Donor any statements, documents, reports, assessments, surveys, schedules, exhibits or other written information obtained in connection with this Agreement, Donee's investigation of the Donated Assets or the transaction contemplated herein (other than information protected by attorney-client privilege or the attorney work product doctrine). Donee agrees that none of the written information obtained from Donor in connection with this Agreement and the transactions contemplated herein will be used by Donee for any purpose other than evaluating a possible acceptance of the charitable contribution of the Donated Assets or used in any way or manner detrimental to the interests of Donor. In the event of a breach or threatened breach by either party or its agents or representatives of this Section 27, the other party shall be entitled to an injunction restraining such party or its agents or representatives from disclosing, in whole or in part, such confidential information unless Donee is required to release said documents in accordance with the Georgia Open Records Act as set forth in O.C.G.A. § 50-18-70 *et seq*, as amended. Nothing herein shall be construed as prohibiting the aggrieved party from pursuing any other available remedy at law or in equity for such breach or threatened breach.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed under seal by its duly authorized signatory(ies) on the date set forth below.

DONOR:

COX ENTERPRISES, INC., a Delaware corporation

By: _____

Name: _____

Title: _____

DONEE:

CITY OF ATLANTA, a municipal corporation

By: _____
Mayor
Date: _____

Attest: _____
Municipal Clerk
Date: _____

Recommended for approval:

By: _____
Chief Operating Officer
Date: _____

By: _____
Chief Financial Officer
Date: _____

By: _____

Date: _____

Approved as to form:

By: _____
City Attorney
Date: _____

EXHIBIT A

LEGAL DESCRIPTION

MUNICIPAL CLERK OFFICE

EXHIBIT B

FORM OF DEED

THE MUNICIPAL CLERK OFFICE

EXHIBIT C

FORM OF BILL OF SALE

EXHIBIT D

ENVIRONMENTAL INSURANCE REQUIREMENTS

MUNICIPAL CLERK'S OFFICE

Property Description – Parcel I

All that tract or parcel of land lying and being in Land Lot 78 of the 14th District of Fulton County, Georgia, and being more particularly described as follows:

BEGINNING at a point located at the intersection of the westerly right–of–way line of Marietta Street (variable width right–of–way) and the northerly right–of–way line of Fairlie Street (variable width right–of–way);

Thence run along and coincident with the northerly right–of–way line of Fairlie Street South 49 degrees 32 minutes 02 seconds West, a distance of 207.01 feet to a point; thence continue to run along and coincident with the northerly right–of–way line of Fairlie Street South 50 degrees 14 minutes 22 seconds West, a distance of 30.37 feet to a point; thence continue to run along and coincident with the northerly right–of–way line of Fairlie Street South 49 degrees 33 minutes 53 seconds West, a distance of 118.21 feet to a point; thence leave the northerly right–of–way line of Fairlie Street North 50 degrees 25 minutes 00 seconds West, a distance of 10.77 feet to a point; thence run North 50 degrees 39 minutes 00 seconds West, a distance of 307.75 feet to a point; thence run North 43 degrees 17 minutes 00 seconds West, a distance of 67.88 feet to a point; thence run along the arc of a curve to the right, an arc distance of 490.19 feet (said curve having a radius of 1230.46 feet, being subtended by a chord bearing of North 33 degrees 29 minutes 43 seconds West, chord a distance of 486.95 feet) to a point located on the southerly right–of–way line of Techwood Drive (74' right–of–way); thence run along and coincident with the southerly right–of–way line of Techwood Drive along the arc of a curve to the right, an arc distance of 5.21 feet (said curve having a radius of 1469.39 feet, being subtended by a chord bearing of South 49 degrees 58 minutes 38 seconds West, a chord distance of 5.21 feet) to a point; thence leave the southerly right–of–way line of Techwood Drive North 17 degrees 27 minutes 02 seconds West, a distance of 80.45 feet to a point located on the northerly right–of–way line of Techwood Drive; thence run along and coincident with the northerly right–of–way line of Techwood Drive along the arc of a curve to the left, an arc distance of 3.04 feet (said curve having a radius of 1395.39 feet, being subtended by a chord bearing of North 48 degrees 45 minutes 13 seconds East, a chord distance of 3.04 feet) to a point; thence continue along the northerly right–of–way line of Techwood Drive North 48 degrees 41 minutes 29 seconds East, a distance of 23.96 feet to a point; thence run South 36 degrees 50 minutes 46 seconds East, a distance of 6.22 feet to a point; thence run North 48 degrees 41 minutes 29 seconds East, a distance of 135.01 feet to a point; thence run South 36 degrees 40 minutes 10 seconds East, a distance of 67.93 feet to a point; thence run South 36 degrees 40 minutes 10 seconds East, a distance of 22.20 feet to a point; thence run South 36 degrees 40 minutes 10 seconds East, a distance of 66.14 feet to a point; thence run South 36 degrees 40 minutes 10 seconds East, a distance of 106.11 feet to a point; thence run North 49 degrees 07 minutes 21 seconds East, a distance of 0.36 feet to a point; thence run South 40 degrees 32 minutes 51 seconds East, a distance of 59.20 feet to a point; thence run South 50 degrees 25 minutes 10 seconds West, a distance of 2.86 feet to a point; thence run South 40 degrees 16 minutes 31 seconds East, a distance of 89.79 feet to a point; thence run South 28 degrees 19 minutes 21 seconds East, a distance of 61.21 feet to a point; thence run South 40 degrees 30 minutes 30 seconds East, a distance of 267.55 feet to a point; thence run South 49 degrees 17 minutes 45 seconds West, a distance of 6.07 feet to a point; thence run South 40 degrees 42 minutes 16 seconds East, a distance of 107.32 feet to a point; thence run North 49 degrees 46 minutes 06 seconds East, a distance of 206.66 feet to a point located on the southerly right–of–way line of Marietta Street; thence run along and coincident with the westerly right–of–way line of Marietta Street South 40 degrees 27 minutes 15 seconds East, a distance of 89.02 feet to a point, said point being the Point of Beginning.

Said parcel containing 4.709 acres (205,130 square feet).

Property Description – Parcel II

All that tract or parcel of land lying and being in Land Lot 78 of the 14th District of Fulton County, Georgia, and being more particularly described as follows:
BEGINNING at a point located at the intersection of the southerly right–of–way line of Fairlie Street (variable width right–of–way) and the westerly right–of–way line of Marietta Street (variable width right–of–way):

Thence run along and coincident with the westerly right–of–way line of Marietta Street South 40 degrees 14 minutes 56 seconds East, a distance of 50.21 feet to a point; thence leave the westerly right–of–way line of Marietta Street and run South 49 degrees 31 minutes 53 seconds West, a distance of 116.03 feet to a point; thence run South 40 degrees 07 minutes 38 seconds East, a distance of 145.31 feet to a point located on the northerly right–of–way line of Forsyth Street (variable width right–of–way); thence run along and coincident with the northerly right–of–way line of Forsyth Street South 49 degrees 20 minutes 46 seconds West, a distance of 198.42 feet to a point; thence leave the northerly right–of–way line of Forsyth Street and run North 50 degrees 33 minutes 46 seconds West, a distance of 159.19 feet to a point; thence run along the arc of a curve to the right, an arc distance of 57.14 feet (said curve having a radius of 32.97 feet, being subtended by a chord bearing of North 00 degrees 54 minutes 49 seconds West, a chord distance of 50.25 feet) to a point located on the southerly right–of–way line of Fairlie Street; thence run along and coincident with the southerly right–of–way line of Fairlie Street North 48 degrees 44 minutes 08 seconds East, a distance of 40.20 feet to a point; thence continue to run along and coincident with the southerly right–of–way line of Fairlie Street North 49 degrees 30 minutes 08 seconds East, a distance of 271.21 feet to a point, said point being the Point of Beginning. Said parcel containing 1.098 acres (47,811 square feet).

RCS# 735
12/06/10
5:30 PM

Atlanta City Council

REGULAR SESSION

10-O-2104 AUTH.MAYOR TO EXECUTE ALL DOCUMENTS TO ACCEPT DONATION OF 5.087 ACRES OF LAND ADOPT AS AMEND

YEAS:	13
NAYS:	1
ABSTENTIONS:	0
NOT VOTING:	1
EXCUSED:	0
ABSENT	1

Y Smith	Y Archibong	N Moore	Y Bond
Y Hall	B Wan	Y Martin	Y Watson
Y Young	Y Shook	Y Bottoms	Y Willis
Y Winslow	Y Adrean	Y Sheperd	NV Mitchell