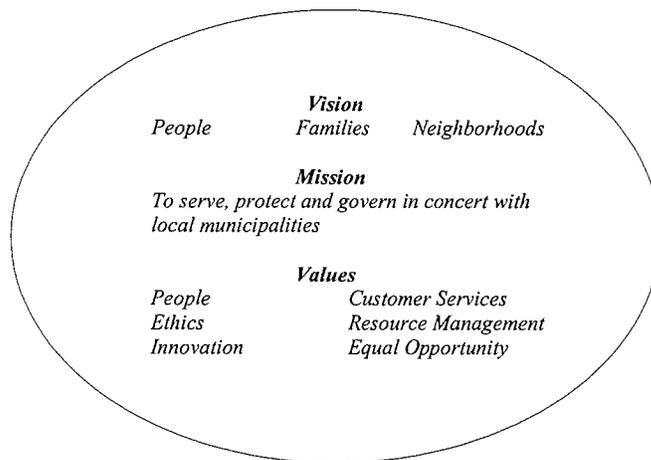


FULTON COUNTY



**PURCHASING DEPARTMENT
REQUEST FOR PROPOSAL NO. 13RFP88017C-MT**

401(a) Defined Contribution Plan Administrative Services

For

Fulton County Finance Department

RFP DUE TIME AND DATE: 11:00 A.M., May 15, 2013

BID ISSUANCE DATE: April 9, 2013

PRE-PROPOSAL CONFERENCE DATE: 10:00 A.M., May 1, 2013

PURCHASING CONTACT: malcolm.tyson@fultoncountyga.gov

**LOCATION: FULTON COUNTY PURCHASING DEPARTMENT
130 PEACHTREE STREET, S.W., SUITE 1168
ATLANTA, GA 30303**

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SECTION 1 INTRODUCTION

1.1 PURPOSE

Fulton County, Georgia (“County”) is accepting proposals to award a contract for a comprehensive 401(a) Defined Contribution Plan Administrative Service Provider to include providing an open architect investment platform, recordkeeping services, participant communications, full time on site participant educational services, and compliance support.

Through the issuance of this Request for Proposal (“RFP” and/or “Proposals”), the County is soliciting Proposals from qualified Proposers for a **401(a) Defined Contribution Plan Administrative Service Provider**.

Proposals provided in response to this RFP that comply with the submittal requirements set forth in Section 3.0, including all forms and certifications as outlined in Section 5.0 will be evaluated in accordance with the criteria and procedures described in Section 4.0. The County will award a contract to the most advantageous Proposer based on the evaluation criteria set forth in the RFP.

1.2 PLAN/PROGRAM DESCRIPTION

As of December 31, 2012 there was \$312,509,874 in Plan Assets. The Plan consisted of 4,597 Plan Participants of which 4,264 were active employees, 3 were beneficiaries, 8 were retired, and 322 were separated from service. The County currently has a Plan Administrator which is a Fiduciary for the Plan, and provides the Investment Platform, Recordkeeping, Custodial, and Participant Educational Services. The current Plan Administrator has chosen to hire a sub-contractor to perform the full time onsite educational services.

Below are various demographics on the Plan Participants, Plan Assets, and our current participant education program:

BALANCES BY AGE as of December 31, 2012

	<u>Age</u>	<u>Under Age 30</u>	<u>Age 30 - 39</u>	<u>Age 40 - 49</u>	<u>Age 50 - 59</u>	<u>Age 60 & Over</u>	<u>Total</u>
Number of Participants		333	1,114	1,509	1,170	471	4,597
Group Balance		\$5,349,321	\$40,867,871	\$103,963,552	\$108,695,857	\$53,633,273	\$312,509,874
Average Account Balance		\$16,064	\$36,686	\$68,896	\$92,902	\$113,871	\$67,981

ASSET CATEGORY BY AGE	<u>Under Age 30</u>	<u>Age 30 - 39</u>	<u>Age 40 - 49</u>	<u>Age 50 - 59</u>	<u>Age 60 & Over</u>	<u>Total</u>
Stable Value	\$558,732	\$5,740,014	\$15,568,510	\$25,265,375	\$22,251,365	\$69,383,996
Fixed Income	\$795,155	\$4,320,930	\$8,978,650	\$10,434,452	\$5,054,831	\$29,584,018
Asset Allocation Lifestyle/Life Cycle	\$1,366,521	\$6,060,577	\$11,752,307	\$11,413,546	\$4,604,589	\$35,197,540
Large Cap Equity	\$1,424,837	\$12,644,817	\$34,823,945	\$32,955,020	\$10,938,615	\$92,787,234
Mid Cap Equity	\$404,002	\$5,072,754	\$15,843,264	\$13,934,776	\$4,709,758	\$39,964,554
Small Cap Equity	\$353,640	\$3,523,014	\$8,485,312	\$7,419,574	\$2,487,369	\$22,268,909
International / Global Equity	\$446,434	\$3,503,115	\$8,066,054	\$6,943,900	\$2,476,561	\$21,436,064
Self Directed Brokerage	\$0	\$2,650	\$445,510	\$329,213	\$1,110,186	\$1,887,559

2012 Plan Cash Flows	
Total Plan Assets 12/31/2011	\$278,899,569
Participant Contributions	\$11,549,811
Rollovers	\$56,283
Employer Contributions	\$15,812,683
457(b) Employer Match	\$1,497,782
Withdrawals/Terminations/Fees	(\$25,187,410)
Forfeited Funds	(\$1,395,435)
Investment Income	\$31,276,591
Total Plan Assets 12/31/2012	\$312,509,874

PLAN ASSET ALLOCATION as of December 31, 2012

<u>INVESTMENT OFFERING</u>	<u>TICKER</u>	<u>Balance 12/31/2012</u>	<u>Percentage of Assets</u>
Diversified Bond SAGIC	N/A	\$69,383,997	22%
JPMorgan Government Bond Fund	OGGAX	\$13,237,951	4%
Total Return Fund (PIMCO)	PTTAX	\$12,130,407	4%
Oppenheimer Global Strategic Income Fund	OSIYX	\$4,215,661	1%
Oakmark Equity & Income Fund	OARBX	\$23,337,630	7%
Wells Fargo Adv DJ Target Today Fund	WOTDX	\$555,424	0%
Wells Fargo Adv DJ Target 2015 Fund	WFSCX	\$1,456,025	0%
Wells Fargo Adv DJ Target 2025 Fund	WFTYX	\$2,742,594	1%
Wells Fargo Adv DJ Target 2035 Fund	WFQRX	\$3,953,228	1%
Wells Fargo Adv DJ Target 2045 Fund	WFQPX	\$3,152,638	1%
Invesco Comstock Fund <small>added 10/13</small>	ACSDX	\$0	0%
Premier Disciplined Value (Babson)	MEPSX	\$14,077,901	5%
Henssler Equity Fund	HEQFX	\$27,543,709	9%
Mass Mutual S&P 500 Index Fund (Northern Trust)	MMIEX	\$38,997,062	12%
American Funds Growth Fund of America	RGAEX	\$12,168,561	4%
Premier Disciplined Growth (Babson) <small>added 10/13</small>	MPGSX	\$0	0%
American Century Mid Cap Value Fund	AVUAX	\$9,311,652	3%
Nuveen Mid Cap Growth Opportunity Fund	FISGX	\$30,652,902	10%
Invesco Small Cap Value Fund	VSCAX	\$9,133,708	3%
Nuveen Small Cap Select Fund	ARSTX	\$13,135,201	4%
American Funds EuroPacific Growth Fund	RERFX	\$19,112,528	6%
Oppenheimer Global Opportunity Fund	OGIYX	\$2,323,536	1%
Self Directed Brokerage Account	N/A	\$1,887,559	1%
		\$312,509,874	100%

2012 PARTICIPANT INTERACTION SUMMARY

	<u>1Q2012</u>		<u>2Q2012</u>		<u>3Q2012</u>		<u>4Q2012</u>		<u>FY 2012</u>	
	<u>Total</u>	<u>Distinct</u>								
<u>Phone Calls</u>	<u>Calls</u>	<u>Calls</u>								
Toll Free 800#	1,251	589	1,044	588	1,061	548	782	450	4,138	2,175
Call Center	1,022	353	1,404	489	1,321	448	918	324	4,665	1,614
	<u>Total</u>	<u>Distinct</u>								
<u>Internet Access Visits</u>	<u>Visits</u>	<u>Visits</u>								
	8,812	1,410	8,195	1,379	9,005	1,393	8,575	1,271	34,587	5,453
	<u># of</u>	<u># of</u>								
<u>Educational Specialist</u>	<u>Sessions</u>	<u>Participants</u>								
New Hire Orientation	6	79	6	102	7	133	4	51	23	365
One-on-one Check Up	368	368	340	340	431	431	261	261	1,400	1,400
Investment Seminars	5	75	3	18	1	15	2	33	11	141
Department Meetings	5	95	17	207	6	94	2	13	30	409
		617		667		673		358		2,315

1.3 BACKGROUND

Fulton County currently sponsors a defined benefit plan and a defined contribution plan. The defined benefit plan was closed to new entrants in 1999, and at the same time the defined contribution plan was established. Participation in either the defined benefit plan or the defined contribution plan is mandatory for all benefit eligible employees. The County also sponsors a voluntary 457 deferred compensation plan.

As of February 28, 2013, there were 801 active participants in the closed defined benefit plan. There is an annual window during which defined benefit active participants are able to transfer the actuarial value of their accrued benefit into the defined contribution plan. Defined benefit participants who were in that plan prior to 1999 and have subsequently transferred to the defined contribution plan have after tax contributions and pre-tax contributions to be accounted for separately.

The defined contribution plan is structured as follows:

Eligibility

All employees hired since July 1, 1999, automatically participate in the 401(a) defined contribution plan.

Employer Contribution Levels

- Automatic eight percent (8%) of annual pay contributed in each biweekly pay-period, subject to a five year vesting schedule. The employer contributions are currently approximately \$610,000 per pay period.
- 457(b) Plan Match. The County will contribute a fifty percent match into the defined contribution plan up to two percent of pay based on employee contributions made to the 457(b) Plan. The County matching contribution is made into the 401(a) plan and is subject to a five year vesting schedule.

Employee Contribution Levels

- Mandatory six percent (6%) of pay, pre-tax contribution. The mandatory employee contributions are currently approximately \$500,000 per pay period.

Worksite Location

Fulton County is located in the metro Atlanta area and contains the majority of the City of Atlanta. Employees work in 700 locations and are dispersed within a 60-mile by 20-mile area.

1.4 OBTAINING THE RFP

This document and supporting documents can be downloaded at the Fulton County Website, <http://www.fultoncountyga.gov/> under "Bid Opportunities".

1.5 SUBCONTRACTING OPPORTUNITIES

Potential prime contractors submitting a bid on this project for Fulton County and are seeking subcontractors and/or suppliers can advertise those subcontracting opportunities on the County's website, <http://www.fultoncountyga.gov> under "Subcontracting Bid Opportunities".

1.6 PRE-PROPOSAL CONFERENCE

The County will hold a Pre-Proposal Conference, on **May 1, 2013 at 10:00 A.M.** in the Bid Conference Room of the Department of Purchasing and Contract Compliance, Fulton County Public Safety Building, Suite 1168, 130 Peachtree Street, S.W., Atlanta, Georgia 30303. Attendance at the Pre-Proposal Conference is voluntary for responding to this RFP, however Proposers are encouraged to attend. The purpose of the Pre-Proposal Conference is to provide information regarding the project and to address any questions and concerns regarding the services sought by the County through this RFP.

1.7 PROPOSAL DUE DATE

All proposals are due in the Purchasing Department of Fulton County located in the Public Safety Building, Suite 1168, 130 Peachtree St, S.W., Atlanta Georgia 30303 on or **before May 15, 2013 at 11:00 A.M.**, legal prevailing time. All submitted proposals will be time and date stamped according to the clock at the front desk of the Fulton County Purchasing Department. Any proposals received after this appointed schedule will be considered late and subject to be returned unopened to the Proposer. The proposal due date can be changed only by addendum.

1.8 DELIVERY REQUIREMENTS

Any proposal received after the above stipulated due date and time will not be

considered and will be rejected and returned. It shall be the sole responsibility of the Proposer to have his/her proposal delivered to the Fulton County Department of Purchasing for receipt on or before the above stipulated due date and time. If a proposal is sent by U.S. Mail, the proposer shall be responsible for its timely delivery to the Department of Purchasing.

1.9 CONTACT PERSON AND INQUIRIES

Any questions or suggestions regarding this RFP should be submitted in writing to the Purchasing Department contact person, Malcolm Tyson, Assistant Purchasing Agent, 130 Peachtree Street, S.W., Atlanta, GA 30303 to E-mail at malcolm.tyson@fultoncountyga.gov. Any response made by the County will be provided in writing to all Proposers by addendum. No verbal responses shall be authoritative.

SECTION 2 INSTRUCTIONS TO PROPOSERS

2.1 **PROCUREMENT PROCESS**

The procurement will be on a formally advertised basis. All technical requirements, unless otherwise specified, must be met, or be capable of being met by the Proposer or their proposal will be disqualified as being non-responsive.

2.2 **CONTRACT DEFINITIONS**

In addition to any other terms that may be defined in this solicitation, the following terms have the following meaning:

Addendum – Revision to the RFP documents issued by the County prior to the receipt of proposals.

Agreement – refers to the executed contract between the County and Contracting Entity.

County – Fulton County Government and its authorized representatives.

Contact Person – Purchasing staff designated by the Fulton County Department of Purchasing and Contract Compliance to submit any questions and suggestions to.

Offeror – the entity of individual submitting a proposal in response to this RFP.

Owner – Fulton County Government

Proposal – the document submitted by the offeror in response to this RFP.

Proposer – the entity or individual submitting a proposal in response to his RFP.

Request for Proposal (RFP) – all documents, whether attached or incorporated by reference, utilized for soliciting sealed proposals.

Responsible Offeror – A person or entity that has the capability in all respects to perform fully and reliably the contract requirements.

Responsive Offeror – A person or entity that has submitted a bid or proposal that conforms in all material respects to the requirements set forth in the invitation for bids or request for proposals.

Scope of Work – All the services specified, indicated, shown, or contemplated by the Contract, and furnishing by the Contractor of all materials, equipment, labor,

methods, processes, construction and manufacturing materials and equipment, tools, plants, supplies, power, water, transportation and other things necessary to complete such services in accordance with the Contract.

Subcontractor/sub-consultant – An individual, firm, corporation or any combination thereof, having a direct contract with Consultant/Contractor for the performance of a part of the work.

2.3 NO CONTACT DURING PROCUREMENT PROCESS

It is the policy of Fulton County that the evaluation and award process for County contracts shall be free from both actual and perceived impropriety, and that contacts between potential vendors and County officials, elected officials and staff regarding pending awards of County contracts shall be prohibited.

- A. No person, firm, or business entity, however situated or composed, obtaining a copy of or responding to this solicitation, shall initiate or continue any verbal or written communication regarding this solicitation with any County officer, elected official, employee, or designated County representative, between the date of the issuance of this solicitation and the date of the County Manager's recommendation to the Board of Commissioners for award of the subject contract, except as may otherwise be specifically authorized and permitted by the terms and conditions of this solicitation.
- B. All verbal and written communications initiated by such person, firm, or entity regarding this solicitation, if same are authorized and permitted by the terms and conditions of this solicitation, shall be directed to the Purchasing Agent.
- C. Any violation of this prohibition of the initiation or continuation of verbal or written communications with County officers, elected officials, employees, or designated County representatives shall result in a written finding by the Purchasing Agent that the submitted bid or proposal of the person, firm, or entity in violation is "non-responsive", and same shall not be considered for award.

2.4 CLARIFICATION & ADDENDA

Proposers may submit requests for clarifications or interpretations regarding this RFP and the Contract. Proposers must prepare such requests in writing for the County's consideration as set forth in this section of this RFP. While the County has not placed an initial limitation on the number of requests which can be submitted, Proposers are cautioned that if Proposers do not request meaningful clarifications or interpretations in an organized manner (e.g., limited frequency of requests), the County will set restrictions on the frequency and number of requests permitted. The County will not respond to requests, oral or written, received after **May 2, 2013 at**

5:00 P.M., local prevailing time. Proposers are advised that this section places no obligation on the part of the County to respond to any or all requests for clarification or interpretation, and that the County's failure to respond to any such request will not relieve the Proposer of any obligations or conditions required by this RFP.

Requests for clarification or interpretation regarding this RFP shall only be submitted in writing (letter, fax or email) to:

**Fulton County Department of Purchasing & Contract Compliance
Attn: Malcolm Tyson
Public Safety Building
130 Peachtree Street S.W. Suite 1168
Atlanta GA 30303
Email: Malcolm.tyson@fultoncountyga.gov
F: (404) 335-5808**

**RE: RFP #13RFP88017C-MT
401(a) Defined Contribution Plan Administrative Services**

Telephone inquiries will not be accepted.

All responses to written requests for clarification, interpretation, or additional information will be distributed as addenda to this RFP and posted on the Fulton County website www.fultoncountyga.gov.

No oral interpretation, instruction, or information concerning this RFP given by any employee or agent of the County shall be binding on the County. Proposers who submit a Proposal in reliance on any such oral information risk having their response to this RFP deemed non-responsive by the County. Only written responses issued by addendum to this RFP should be considered by the Proposers.

During the period provided for the preparation of Proposals, the County may issue addenda to this RFP. These addenda will be numbered consecutively and will be posted on the Fulton County website, www.fultoncountyga.gov. These addenda will be issued by, or on behalf of, the County and will constitute a part of this RFP. Each Proposer is required to acknowledge receipt of each addendum by submitting an executed acknowledgment form. This acknowledgment shall include all addenda distributed prior to the Proposal Submission Date. All responses to this RFP shall be prepared with full consideration of the addenda issued prior to the Proposal Submission Date.

2.5 TERM OF CONTRACT

The period of this Agreement shall consist of a series of Terms as defined below. The County is obligated only to pay such compensation under this Agreement as may lawfully be made from funds budgeted and appropriated for that purpose during the County's then current fiscal year.

a. **Term of Contract**

The initial term of the contract shall be for a five (5) year term beginning January 31, 2014, with one (1), three (3) year renewal option if agreed to by both parties.

b. **Renewal Terms**

Unless the terms of this Agreement are fulfilled with no further obligation of the part of either party on or before the final date of the Commencement Term as stated above, or unless an event of termination as defined within this Agreement occurs during the Commencement Term, this Agreement may be renewed at the written option of the County upon the approval of the County Board of Commissioners for one (1) three (3) year renewal period ("Renewal Terms"). However, no Renewal Term of this Agreement shall be authorized nor shall any Renewal Term of this Agreement commence unless and until each Renewal Term has first been approved in writing by the County Board of Commissioners for the calendar years of such Renewal Term.

c. **Term Subject to Events of Termination**

All "Terms" as defined within this Section are subject to the section of this Agreement which pertain to events of termination and the County's rights upon termination.

d. **Same Terms**

Unless mutually agreed upon in writing by the parties, or otherwise indicated herein, all provisions and conditions of any Renewal Term shall be exactly the same as those contained within in this Agreement.

e. **Statutory Compliance Regarding Purchase Contracts.**

The parties intend that this Agreement shall, and this Agreement shall operate in conformity with and not in contravention of the requirements of O.C.G.A. § 36-60-13, as applicable, and in the event that this Agreement

would conflict therewith, then this Agreement shall be interpreted and implemented in a manner consistent with such statute.

2.6 REQUIRED SUBMITTALS

See **Exhibit 1** for the RFP Submittal Checklist. This checklist will assist you to ensure that all submittals are included in your proposal. Failure to submit all submittals may deem your proposal non-responsive.

2.7 PROPOSAL EVALUATION

All proposals will be evaluated using the criteria specified in Section 4 of this RFP. Selection will include an analysis of proposals by a Vendor Selection Committee composed of County personnel who will review the proposal submittals in accordance with the submittal requirements and the evaluation criteria set forth in Section 4 of this RFP. The committee may request oral interviews and/or site visits. Awards will not necessarily be based on cost alone. Other factors, as detailed in the RFP, will be considered in determining what proposal will be deemed to best meet the needs of Fulton County.

2.8 DISQUALIFICATION OF PROPOSERS

The submission of more than one (1) proposal to the County as the primary Proposer or member of a joint venture for the same work by an individual firm, partnership or corporation under the same or different names may be grounds for disqualification of a Proposer and the rejection of the proposal.

2.9 RESERVED RIGHTS

The County reserves the right to accept or reject any and/or all proposals, to waive irregularities and technicalities, and to request resubmission. Any sole response that is received may or may not be rejected by the County depending on available competition and timely needs of the County. There is no obligation on the part of the County to award the contract to the lowest proposer and the County reserves the right to award the contract to the responsible proposers submitting responsive proposals with resulting agreements most advantageous and in the best interest of the County. The County shall be the sole judge of the proposals and the resulting agreements that are in its best interest and its decision shall be final. Also, the County reserves the right to make such investigation as it deems necessary to determine the ability of any proposer to perform the work or service requested. Information the County deems necessary to make this determination shall be provided by the proposer. Such information may include, but shall not be limited to, current financial statements by an independent CPA; verification of availability of personnel; and past performance records.

2.10 APPLICABLE LAWS

All applicable laws and regulations of the State of Georgia and ordinances and regulations of Fulton County shall apply. Protestors shall seek resolution of their

complaints in the manner provided in the Fulton County Code of Laws §2-324 which is incorporated by reference herein.

2.11 MINIMUM PARTICIPATION REQUIREMENTS FOR PRIME CONTRACTORS

Pursuant to Fulton County Code 102-357, Prime Bidders on the project must perform no less than 51% of the scope of work required under the project.

2.12 INSURANCE AND RISK MANAGEMENT PROVISIONS

Insurance and Risk Management provisions and Indemnification and Hold Harmless provisions are outlined in Section 7 of this RFP.

2.13 ACCURACY OF RFP AND RELATED DOCUMENTS

The County assumes no responsibility that the specified technical and background information presented in this RFP, or otherwise distributed or made available during this procurement process, is complete or accurate. Without limiting the generality of the foregoing, the County will not be bound by or be responsible for any explanation or interpretation of the Proposal documents other than those given in writing as an addendum to this RFP.

Should a recipient of this RFP find discrepancies in or omissions from this RFP and related documents, the recipient of this RFP shall immediately notify the Purchasing Contact Person identified in Section 1.11 in writing at the following address: Fulton County Department of Purchasing and Contract Compliance, Public Safety Bldg, 130 Peachtree Street S.W., Suite 1168 Atlanta, GA 30303. A written addendum, if necessary, then will be made available to each recipient of this RFP.

2.14 RESPONSIBILITY OF PROPOSER

Each Proposer is encouraged to conduct all necessary investigations and review all available and relevant data and information, which are necessary in its judgment in order to assume this responsibility prior to the submittal of its Proposal. Proposers are reminded of Fulton County's "**No Contact During Procurement**" policy and shall only contact the person designated by the RFP.

2.15 CONFIDENTIAL INFORMATION

If any Proposal contains technical, financial, or other confidential information that the Proposer believes is exempt from disclosure, the Proposer must clearly label the specific portions sought to be kept confidential and specify on what the exemption is based. The County, at its sole discretion and subject to applicable law, will determine whether such exemption applies. The County has sole discretion to make such determination regarding the disclosure of information, and by responding to this RFP, Proposers waive any challenge to the County's decisions in this regard.

Marking all or substantially all of a Proposal as confidential may result in the Proposer being deemed non-responsive to this RFP.

Notwithstanding the foregoing, Proposers recognize and agree that the County, its staff, and its Consultants will not be responsible or liable in any way for any losses that the Proposer may suffer from the disclosure of information or materials to third parties.

2.16 COUNTY RIGHTS AND OPTIONS

This RFP constitutes an invitation to submit Proposals to the County. Without limitation or penalty, the County reserves and holds at its sole discretion, the following rights and options:

- This RFP does not obligate the County to select, procure or contract for any services whatsoever.
- Fulton County reserves the right to award a contract based on this RFP and the proposal(s) received (in whole or in part) to one or several vendors.
- The County reserves the right to change or alter the schedule for any events associated with this procurement and, if required, notify the Proposers. A Proposer, by submitting a Proposal, agrees to be bound by any modifications made by the County
- All costs incurred by a Proposer in connection with responding to this RFP, the evaluation and selection process undertaken in connection with this procurement, and any negotiations with the County will be borne by the Proposer.
- The County reserves the right to reject all Proposals and components thereof to eliminate all Proposers responding to this RFP from further consideration for this procurement, and to notify such Proposers of the County's determination.
- The County may cancel this RFP without the substitution of another RFP and terminate this procurement at any time without any liability whatsoever.
- The County reserves the right to waive any technicalities or irregularities in the Proposals.
- The County reserves the right to eliminate any Proposer who submits incomplete or inadequate responses or is not responsive to the requirements of this RFP.

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- The County may request Proposers to send representatives to the County for interviews and presentations.
 - To the extent deemed appropriate by the County, the County may select and enter into discussion and negotiations with the Proposer(s) submitting Proposal(s), which are found to be reasonably susceptible for award.
 - The County reserves the right to discontinue negotiations with any selected Proposer.
 - The County reserves the right, without prior notice, to supplement, amend, or otherwise modify this RFP.
 - All Proposals (other than portions thereof subject to patent or copyright protection) become the property of the County and will not be returned, and the County reserves the right to utilize all such information contained in the Proposals without further cost to the County
 - The County may add to or delete from the Project Scope of Work set forth in this RFP.
 - Any and all Proposals not received by the Proposal Submission Date shall be rejected and returned unopened.
 - Neither the County, its staff, its representatives, nor any of its consultants or attorneys will be liable for any claims or damages resulting from the solicitation, collection, review, or evaluation of responses to this RFP.
 - The County, including its representatives and consultants, reserves the right to visit and examine any of the facilities referenced in any Proposal and to observe and investigate the operations of such facilities.

By responding to this RFP, Proposers acknowledge and consent to the rights and conditions set forth in this RFP.

2.17 COST OF PROPOSAL PREPARATION AND SELECTION PROCESS

Each Proposal, including preparation of all information required to be included in a Proposal pursuant to this RFP, shall be prepared at the sole cost and expense (including, but not limited to, engineering and legal costs) of the Proposer. In addition, the Proposer shall be solely responsible for all costs (including engineering and legal costs) incurred by such Proposer in connection with this selection process, including any costs incurred by the Proposer in any subsequent negotiations

entered into in connection with developing the Proposal. There shall be no claims whatsoever against the County, its staff, or its consultants for reimbursement for the costs or expenses (including, but not limited to, engineering and legal costs) incurred during the preparation of the Proposal or other information required by this RFP or procurement process or in connection with the selection process or any negotiations.

2.18 TERMINATION OF NEGOTIATIONS

The County at its sole discretion may, at any time, to the extent permitted by Applicable Law, exclude a Proposer from further participation in any negotiation process if the County determines that such Proposer is failing to progress in the negotiations or if the terms of its Proposal are less advantageous than those of other Proposers and such Proposer is deemed to be no longer susceptible of selection. The County will give written notice of its decision to the Proposer, which shall be sent in writing, signed by the County.

2.19 WAGE CLAUSE

Pursuant to 102-391, Each Contractor shall agree that in the performance of the Contract he will comply with all lawful agreements, if any, which the Contractor had made with any association, union, or other entity, with respect to wages, salaries, and working conditions, so as not to cause inconvenience, picketing, or work stoppage.

2.20 ADDITIONAL OR SUPPLEMENTAL INFORMATION

After receipt of the submittals, the County will evaluate the responses, including the references, financial statements, experience and other data relating to the Respondent's qualifications. If requested by the Fulton County Department of Purchasing and Contract Compliance, Respondent's maybe required to submit additional or supplemental information to determine whether the Respondent meets all of the qualification requirements.

2.21 REPORTING RESPONSIBILITIES

The successful Proposer will report directly to the County's designated representative.

2.22 GEORGIA SECURITY AND IMMIGRATION COMPLIANCE ACT

This Request for Proposal is subject to the Georgia Security & Immigration Compliance Act. Pursuant to the Georgia Security & Immigration Compliance Act of 2006, as amended on May 11, 2009, bidders and proposers are notified that all bids/proposals for services that are to be physically performed within the State of Georgia must be accompanied by proof of their registration with and continuing and future participation in the E-Verify program established by the United States Department of Homeland Security. A completed affidavit must be submitted on the top of the bid/proposal at the time of submission, prior to the time for opening bids/proposals. Under state law, the County cannot consider any bid/proposal which does not include a completed affidavit. It is not the intent of this notice to

provide detailed information or legal advice concerning the Georgia Security & Immigration Compliance Act. All bidders/proposers intending to do business with the County are responsible for independently apprising themselves and complying with the requirements of that law and its effect on County procurements and their participation in those procurements. For additional information on the E-Verify program or to enroll in the program, go to: <https://e-verify.uscis.gov/enroll>.

See Section 5, Proposal Forms for declarations and affidavits.

2.23 AUTHORIZATION TO TRANSACT BUSINESS

If the Proposer is a Georgia corporation, the corporation, prior to contract execution, shall submit documentary evidence from the Secretary of State that the Corporation is in good standing and that the corporation is authorized to transact business in the State of Georgia.

If the Proposer is a foreign (non-Georgia) corporation, the corporation, prior to contract execution shall submit a Certificate of Authority and documentary evidence from the Georgia Secretary of State of good standing which reflects that the corporation is authorized to do business in the State of Georgia.

2.24 RIGHT TO PROTEST

Any actual bidder or offeror who is aggrieved in connection with the solicitation or award of a contract shall protest in writing to the Director of Purchasing & Contract Compliance. An actual bidder or offeror is defined as a person or entity who has submitted a bid or proposal on the project for which they are filing a protest. A protest shall be submitted to and received by the Director of Purchasing & Contract Compliance in writing within 14 days after such aggrieved entity known or should have known of the solicitation, the award of contract to another or other acts giving rise to a protest. An oral protest or a protest to an official, employee, User Department, or other person apart from the Director of Purchasing & Contract Compliance does not comply.

2.25 FIRST SOURCE JOBS POLICY

It is the policy of Fulton County Government to provide employment opportunities to the citizens of Fulton County. This policy will apply to all contracts procured through the Department of Purchasing & Contract Compliance valued in excess of \$200,000. The Prime Contract is expected to utilize the First Source Jobs Program to fill 50% of the entry level jobs which arise as a result of any project funded in whole or in part with County funds with residents of Fulton County. Forms are provided in Section 6 of this RFP.

2.26 NON-COLLUSION

By submitting a signed proposal, Offeror certifies that there has been no

collusion with any other Offeror. Reasonable grounds for believing Offeror has an interest in more than one proposal will result in rejection of all proposals in which the Offeror has an interest. Any party to collusion may not be considered in future proposals for the same or similar work. See Section 5, Proposal Forms for declarations and affidavits.

2.27 GENERAL REQUIREMENTS

1. Proposals may be withdrawn upon receipt of a written request prior to the stated due date and time. If a firm seeks to withdraw a proposal after the due date and time, the firm must present a notarized statement indicating that an error was made, with an explanation of how it occurred. The withdrawal request must be accompanied by documentation supporting the claim. Prior to approving or disapproving the request, an opinion will be obtained from Fulton County's Legal Counsel indicating whether the firm is bound by its proposal.

Proposals for projects that are solicited pursuant to the Georgia Local Government Public Works Construction Law (O.C.G.A. § 36-91-1 et seq.) may be withdrawn as follows:

The County must advise Offerors in the request for proposals of the number of days that Offerors will be required to honor their proposals. If an Offeror is not selected within 60 days of opening the proposals, any Offeror that is determined by the governmental entity to be unlikely of being selected for contract award will be released from the proposal.

2. Fulton County shall be the sole judge of the quality and the applicability of all proposals. Design, features, overall quality, local facilities, terms and other pertinent considerations will be taken into account in determining acceptability.
3. The successful Offeror must assume full responsibility for delivery of all goods and services proposed.
4. The successful Offeror must assume full responsibility for replacement of all defective or damaged goods and/or performance of contracted services within thirty (30) days notice by the County of such defect, damage or deficiency.
5. The successful Offeror must assume full responsibility for providing warranty service on all goods, materials, or equipment provided to the County with warranty coverage. Should a vendor be other than the manufacturer, the vendor and not the County is responsible for contacting the manufacturer. The Offeror is solely responsible for arranging for the service to be performed.
6. The successful Offeror shall be responsible for the proper training and certification of personnel used in the performance of the services proposed.

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7. The successful Offeror shall not assign, transfer, convey, sublet, or otherwise dispose of any contract resulting from the RFP or of any of its rights, title or interest therein without prior written consent of the Fulton County Board of Commissioners.
 8. In case of default by the successful Offeror, Fulton County may procure the articles or services from another source and hold the successful Vendor responsible for any resultant excess cost.
 9. All proposals and bids submitted to Fulton County are subject to the Georgia "Open Records Act", Official Code of Georgia, Annotated (O.C.G.A.) § 50-18-70 et seq.
 10. All proposals and bids submitted to Fulton County involving Utility Contracting are subject to the Georgia law governing licensing of Utility Contractors, O.C.G.A. §43-14-8.2(h).

**SECTION 3
PROPOSAL REQUIREMENTS**

3.1 SUBMISSION REQUIREMENTS

3.1.1 Proposal Submission Date and Submittal Format

All Proposals, including all attachments, must be received by the County in a sealed package no later than **May 15, 2013 at 11:00 A.M.** and must be addressed to:

**REQUEST FOR PROPOSALS RFP #13RFP88017C-MT
Fulton County Department of Purchasing & Contract Compliance
Public Safety Building
130 Peachtree Street S.W. Suite 1168
Atlanta GA 30303**

The Proposal shall consist of a Technical Proposal, a Cost Proposal and all documents listed on the Required Submittal Checklist (Exhibit 1). The Technical Proposal shall include proposer information, technical information, business-related information, and any Technical Proposal forms and Questionnaires requested. The Cost Proposal shall include the Cost Proposal Forms and any information describing the basis for pricing and must be separately, sealed, marked and packaged.

The required content of the Technical Proposal and Cost Proposal is further specified in this section of the RFP. The Proposal must be signed and acknowledged by the Proposer, including certain information to be provided under oath as required under applicable law, in accordance with the instructions herein and the various proposal forms.

THE TECHNICAL PROPOSAL, THE COST PROPOSAL AND CONTRACT COMPLIANCE EXHIBITS SHALL BE SUBMITTED IN SEPARATE, SEALED ENVELOPES OR PACKAGES. THE INCLUSION OF ANY COST INFORMATION IN THE TECHNICAL PROPOSAL MAY RESULT IN SUCH PROPOSAL BEING REJECTED BY THE COUNTY.

Each envelope or package shall be clearly marked as follows:

**REQUEST FOR PROPOSALS RFP #13RFP88017C-MT
401(a) Defined Contribution Plan Administrative Services
[Technical or Cost Proposal]
Proposer's Name and Address**

3.1.2 Number of Copies

Proposers shall submit the following:

Technical Proposal, five (5) original and five (5) copies on CD media in PDF format.

Contract Compliance Exhibits, one (1) original with the Technical Proposal marked "Original" and one (1) copy in a separate sealed envelope.

Financial Information, one (1) original with the Technical Proposal marked "Original" and one (1) copy in a separate sealed envelope.

Cost Proposal, one (1) original and one (1) copy in a separate sealed envelope.

All Proposals must be complete with all requested information.

3.2 OVERVIEW OF PROPOSAL REQUIREMENTS

Proposers shall submit Proposals in accordance with the content and format requirements set forth in this RFP. Proposals should be clearly organized and structured in a manner that allows materials included in the document to be located easily.

Each of the instructions set forth in this section must be followed for a Proposal to be deemed responsive to this RFP. In all cases, the County reserves the right to determine, at its sole discretion, whether any aspect of the Proposal meets the requirements set forth in this section. The County reserves the right to reject any Proposal, which in its judgment, does not comply with these Proposal submission requirements.

Proposing firms must meet the following requirements:

- For existing vendor (Mass Mutual) to be eligible to submit a proposal, they must agree to waive any redemption fees, waive any withdrawals limitations on the Diversified Bond SAGIC account (account shall be fully distributed with 120 days' notice from Fulton County), and waive any back end fees associated with the assets moving to the new vendor in the event they are not selected as the most qualified vendor and advantageous Proposer based on the evaluation criteria set forth in Section 4 of the RFP. For the proposal to be considered, a letter to this affect signed by an authorized representative of the organization must be submitted with the Executive Summary of the Technical Proposal.

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- The firm must have at least 10 years of experience administering public sector Retirement Plans and must administer a minimum of \$1 billion dollars in assets in public sector retirement plans.
 - The prime bidder will be a Fiduciary of the Plan and must perform all Plan Sponsor Investment Advisory Services and all Recordkeeping Services and as it relates to the management of the Plan. All other services (e.g. Custodial, participant educational services, marketing, etc.) may be provided by a sub-contractor of the prime bidder and may be paid through a Plan Expense Reimbursement Account (“PERA”) upon request of the selected firm. The Prime Bidder assumes all Fiduciary Liability for any/all contracted services performed by sub-contractors for the Plan and for paying the fees such sub-contractors charge for the performance of such contracted services, which must be disclosed in the Contracts. The County will not agree to a Broker of Record arrangement and will not execute a Broker of Record Agreement.
 - On-site educational specialists provided by the vendor must be properly licensed to give participant advice and have at least five years of experience providing on-site participant educational services for public sector retirement plans.
 - Representatives, including sub-contractors, will be absolutely forbidden to sell ancillary products (such as life insurance and annuities) to plan participants, without prior written permission from Fulton County. Participant data is the sole property of Fulton County and may not be used in any way to market other products or be sold to other organizations without the express written consent of Fulton County. These provisions will be included in the contract with the vendor for the plans.
 - A wide spectrum of investment options must be available to plan participants, including a stable value fund or fixed rate account that does not restrict participant withdrawals or transfers (with the exception of transfers to “competing” fixed income funds) and the asset classes requested in the investment section of the questionnaire. Insurance company General Accounts may not be offered to the plans.
 - There may be no termination, withdrawal or transfer charges or restrictions (including market value adjustments) throughout the term of the contract. The only exceptions are a) stable value fund restrictions against direct fund transfers into competing fixed income funds, b) charges for early withdrawal from fixed maturity or other structured investment products (such as CDs) which have a clearly defined investment period, c) industry standard

withdrawal limitation on stable value of fixed accounts, not to exceed one year, and d) redemption fees for short-term trading.

- The vendor must accept full responsibility for processing errors it makes and they must be reported within a reasonable period of time. In the event a participant incurs a loss or a lost opportunity due to such an error, the vendor shall adjust the participant's account to the same level as if the processing error had not occurred. These terms must be included in the contract.
- The vendor must comply with all components of this RFP. Unless otherwise noted in your cover letter, it is assumed that by submitting a response to this RFP, your response conforms to all specifications in every way. After finalist selection, the proposal of additional terms may not be considered.

Any proposal not meeting these specifications will not be considered. A letter that confirms that each provider meets all of the above requirements must accompany the proposal at part of the Technical Proposal Executive Summary.

3.3 SCOPE OF WORK

The successful proposer will provide comprehensive defined contribution retirement services to include:

Administrative Services

- Ability to enroll new employees via a by Personal Digital Assistant (PDA) in the bi-weekly new hire orientations
- Withdrawal processing – Lump Sum and partial distributions in compliance with Plan Document
- Distribution kits
- Proactive participant rollover educational services
- Fund profiles and performance information via Call Center and Internet
- Address changes
- Personalized information available online
- Proactive minimum distribution services
- Online Participant Beneficiary Changes

Compliance Services

- Regulatory updates to Plan Sponsor
- Compliance consulting and conformance materials

Reporting Services

- Participant Internet access – Online access for participant accounts should include, but not be limited to: Investment Fund Options and fund fact sheets (e.g. Morningstar reports); Participant balance by fund option,

including self-directed brokerage account balance; fund performance (YTD, 1yr, 3yr, 5yr); personal performance; ability to transfer between fund options, including the self-directed brokerage account; rebalancing tools; investment election changes for future contributions; beneficiary info and changes; quarterly statements; and address info and changes.

- Onsite Plan Sponsor Comprehensive Quarterly plan level reporting package should include, but not be limited to: Economic Update; fund performance reporting which includes quarterly, YTD, 1yr, 3yr, 5yr performance and expense ratios and Morningstar Rating for each mutual fund offering; Mutual Fund Report Card and watch list; Investment Offering statistics, including activity, balances, and percentage of Plan Assets; quarterly and YTD cash flow analysis; Participant Balances by Age Reporting; Investment Option Balances broken down by Participant Status (e.g. Active, beneficiary, retired, terminated, QDRO); Forfeiture account detailed reporting; and Participant Interaction reporting (e.g. Call Center, website access, new hire orientation, one-on-one checkups, Department Group Sessions, Investment Education Classes).

Communication & Educational Services

- Ongoing communication consultant assigned to the relationship
- Wide range of retirement planning and investment education materials
- Enhanced user friendly participant statements
- Provide an on-site full time educational specialist for 40 hours a week who will be responsible for the following participant educational services:
 - Attend new hire orientation every other Wednesday at the Fulton County Government Center and assist new employees with the registration/investment election process.
 - Conduct one-on-one participant meetings to assist with performing a risk assessment, explain investment options, assist with asset allocation and investment offering selections and rebalancing, discuss preparing for retirement, and explain post employment retirement/withdrawal options. The educational specialists will be expected to travel throughout the County to all Fulton County offices to assist employees with one-on-one meetings.
 - Conduct educational seminars through the Fulton County Training Department for various topics designated in assisting our participants in their retirement planning.
 - Attend Departmental Group Sessions held throughout the County to discuss the 401(a) Plan and schedule individual one-on-one sessions with plan participants.
 - Assist employees with rollover process if they elect full distribution from the Plan upon separation from the County.

3.4 **TECHNICAL PROPOSAL FORMAT AND CONTENT**

The Technical Proposal shall include the appropriate and requested information in sufficient detail to demonstrate the Proposer's knowledge, skills and abilities to provide requested services and will be reviewed and evaluated based on each Proposer's responses to the criteria described below.

The Technical Proposal shall be arranged and include content as described below:

Section 1 - Executive Summary

The executive summary shall include a brief statement of approach to the work, understanding of the project's goals and objectives and demonstrated understanding of the project's potential problems and concerns. At minimum, the Executive Summary should also include the following information:

- Name and location of prime Proposal's firm.
- Description of legal structure of Team (corporation, LLC, joint venture, sub-contractors, etc.)
- The Proposer team's ability and commitment to provide all the necessary resources to successfully complete the transition, provide administration of plan assets, and provide education services to plan participants.
- A letter confirming that your firm meets all of the requirements set forth in Section 3.2 – Proposal Requirements. The current provider, if submitting a proposal, must also include their commitment to the waivers outlined for redemption fees, back end fees, and that the withdrawal limitation on the SAGIC fund will not exceed 120 days' notice from Fulton County if they are not selected as the most qualified vendor.

Section 2 – Project Plan or Project Approach

The Project Plan must be broken down into two sections:

Transition of Plan Assets

The Project Plan for the transition should detail at a minimum the following:

- All major tasks associated with the transition
- Timeline for when each task will start and finish
- Who will be primarily responsible for each task
- Necessary actions for each task to be successful and completed within the projected timelines

Project Plan – Post Transition

The Post Transition Project Plan should detail at a minimum the following:

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- Overview of post transition communication plan
 - Overview of post transition educational services plan, including overview of dedicated resources committed to the Plan and Project Plan for rolling out group sessions, training session options, one-on-one sessions, etc.
 - Overview of Plan Sponsor reporting plan

Section 3 – Project Team Qualifications/ Qualifications of Key Personnel

1. Provide resumes for each of the key personnel proposed for this project with specific emphasis on the Transition Team and the ongoing Support Team post transition, including the educational specialists that will be providing the onsite educational services.
2. Each resume should be limited to no more than two (2) pages per person and be organized according to the following:
 - Name and Title
 - Professional Background
 - Current and Past Relevant Work Experience
 - All Certifications held
 - Listing of Public Retirement Plans they currently service, including type of Plan, years they have served for the Plan, size of Plan, and number of participants
 - Include two (2) references for each key personnel member on similar projects.

Section 4 - Availability of Key Personnel (both transition team and ongoing support team post transition)

- (1) Percentage of time key personnel will spend on this project
- (2) Current workload of key personnel

Section 5 - Local Preference

Local Preference is given to businesses that have a business location within the geographic boundaries of Fulton County. The term business location means that the business has a staffed, fixed, physical place of business located within Fulton County and has had the same for at least one (1) year prior to the date of the business' submission of its proposal or bid, as applicable and has had held a valid business license from Fulton County or a city located within Fulton County for the business at a fixed, physical, place of business, for at least one (1) year prior to the date of the business' submission of its proposal or bid as applicable.

In order to receive the Local Preference points of five (5) points the Proposer must meet one (1) of the following criteria, provide supporting documentation as

required and certify under oath that it is eligible to receive the local preference points by signing and submitting Form H, Local Preference Affidavit located in Section 5 of this RFP.

The Proposer must indicate which one (1) of the following criteria they will utilize in order to receive local preference:

1. Business having a business location within the geographic boundaries of Fulton County.

The following supporting documentation must be provided:

- Copy of occupational tax certificate (business license) form Fulton County or a city located within Fulton County, or;
- Copy of a lease or rental agreement, or;
- Proof of ownership interest in a location within the geographical boundaries of Fulton County.

1. Businesses where at least fifty-one percent (51%) of the owners of the business are residents of Fulton County but the business is located outside of Fulton County.

The following supporting documentation must be provided:

- Provide the residential address of the business owner(s).

2. Businesses where at least fifty-one percent (51%) of the employees of the business are residents of Fulton County but the business is located outside of Fulton County.

The following supporting documentation must be provided:

- Provide a list of all employees name and address.

Failure to provide the required supporting documentation with your proposal submittal shall result in your firm receiving a "0" (zero) for Local Preference. In the event the affidavit or other declaration under oath is determined to be false, such business shall be deemed "non-responsive" and shall not be considered for award of the applicable contract.

Section 6 – Service Disabled Veterans Preference

Service Disabled Veterans Business Enterprise Preference is given to businesses that are independent and continuing operations for profit, performing commercially useful functions, and which are owned and controlled by one or

more individuals who are disabled as a result of military service who have been honorably discharged, designated as such by the United States Department of Veterans Affairs, and is located within the geographic boundaries of Fulton County. The Service Disabled Veteran Business Enterprise (“SDVBE”) must be certified as such by the County’s Office of Contract Compliance.

In order to receive the SDVBE Preference points the Proposer must submit a copy of their certification letter from the Office of Contract Compliance and certify under oath that it is eligible to receive the SDVBE preference points by signing and submitting Form I, Service Disabled Veterans Preference Affidavit located in Section 5 of this RFP.

Section 7 – Relevant Project Experience/Past Performance

Identify three (3) projects where the Proposer has performed projects similar in size and scope with entities comparable to Fulton County within the past three (3) years. Limit your response to one (1) page per project; please provide the following information for each project:

- The name of the project, the owner, year performed and the project location.
- A description of the project.
- A reference, including a contact name, addresses and phone number. This reference should be the owner’s staff member who was in charge of the project for the owner.

Complete and submit the following table:

	# of 401(a) Plans	Avg # of participants per Plan	Total Assets within Plan Asset Range	% of 401(a) Assets
<\$5M			\$	%
\$5M-\$9.9M			\$	%
\$10M-\$99M			\$	%
\$100M-\$249M			\$	%
\$250M-\$999M			\$	%
>\$1B			\$	%
Total # of Plans, Participants, and AUM				Should total 100%

Section 8 – Proposer Financial Information

It is the policy of the County to conduct a review of a firm’s financial responsibility in order to determine the firm’s capability to successfully perform the work.

If submitting as a Joint Venture, Partnership, Limited Liability Corporation or Limited Liability Partnership, the financials must be submitted for each entity that comprises the prime contractor.

The following documentation is required in order for the County to evaluate financial responsibility:

- (1) Provide your firm's most recent balance sheets.
- (2) Provide your firm's most recent Dun & Bradstreet, Value Line Reports or other credit ratings/report.
- (3) Identify any evidence of access to a line or letter of credit. The evidence must be provided by a financial institution.
- (4) Provide a sworn statement that your firm has not filed petition(s) for federal bankruptcy or state insolvency. The statement must be notarized.

Section 9 - Core Questionnaire

I. Participant Services

A. On-Site Service – Transition. Describe the participant enrollment and conversion program you will conduct between the time you are selected to serve the plan and the time assets are transferred to your program:

1. Provide a schedule for initial enrollment and conversion.
2. Will participants' accounts be "mapped" (automatically transferred) to investments in your program or will you require them to instruct you on how to transfer their investments?
3. Discuss how you will communicate plan changes to employees and to participants who we no longer employ.
4. Quantify your on-site personnel commitment, including the number of group meetings you will conduct during the transition. Will participants have the opportunity to receive individual consultations?

B. On-Site Service – Post Transition. Describe the ongoing enrollment and educational program that will be performed by your on-site service representatives:

1. Describe the individual consultations your representatives will provide on-site. How many hours per week will each of these individuals be onsite at Fulton

County locations to provide the educational services. Describe the software your representatives use to work with participants during consultations.

2. Describe the on-site group education you will provide on an on-going basis. What specific subjects are covered in your program?

3. Briefly describe how you assist participants nearing retirement.

4. How is your approach to educating public sector employees different from your service for private sector plans? Describe the experience the proposed representative for our plan has in serving public sector employees.

5. How much time will representatives dedicate on-site to serve our plan? Define how many educational seminars and individual consultations will be provided annually.

6. Are your representatives salaried employees? On average, what percent of their total compensation is salary and what percent is bonus/commission? Is their compensation affected in any way by participant investment or disbursement decisions? Do your representatives receive any additional compensation for the sale of annuities to participants?

7. What financial planning services are available through a Certified Financial Planner or other similarly trained personnel? How are these individuals compensated?

8. Provide samples of all 401(a) employee enrollment and communications materials.

C. Internet. Address the following with regard to your web-based services:

1. Describe the educational features offered to public employees on your web site. Does it offer functionality for determining a) how much to save each year toward retirement, and b) asset allocations? Does it have the flexibility to make these determinations based on overall household assets?

2. Describe investment advice available to participants. What firm will be providing these services?

3. Describe the transactions that can be implemented by employees on-line.

4. Provide the URL for your web site and a test account for us to view all participant functions. The test account should be made available to us through the date in which our final selection decision is scheduled.

5. In the past calendar year, how many hours was your web site down? How much of this down time was planned?

6. Are participants able to set up automatic rebalancing of their accounts based on a pre-established targeted asset allocation?

D. Call Center. Describe your call center:

1. What transactions and information are accessible through call center representatives and through your voice response system? Is it a dedicated line to public sector retirement plan service personnel, or do they cover all other aspects of your business?

2. Describe the licenses held, special training received and other qualifications of call center personnel. Are your call center representatives dedicated solely to serving public sector employees?

3. Describe how participants transfer from the voice response system to the call center. When are they notified they can transfer to a representative?

4. What hours are call center representatives available?

5. Complete the following chart for the primary call center for our plan for each quarter of last year:

Item	1 st Quarter	2 nd Quarter	3 rd Quarter	4 th Quarter
Call abandon rate				
Average length of call				
Average response time				
Unscheduled down time				

6. Describe how you ensure and measure the quality of your call center.

7. How do you manage peak volume when you have large number of calls?

8. Describe the ability, if any, to track the types of customer inquiries and develop new materials/training/routines for resolving inquiries (e.g., if tax code changes cause new inquiries).

E. Statements. Address the following with regard to participant statements:

1. Do you provide aggregate account information for participants if you administer multiple plans?

2. Does your statement provide a) asset allocation graphics and b) a personal rate of return? Provide a sample quarterly statement.

-
3. Can a customized message be printed on statements for participants in our plan? If so, how long can the statement message be?
 4. How many days after quarter-end are statements mailed? What percent of statements mailed over the past four quarters met this target?
 5. Are your statements made available on-line? What is the turnaround time? Do participants have the option to discontinue paper statements and receive copies only on-line?

F. Performance. Address the following questions related to the impact of your participant services.

1. Describe surveys you conduct to measure participant satisfaction.
2. How do you measure the success of your educational programs?
3. How has your educational program affected participant decisions? In the aggregate, how are assets allocated between the equity, fixed income/stable value and balanced/lifestyle/lifecycle funds you administer? What percent of participants making withdrawals opt for periodic payments, lump sum payments and annuities?

II. **Plan Sponsor Services**

- A. Describe how you interact with plan sponsors on a daily basis and how you minimize the plan sponsor's workload through automation.
- B. Describe the services you offer to help maintain compliance with current and proposed regulations as they relate to public sector retirement plans.
- C. What information do you provide plan sponsors to assist with their investment and plan due diligence? Provide a sample employer statement and plan review we would receive and disclose the frequency of each statement/review report. Please disclose any Plan Sponsor Reporting Requirements outlined in the Scope of Services in which your firm is unable to meet in providing on a quarterly basis.
- D. Who will serve as our contact for daily questions and issues related to the administration of our plan?
- E. Describe on-line services available to plan sponsors. Provide the URL for your web site and a test account for us to view all plan sponsor functions. The test account should be made available to us through the date on which our final selection decision is scheduled.

III. Investment Management

The Fulton County Defined Contribution Plan has an investment policy that provides general guidelines for the 401(a) plan providers. Please refer to the attached investment policy.

- A. Briefly describe your overall investment philosophy. What are your criteria for selecting and retaining an investment management firms? How do you structure investment options for plan participants?
- B. Do you have a watch list process to help identify mutual fund vehicles that are not performing to expectations? If yes, please outline the evaluation/scoring process and the scoring criteria and provide a sample copy of the watch list report.
- C. Propose one mutual fund for each of the categories in the chart below. Offer one option only for each category and provide the data requested for both the fund and its market benchmark as of December 31, 2012. If the fund has a custom or blended benchmark, provide data for each benchmark and indicate the benchmark allocations (which should add to 100%).

Asset Class	Proposed Fund Offering Name and Share Class Benchmark Name	1 year Return as of 12/31/2012	3 Yr Return as of 12/31/2012	5 Yr Return as of 12/31/2012	10 Yr Return as of 12/31/2012	3-year Beta	3-year Standard Dev	Morningstar Rating
Large Cap Growth (active)								
Benchmark	Russell 1000 Large Growth Index							
Large Cap Growth (passive)								
Benchmark	Russell 1000 Large Growth Index							
Large Cap Blend (active)								
Benchmark	S&P 500 Index							
Large Cap Blend (passive)								
Benchmark	S&P 500 Index							
Large Cap Value (active)								
Benchmark	Russell 1000 Value Growth Index							
Large Cap Value (passive)								
Benchmark	Russell 1000 Value Growth Index							
Mid Cap Growth (active)								
Benchmark	Russell Mid-Cap Growth Index							
Mid Cap Value (active)								
Benchmark	Russell Mid-Cap Value Index							
Small Cap Growth (active)								
Benchmark	Russell Small Cap Growth Index							
Small Cap Value (active)								
Benchmark	Russell Small Cap Value Index							
Int'l/Global Large Core (active)								
Benchmark	MSCI AC World ex-US							
Int'l/Global Small/Mid Cap (active)								
Benchmark	MSCI World Index							
Global Multi Sector Bond								
Benchmark	Barclays US Agg Bond Index							
Intermediate Core Bond								
Benchmark	Barclays US Agg Bond Index							
US Government Bond								
Benchmark	Barclays US Government Bond Index							
S/T Offering - Principal Protected								
Benchmark	H15T3M Index							
Target Date Fund - S/T								
Benchmark	DJ Target Today Index							
Target Date Fund - 2015								
Benchmark	DJ Target 2015 Index							
Target Date Fund - 2020								
Benchmark	DJ Target 2020 Index							
Target Date Fund - 2025								
Benchmark	DJ Target 2025 Index							
Target Date Fund - 2030								
Benchmark	DJ Target 2030 Index							
Target Date Fund - 2035								
Benchmark	DJ Target 2035 Index							
Target Date Fund - 2040								
Benchmark	DJ Target 2040 Index							
Target Date Fund - 2045								
Benchmark	DJ Target 2045 Index							
Balanced Fund								
Benchmark								

Attach copies of Morningstar summary sheets for each fund proposed.

For the bond fund, provide the average maturity, average duration and average credit quality as of 12/31/2012.

- C. Describe the flexibility you will provide for the plan sponsor to select investments for use by our plan. If you are providing the plan sponsor open access to your alliance with mutual fund families to customize the fund line-up, provide a list of the fund families and a list of the funds available from those families with tickers, fund expenses and performance on a spreadsheet in the appendix of your proposal.
- D. Describe your lifestyle and/or lifecycle funds and their underlying components. How are asset allocations adjusted and rebalanced over time? Provide the following data for each of the funds:

Section 10 - Due Diligence Questionnaire

I. Introduction

- A. What is the primary business of the parent company and/or affiliates? If the proposer is an insurance company or an issuer of debt, provide Moody's, Standard & Poor's, and A.M. Best ratings and the most recent reports.
- B. Describe your staff recruitment programs. What was the level of turnover for staff dedicated to public sector retirement plans in the last calendar year?
- C. Describe training provided for your (a) customer service staff, (b) investment advisory staff, and (c) educational specialists.
- D. Provide five references of public sector retirement plan clients. Include a contact name, title, phone number and e-mail address.
- E. Provide sample copies of all contracts/documents that would be required in the event your firm is selected to perform the Plan Services.

II. Plan Administration

- A. How quickly are contributions invested in participant accounts? How do you receive contribution data and money? Are you able to ACH Debit the County's bank account upon receipt of the contribution file? How do you monitor and enforce contribution limits?
- B. Describe how fund transfers are executed. What is your deadline for receiving instructions to implement fund transfers at the close of business?
- C. Describe in detail the annuity and non-annuity disbursement options available to plan participants. What flexibility do you give participants in specifying the sequence in which investment options will be depleted?
- D. How long does it take to mail a check to the participant once a withdrawal is authorized? How long does it take to mail a check to another vendor once a participant provides an instruction to make the transfer?
- E. How do you report disbursements to the IRS and state tax authorities? Describe the tax statements you provide to participants on plan disbursements.
- F. Describe how you handle minimum required distributions.
- G. What confirmations do you mail to participants? What confirmations are made available to participants on-line? How quickly are confirmations sent to participants?

-
- H. Describe how you adhere to the policies of investment funds administered with regard to market timing.
 - I. Describe the quality control procedures you have in place. What types of reconciliation and editing do you perform? How do you resolve data discrepancies with respect to transaction processing?
 - J. Describe your process for resolving issues that occur. What are your standards for the timing of resolving issues and how do you meet that target? What are your escalation procedures for issues that are not resolved within a standard period of time?
 - K. How do you curtail excessive trading by individuals that may impact other participants?

III. Record Keeping

- A. Describe the record keeping hardware and software used by your organization. Was the software purchased or developed in-house?
- B. Describe your back-ups and disaster recovery plan. How often is the plan tested?
- C. Describe procedures and safeguards used to provide systems security. Discuss your Internet and call center security. Describe how confidentiality of data is ensured.
- D. What is the capacity utilization rate of your record keeping system's hardware and voice response unit? How do you ensure adequate capacity as demands on your system grow?
- E. Do you record keep assets at NAV or on a unitized basis? How do you record keep assets in the stable value fund if offered?
- F. Describe internal and external audits of your record keeping system and administrative functions. Do you receive a SAS-70? If so, provide a copy.
- G. Confirm that you will provide total access to plan data during business hours to our auditor as required.
- H. In the event of an error in your control, how do you make participants and the plan whole?
- I. Describe performance guarantees you will make for the plan, with specific penalties for non-compliance.

IV. Transition

- A. Describe how you handle accounts in distribution.
- B. Describe how you convert assets in a self-directed brokerage. Can you implement an in-kind transfer of assets within brokerage accounts?
- C. Describe the blackout period and what participants can and cannot do during this period. What is the typical blackout period for provider-to-provider conversions you have completed in the past year?
- D. How do you ensure continuity is maintained from the transition to the ongoing service for our plan?

3.5 COST PROPOSAL FORMAT AND CONTENT

The Cost Proposal shall be provided in a **separate sealed envelope**. The Cost Proposal shall include current information and shall be arranged and include content as described below:

Section 1 - Introduction

The Proposer shall include an introduction which outlines the contents of the Cost Proposal.

Section 2 - Completed Cost Proposal Forms

The Proposer is required to complete **all** of the Cost Proposal Forms provided.

Cost Proposal

The County has established the following process to evaluate cost proposals for Request for Proposals (RFP). The respondent with the lowest total cost will receive the full 25 points. For respondents with the second, third, fourth, etc., their total costs will be divided into the lowest cost and multiplied by 25, the total points allowed for cost.

- 1) The first component of calculating the total proposed cost is the total estimated expense associated with the mutual fund offerings. Please submit the following information for the proposed fund lineup provided in Section 7 Core Questionnaire/IV(C) for calculation purposes. The cost will be calculated by multiplying the Balance as of 12/31/2012 times the Net Expense Ratio for each asset class and adding the totals together.

Asset Class	Proposed Fund Offering Name and Share Class	Ticker	Asset Class Balance as of 12/31/2012	Net Expense Ratio Effective 12/31/2012	Estimated Annual Cost (Balance x Net Expense Ratio)	Revenue Sharing earned by vendor (in bp)
Large Cap Growth (active)			\$12,168,561		\$	bp
Large Cap Growth (passive)			\$0		\$	bp
Large Cap Blend (active)			\$27,543,709		\$	bp
Large Cap Blend (passive)			\$38,997,062		\$	bp
Large Cap Value (active)			\$0		\$	bp
Large Cap Value (passive)			\$14,077,901		\$	bp
Mid Cap Growth (active)			\$30,652,902		\$	bp
Mid Cap Value (active)			\$9,311,652		\$	bp
Small Cap Growth (active)			\$13,135,201		\$	bp
Small Cap Value (active)			\$9,133,708		\$	bp
Intl/Global Large Core (active)			\$19,112,528		\$	bp
Intl/Global Small/Mid Cap (active)			\$2,323,536		\$	bp
Global Multi Sector Bond			\$4,215,661		\$	bp
Intermediate Core Bond			\$12,130,407		\$	bp
US Government Bond			\$13,237,951		\$	bp
Target Date Fund - S/T			\$555,424		\$	bp
Target Date Fund - 2015			\$1,456,025		\$	bp
Target Date Fund - 2020			\$0		\$	bp
Target Date Fund - 2025			\$2,742,594		\$	bp
Target Date Fund - 2030			\$0		\$	bp
Target Date Fund - 2035			\$3,953,228		\$	bp
Target Date Fund - 2040			\$0		\$	bp
Target Date Fund - 2045			\$3,152,638		\$	bp
Balanced Fund Offering			\$23,337,630		\$	bp
ESTIMATED TOTAL ANNUAL COST OF INVESTMENT OFFERINGS					\$	

2) The second component of calculating the total proposed cost is the total estimated expense associated with the self-directed brokerage accounts (currently 26 participants have SDBA). Please provide the following commissions/fees for these accounts:

- Annual Account fee
- Fee schedule for Broker Assisted Securities Transactions (stocks & fixed income)
- Fee schedule for online securities transactions (stocks & fixed income)
- Any overriding minimums for online security transactions
- Service fees for online mutual fund transactions (Load & No Load)
- Any/All other Fees associated with SDBA, excluding fees imposed by the mutual fund companies (front load, back load, excessive trading charges).

For purposes of calculating the estimated cost proposal, the County will Utilize the following assumptions for self-directed brokerage accounts:

- 26 SDBAs
- 20 Broker Assisted Equity Trades per year, each with a share price of \$20 per share and a principal cost of \$20,000
- 200 Online Trades performed each year, 100 with a share price of \$25 per share and a principal amount of \$10,000 and 100 with a share price of \$50 per share and a principal amount of \$20,000
- 25 Online No-Load Mutual Fund Purchases
- 10 Online Load Mutual Fund Purchases

-
- 3) The final component of calculating the total proposed cost is any incremental fees including but not limited to plan asset based fees, participant fees, ancillary service fees and any other fees/expenses, or any front end/back end/or surrender charges associated with any investment options included in your proposed investment fund lineup. Please details any such fees, and your firm (if selected) will not be permitted to assess fees or expenses of any kind for services you have proposed that are not clearly disclosed in this written response.

The total amount for the cost proposal for each firm which be calculated by adding the total cost of #1, #2, and #3 above. This is the amount that will be used to determine the scoring for the cost proposal.

In addition to the above, please provide the below cost info/commitments:

Due to the various methods of disclosing all of the fees associated with the short term investment options the County has determined it is difficult to do a valid comparison. Therefore for disclosure purposes, please provide the following information as it relates to the cost associated with your short term investment offering (Stable Value, Fixed Account, etc):

- What is the expense ratio that is disclosed to the street, if any?
- What are the estimated expenses above the expense ratio (in bp) that are netted from returns and not included in the expense ratio?
- What is the total 12(b)1 and revenue sharing amount (in bp) received by your firm on this product?
- Is the share class proposed the lowest share class available for this investment product? If not, please provide a matrix of all share classes available for this product, including the expense ratios and revenue sharing amount for each share class.

Please provide your required revenue sharing requirement (in bps) on the Assets Under Management, in order to provide all services outlined in your proposal. Please discuss your commitment to excess revenues generated from the Plan above this requirement, and your ability to revert to lower share classes to ensure all excess earnings are directed back to Plan Participants.

SECTION 4 EVALUATION CRITERIA

4.1 PROPOSAL EVALUATION – SELECTION CRITERIA

The following criteria will be used to evaluate the proposals submitted in response to this RFP:

Evaluation Criteria	Weight
Quality of proposed investment fund lineup – Diversification of Fund Family Offerings, short term offerings, and weighted average return of proposed investment offerings.*	30%
Project Plan/Approach to Work	10%
Qualifications of Key Personnel	10%
Relevant Project Experience/ Past performance	10%
Availability of Key Personnel	8%
Local Preference	5%
Service Disabled Veterans Preference	2%
Cost Proposal**	25%
TOTAL POINTS	100%

*Of the total available 30 points to be awarded, 20 points will be awarded based on the previous 3-year weighted average return of the investment lineup submitted given the current asset allocation of the Plan as outlined in Section 1.2 “Plan Asset Allocation as of December 31, 2013”. The firm submitting the investment fund lineup with the highest previous 3-year weighted average return will receive the full 20 points. The remaining firms will receive a pro-rata share of the 20 points based on the percentage of the incremental return between the benchmark return and the highest weighted average return captured based on their proposed investment fund lineup. 5 points will be awarded based off of the terms of the short term investment vehicle (stable value of fixed account) offering, and whether the offering provides the desired liquidity terms of the County of 12 months or less. Firms will either receive 5 points or 0 points. 5 points will be awarded based off of the diversification of fund family for equity and fixed income mutual fund offerings. All five 5 points will be awarded for lineups reflecting more than 10 fund families, 4 points will be awarded for 9-10 fund families, 3 points for 7-8 fund families, and 0 points will be awarded for firms submitting investment fund lineups with less than 7 fund families offerings.

**Lowest cost provider will be determined by multiplying the net expense ratio of each investment option times the assets in each asset class (as outlined in Section 1.2 Plan Asset Allocation as of December 31, 2013), plus the estimated cost of the self-directed brokerage accounts as outlined in the cost proposal, plus any additional fees as required to be disclosed in the cost proposal. The County will then take the total estimated cost for each provider and allocate points for cost accordingly. 25 points will be awarded to the firm submitting the lowest cost proposal. The remaining firms will receive a pro-rata share of the 25 points based on the percentage of points captured compared to the lowest cost provider.

SECTION 5 PROPOSAL FORMS

5.1 INTRODUCTION

To be deemed responsive to this RFP, Proposers must provide the information requested and, where applicable, complete in detail all Proposal Forms. The appropriate individual(s) authorized to commit the Proposer to the Project must sign the Proposal Forms. As appropriate, Proposers shall reproduce each Proposal Form and complete the appropriate portions of the forms provided in this section.

Form A: Certification Regarding Debarment

Form B: Non-Collusion Affidavit of Bidder/Offeror

Form C: Certificate of Acceptance of Request for Proposal Requirements

Form D: Disclosure Form and Questionnaire

Form E: Georgia Security and Immigration Contractor Affidavit/Agreement

Form F: Georgia Security and Immigration Subcontractor Affidavit

Form G: Professional License

Form H: Local Preference Affidavit of Bidder/Offeror

Form I: Service Disabled Veteran Preference Affidavit of Bidder/Offeror

5.2 PROPOSAL FORMS DESCRIPTION

Certification Regarding Debarment

Proposer shall complete and submit **Form A**, which certifies that neither it nor its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from doing business with any government agency.

Non-Collusion Affidavit of Bidder/Offeror

Proposer shall complete and submit **Form B**, executed by an authorized officer of the corporation. Proposals developed by a joint venture shall be similarly executed by all joint venture participants.

Certificate of Acceptance of Request for Proposal Requirements

Proposer shall complete and submit **Form C**, which certifies that Proposer has read the solicitation including all addenda, exhibits, attachments and appendices.

Disclosure Form and Questionnaire

The offerors and their joint venture partners or team members and first-tier subcontractors, shall complete and submit **Form D**, which requests disclosure of business and litigation.

Georgia Security and Immigration Contractor Affidavit and Agreement

Proposer shall complete and submit **Form E**, in order to comply with the requirements of O.C.G.A. 13-10-91 and the Georgia Department of Labor Rule 300-10-01-.02.

Georgia Security and Immigration Subcontractor Affidavit

Proposer shall ensure that any and all subcontractor(s), that will be utilized for this project shall complete and submit **Form F**, Subcontractor Affidavit.

Professional License

Proposer and any subcontractor(s) performing work required by state law to be licensed shall complete and submit **Form G** and attach a copy of their license for the work they will perform on this project.

Local Preference Affidavit of Bidder/Offeror

Proposer shall complete and submit **Form H**, which certifies that the Proposer is eligible to receive local preference points.

Service Disabled Veteran Preference Affidavit of Bidder/Offeror

Proposer shall complete and submit **Form I**, which certifies that the Proposer is certified as Service Disabled Veteran Business Enterprise ("SVDBE") by the County's Office of Contract Compliance.

FORM A: CERTIFICATION REGARDING DEBARMENT

- (1) The Offeror certifies that neither it or its subcontractors is presently debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from doing business with any government agency. Any such exclusion may cause prohibition of your firm from participating in any procurement by the Fulton County Government.
- (2) If the Offeror is unable to certify to any of the statements in this certification, such Offeror or subcontractor shall attach an explanation to this bid or proposal.

INSTRUCTIONS FOR CERTIFICATION

By signing and submitting this certification, the Offeror is providing the certification set out below:

- (1) The certification in this clause is a material representation of fact upon which reliance will be placed. If it is later determined that the prospective vendor knowingly rendered a false certification, the Purchasing Agent may pursue all available remedies, including suspension and/or debarment, for withdrawal of award or termination of a contract.
- (2) The prospective Offeror shall provide immediate written notice to the Purchasing Agent if at anytime the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- (3) Offeror shall be under a continuing duty to immediately inform the Purchasing Agent in writing of any changes, if as a result of such changes, the Offeror certification regarding debarment is affected.

DEBARMENT ORDINANCE

The following Section 2-322 of Fulton County Code of Laws establishes the procedure for the debarment of contractors.

(a) *Authority to suspend.*

After reasonable notice to the entity involved and reasonable opportunity for that entity to be heard, the Purchasing Agent, after consultation with user department, the County Manager and the County Attorney shall have the authority to suspend an entity for cause from consideration for award of county contracts. As used in this section, the term entity means any business entity, individual, firm, contractor, subcontractor or business corporation, partnership, limited liability corporation, firm, contractor, subcontractor or business structured; provided, further, that any such entity shall also be subject to suspension under this section if any of its constituents, members, subcontractors at any tier of such entity's and the entity, or any constituent or member, knew or should have known of the commission of the act. The suspension shall be for a period not to exceed three (3) years unless cause is based on a felony conviction for an offense related or associated with fraudulent contracting or misappropriation of funds wherein the suspension shall not exceed seven (7) years.

(b) Causes for Suspension. The causes for suspension include:

- 1) Conviction for commission of a criminal offense as an incident to obtain or attempting to obtain a public or private contract or subcontract, or in performance of such contract or subcontract;
- 2) Conviction of state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or other offense indicating a lack of business integrity or business honesty which currently, seriously and directly affects responsibility as a county contractor.
- 3) Conviction of state or federal anti-trust statutes arising out of the solicitation and submission of bids and proposals;
- 4) Violation of contract provisions, as set forth below, of a character which is regarded by the Purchasing Agent to be so serious as to justify suspension action:
 - a. Failure to perform in accordance with the specifications within a time limit provided in a county contract;
 - b. A recent record of failure to perform or unsatisfactory performance in accordance with the terms of one or more contracts; provided, that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for suspension;
 - c. Material representation of the composition of the ownership or workforce or business entity certified to the county as a minority business enterprise; or
 - d. Falsification of any documents.
- i. For violation of the ethical standards set forth in Fulton County Code Chapter 9, Code of Ethics.
- ii. Knowing misrepresentation to the county, of the use which a majority owned contractor intends to make a minority business enterprise (a business entity at least 51 percent of which is owned and controlled by minority persons, as defined in Fulton County Code Chapter 6, Article B, Minority Business Enterprise Affirmative Action Program and certified as such by the County) as a subcontractor or a joint venture partner, in performing work under contract with the County.

Failure to fully and truthfully provide the information required, may result in the disqualification of your bid/proposal from consideration or termination of the Contract, once awarded. This document must be completed and included as a part of the bid/proposal package along with other required documents.

[SIGNATURES ON NEXT PAGE]

Under penalty of perjury, I declare that I have examined this certification and all attachments hereto, if applicable, to the best of my knowledge and belief, and all statements contained hereto are true, correct, and complete.

On this _____ day of _____, 20__

(Legal Name of Proponent) (Date)

(Signature of Authorized Representative) (Date)

(Title)

STATE OF GEORGIA

COUNTY OF FULTON

FORM B: NON-COLLUSION AFFIDAVIT OF BIDDER/OFFEROR

I, _____ certify that pursuant to Fulton County Code Section 2-320 (11), this bid or proposal is made without prior understanding, agreement or connection with any corporation, firm or person submitting a bid for the same work, labor or service to be done or the supplies, materials or equipment to be furnished and is in all respects fair and without collusion or fraud. I understand collusive bidding is a violation of state and federal law and can result in fines, prison sentences and civil damages awards. I agree to abide by all conditions of this bid or proposal and certify that I am authorized to sign this bid or proposal for the bidder.

Affiant further states that pursuant to O.C.G.A. Section 36-91-21 (d) and (e), _____ has not, by itself or with others, directly or indirectly, prevented or attempted to prevent competition in such bidding or proposals by any means whatsoever. Affiant further states that (s)he has not prevented or endeavored to prevent anyone from making a bid or offer on the project by any means whatever, nor has Affiant caused or induced another to withdraw a bid or offer for the work.

Affiant further states that the said offer of _____ is bona fide, and that no one has gone to any supplier and attempted to get such person or company to furnish the materials to the bidder only, or if furnished to any other bidder, that the material shall be at a higher price.

(COMPANY NAME)

(PRESIDENT/VICE PRESIDENT)

Sworn to and subscribed before me this _____ day of _____, 20__.

(SECRETARY/ASSISTANT SECRETARY)

(Affix corporate seal here, if a corporation)

Notary Public: _____

County: _____

Commission Expires: _____

NOTE:

IF THE OFFEROR IS A PARTNERSHIP, ALL OF THE PARTNERS AND ANY OFFICER, AGENT, OR OTHER PERSON WHO MAY HAVE REPRESENTED OR ACTED FOR THEM IN BIDDING FOR OR PROCURING THE CONTRACT SHALL ALSO MAKE THIS OATH.

IF THE OFFEROR IS A CORPORATION, ALL OFFICERS, AGENTS, OR OTHER PERSONS WHO MAY HAVE ACTED FOR OR REPRESENTED THE CORPORATION IN BIDDING FOR OR PROCURING THE CONTRACT SHALL MAKE THE OATH.

FORM C: CERTIFICATE OF ACCEPTANCE OF REQUEST
FOR PROPOSAL REQUIREMENTS

This is to certify that on this day, offeror acknowledges that he/she has read this solicitation document, pages # _____ to # _____ inclusive, including any addenda # _____ to # _____ exhibit(s) # _____ to # _____, attachment(s) # _____ to # _____, and/or appendices # _____ to # _____, in its entirety, and agrees that no pages or parts of the document have been omitted, that he/she understands, accepts and agrees to fully comply with the requirements therein, and that the undersigned is authorized by the offeror to submit the proposal herein and to legally obligate the offeror thereto.

This is also to certify that the offeror has reviewed the form Fulton County contract included in the solicitation documents and agrees to be bound by its terms, or that the offeror certifies that it is submitting any proposed modification to the contract terms with its proposal. The offeror further certifies that the failure to submit proposed modifications with the proposal waives the offeror's right to submit proposed modifications later. The offeror also acknowledges that the indemnification and insurance provisions of Fulton County's contract included in the solicitation documents are non-negotiable and that proposed modifications to said terms may be reason to declare the offeror's proposal as non-responsive.

Company: _____

Signature: _____

Name: _____

Title: _____ Date: _____

(Affix Corporate Seal)

Form D: OFFEROR'S DISCLOSURE FORM AND QUESTIONNAIRE

1. Please provide the names and business addresses of each of the Offeror's firm's officers and directors.

For the purposes of this form, the term "Offeror" means an entity that responds to a solicitation for a County contract by either submitting a proposal in response to a Request for Proposal or a Request for Qualification or a Bid in response to an Invitation to Bid. Describe accurately, fully and completely, their respective relationships with said Offeror, including their ownership interests and their anticipated role in the management and operations of said Offeror.

2. Please describe the general development of said Offeror's business during the past five (5) years, or such shorter period of time that said Offeror has been in business.

3. Please state whether any employee, agent or representative of said Offeror who is or will be directly involved in the subject project has or had within the last five (5) years: (i) directly or indirectly had a business relationship with Fulton County; (ii) directly or indirectly received revenues from Fulton County; or (iii) directly or indirectly receives revenues from the result of conducting business on Fulton County property or pursuant to any contract with Fulton County. Please describe in detail any such relationship.

LITIGATION DISCLOSURE:

Failure to fully and truthfully disclose the information required, may result in the disqualification of your bid or proposal from consideration or termination of the Contract, once awarded.

1. Please state whether any of the following events have occurred in the last five (5) years with respect to said Offeror. If any answer is yes, explain fully the following:

(a) whether a petition under the federal bankruptcy laws or state insolvency laws was filed by or against said Offeror, or a receiver fiscal agent or similar officer was appointed by a court for the business or property of said Offeror;

Circle One: YES NO

(b) whether Offeror was subject of any order, judgment, or decree not subsequently reversed, suspended or vacated by any court of competent jurisdiction, permanently enjoining said Offeror from engaging in any type of business practice, or otherwise eliminating any type of business practice; and

Circle One: YES NO

(c) whether said Offeror's business was the subject of any civil or criminal proceeding in which there was a final adjudication adverse to said or Offeror, which directly arose from activities conducted by the business unit or corporate division of said Offeror which submitted a bid or proposal for the subject project. If so please explain.

Circle One: YES NO

2. Have you or any member of your firm or team to be assigned to this engagement ever been indicted or convicted of a criminal offense within the last five (5) years?

Circle One: YES NO

3. Have you or any member of your firm or team been terminated (for cause or otherwise) from any work being performed for Fulton County or any other Federal, State or Local Government?

Circle One: YES NO

4. Have you or any member of your firm or team been involved in any claim or litigation adverse to Fulton County or any other federal, state or local government, or private entity during the last three (3) years?

Circle One: YES NO

5. Has any Offeror, member of Offeror's team, or officer of any of them (with respect to any matter involving the business practices or activities of his or her employer), been notified within the five (5) years preceding the date of this offer that any of them are the target of a criminal investigation, grand jury investigation, or civil enforcement proceeding?

Circle One: YES NO

If you have answered "YES" to any of the above questions, please indicate the name(s) of the person(s), the nature, and the status and/or outcome of the information, indictment, conviction, termination, claim or litigation, the name of the court and the file or reference number of the case, as applicable. Any such information should be provided on a separate page, attached to this form and submitted with your proposal.

NOTE: If any response to any question set forth in this questionnaire has been disclosed in any other document, a response may be made by attaching a copy of such disclosure. (For example, said Offeror's most recent filings with the Securities and Exchange Commission ("SEC") may be provided if they are responsive to certain items within the questionnaire.) However, for purposes of clarity, Offeror should correlate its responses with the exhibits by identifying the exhibit and its relevant text.

Disclosures must specifically address, completely respond and comply with all information requested and fully answer all questions requested by Fulton County. Such disclosure must be submitted at the time of the bid or proposal submission and included as a part of the bid/proposal submitted for this project. Disclosure is required for Offerors, joint venture partners and first-tier subcontractors.

Failure to provide required disclosure, submit officially signed and notarized documents or respond to any and all information requested/required by Fulton County can result in the bid/proposal declared as non-responsive. This document must be completed and included as a part of the bid/proposal package along with other required documents.

[SIGNATURES ON NEXT PAGE]

Under penalty of perjury, I declare that I have examined this questionnaire and all attachments hereto, if applicable, to the best of my knowledge and belief, and all statements contained hereto are true, correct, and complete.

On this _____ day of _____, 20__

(Legal Name of Proponent) (Date)

(Signature of Authorized Representative) (Date)

(Title)

Sworn to and subscribed before me,

This _____ day of _____, 20__

(Notary Public) (Seal)

Commission Expires _____
(Date)

**FORM E: GEORGIA SECURITY AND IMMIGRATION CONTRACTOR
AFFIDAVIT**

Instructions:

Contractors must attest to compliance with the requirements of O.C.G.A 13-10-91 and the Georgia Department of Labor Rule 300-10-01-.02 by executing the Contractor Affidavit.

STATE OF GEORGIA

COUNTY OF FULTON

**FORM E: GEORGIA SECURITY AND IMMIGRATION CONTRACTOR AFFIDAVIT
AND AGREEMENT**

By executing this affidavit, the undersigned contractor verifies its compliance with O.C.G.A. 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services under a contract with **[insert name of prime contractor]** _____ on behalf of **Fulton County Government** has registered with and is participating in a federal work authorization program* [any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603], in accordance with the applicability provisions and deadlines established in O.C.G.A. 13-10-91.

The undersigned further agrees that, should it employ or contract with any subcontractor(s) in connection with the physical performance of services to this contract with **Fulton County Government**, contractor will secure from such subcontractor(s) similar verification of compliance with O.C.G.A. 13-10-91 on the Subcontractor Affidavit provided in Rule 300-10-01-.08 or a substantially similar form. Contractor further agrees to maintain records of such compliance and provide a copy of each such verification to the **Fulton County Government** at the time the subcontractor(s) is retained to perform such service.

EEV/Basic Pilot Program* User Identification Number

BY: Authorized Officer of Agent
(Insert Contractor Name)

Title of Authorized Officer or Agent of Contractor

Printed Name of Authorized Officer or Agent

Sworn to and subscribed before me this _____ day of _____, 20__.

Notary Public: _____

County: _____

Commission Expires: _____

NOTE:

* As of the effective date of O.C.G.A. 13-10-91, the applicable federal work authorization program is the "EEV/Basic Pilot Program" operated by the U.S. Citizenship and Immigration Services Bureau of the U.S. Department of Homeland Security, in conjunction with the Social Security Administration (SSA).

**FORM F: GEORGIA SECURITY AND IMMIGRATION SUBCONTRACTOR
AFFIDAVIT**

Instructions:

In the event that your company is awarded the contract for this project, and will be utilizing the services of any subcontractor(s) in connection with the physical performance of services pursuant to this contract, the following affidavit must be completed by such subcontractor(s). Your company must provide a copy of each such affidavit to Fulton County Government, Department of Purchasing & Contract Compliance with the proposal submittal.

All subcontractor affidavit(s) shall become a part of the contract and all subcontractor(s) affidavits shall be maintained by your company and available for inspection by Fulton County Government at any time during the term of the contract. All subcontractor(s) affidavit(s) shall become a part of any contractor/subcontractor agreement(s) entered into by your company.

STATE OF GEORGIA

COUNTY OF FULTON

FORM F: GEORGIA SECURITY AND IMMIGRATION SUBCONTRACTOR AFFIDAVIT

By executing this affidavit, the undersigned subcontractor verifies its compliance with O.C.G.A. 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services under a contract with **[insert name of prime contractor]** _____ behalf of **Fulton County Government** has registered with and is participating in a federal work authorization program* [any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603], in accordance with the applicability provisions and deadlines established in O.C.G.A. 13-10-91.

EEV/Basic Pilot Program* User Identification Number

BY: Authorized Officer of Agent
(Insert Subcontractor Name)

Title of Authorized Officer or Agent of Subcontractor

Printed Name of Authorized Officer or Agent

Sworn to and subscribed before me this _____ day of _____, 20__.

Notary Public: _____

County: _____

Commission Expires: _____

NOTE:

* As of the effective date of O.C.G.A. 13-10-91, the applicable federal work authorization program is the "EEV/Basic Pilot Program" operated by the U.S. Citizenship and Immigration Services Bureau of the U.S. Department of Homeland Security, in conjunction with the Social Security Administration (SSA).

FORM G: GEORGIA PROFESSIONAL LICENSE CERTIFICATION

NOTE: Please complete this form for the work your firm will perform on this project.

Contractor's Name: _____

Performing work as: Prime Contractor ____ Sub-Contractor ____

Professional License Type: _____

Professional License Number: _____

Expiration Date of License: _____

I certify that the above information is true and correct and that the classification noted is applicable to the Bid for this Project.

Signed: _____

Date: _____

(ATTACH COPY OF LICENSE)

STATE OF GEORGIA

COUNTY OF FULTON

FORM H: LOCAL PREFERENCE AFFIDAVIT OF BIDDER/OFFEROR

I hereby certify that pursuant to Fulton County Code Section 102-358(f), the Bidder/Offeror _____ is eligible to receive local preference points and has a staffed, fixed, physical, place of business located within Fulton County and has had the same for at least one (1) year prior to the date of submission of its proposal or bid and has held a valid business license from Fulton County or a city within Fulton County boundaries for the business at a fixed, physical, place of business, for at least one (1) year prior to the date of submission of its proposal or bid.

Affiant further acknowledges and understands that pursuant to Fulton County Code Section 102-358(f), in the event this affidavit is determined to be false, the business named herein shall be deemed "non-responsive" and shall not be considered for award of the applicable contract.

_____ (Affix corporate seal here, if a corporation)
(BUSINESS NAME)

(FULTON COUNTY BUSINESS ADDRESS)

(OFFICIAL TITLE OF AFFIANT)

(NAME OF AFFIANT)

(SIGNATURE OF AFFIANT)

Sworn to and subscribed before me this _____ day of _____, 20_____.

Notary Public: _____

County: _____

Commission Expires: _____

STATE OF GEORGIA

COUNTY OF FULTON

FORM I: **SERVICE DISABLED VETERAN PREFERENCE AFFIDAVIT**
OF BIDDER/OFFEROR

I hereby certify that pursuant to Fulton County Code Section 102-361, the Bidder/Offeror _____ is eligible to receive Service Disabled Veteran Business Enterprise preference points and is independent and continuing operation for profit, performing a commercially useful function, and is owned and controlled by one or more individuals who are at least thirty percent (30%) disabled as a result of military service who has been honorably discharged, designated as such by the United States Department of Veterans Affairs, and that the businesses is located within the geographic boundaries of Fulton County.

Affiant further acknowledges and understands that pursuant to Fulton County Code Section 102-361(e), in the event this affidavit is determined to be false, the business named herein shall be deemed "non-responsive" and shall not be considered for award of the applicable contract.

_____ (Affix corporate seal here, if a corporation)
(BUSINESS NAME)

(FULTON COUNTY BUSINESS ADDRESS)

(OFFICIAL TITLE OF AFFIANT)

(NAME OF AFFIANT)

(SIGNATURE OF AFFIANT)

Sworn to and subscribed before me this _____ day of _____, 20____.

Notary Public: _____

County: _____

Commission Expires: _____

SECTION 6
CONTRACT COMPLIANCE REQUIREMENTS

6.1 NON-DISCRIMINATION IN PURCHASING AND CONTRACTING

It is the policy of Fulton County Government that discrimination against businesses by reason of the race, color, gender or national origin of the ownership of any such business is prohibited. Furthermore, it is the policy of the Board of Commissioners ("Board") that Fulton County and all vendors and contractors doing business with Fulton County shall provide to all businesses the opportunity to participate in contracting and procurement paid, in whole or in part, with monetary appropriations of the Board without regard to the race, color, gender or national origin of the ownership of any such business. Similarly, it is the policy of the Board that the contracting and procurement practices of Fulton County should not implicate Fulton County as either an active or passive participant in the discriminatory practices engaged in by private contractors or vendors seeking to obtain contracts with Fulton County.

Implementation of Equal Employment Opportunity (EEO) Policy

The County effectuates Equal Employment Opportunity thru Policy #800-8, Non-Discrimination in Contracting and Procurement. This policy considers racial and gender workforce availability. The availability of each workgroup is derived from the work force demographics set forth in the 2000 Census EEO file prepared by the United States Department of Commerce for the applicable labor pool normally utilized for the contract.

Monitoring of EEO Policy

Upon award of a contract with Fulton County, the successful bidder/proposer must complete an Equal Employment Opportunity Report (EEOR), describing the racial and gender make-up of the firm's work force. If the EEOR indicates that the firm's demographic composition indicates underutilization of employee's of a particular ethnic group for each job category, the firm will be required to submit an aggressive action plan setting forth steps the firm will take to address the identified underutilization.

6.2 EQUAL BUSINESS OPPORTUNITY PLAN (EBO PLAN)

In addition to the proposal submission requirements, each vendor **must** submit an Equal Business Opportunity Plan (EBO Plan) with their bid/proposal. The EBO Plan is designed to enhance the utilization of a particular racial, gender or ethnic group by a bidder/proposer, contractor, or vendor or by Fulton County. The respondent **must** outline a plan of action to encourage and achieve diversity and equality in the available procurement and contracting opportunities with *this solicitation*.

The EBO Plan **must** identify and include:

-
1. Potential opportunities within the scope of work of *this solicitation* that will allow for participation of racial, gender or ethnic groups.
 2. Efforts that will be made by the bidder/proposer to encourage and solicit minority and female business utilization in *this solicitation*.

Fulton County encourages joint ventures, teaming, partnering and mentor-protégé relationships with minority and female businesses in an effort to achieve contracting and procurement diversity.

Prompt Payment: The prime contractor **must** certify in writing and **must** document all subcontractors, sub-consultants and suppliers have been promptly paid for work and materials, (less any retainage by the prime contractor prior to receipt of any further progress payments). In the event the prime contractor is unable to pay subcontractors, sub-consultants or suppliers until it has received a progress payment from Fulton County, the prime contractor shall pay all subcontractors, sub-consultants or suppliers funds due from said progress payment within forty-eight (48) hours of receipt of payment from Fulton County. In no event shall a subcontractor, sub-consultant or supplier be paid later than fifteen (15) days as provided for by state law.

6.3 DETERMINATION OF GOOD FAITH EFFORTS

During the course of the project, the Prime Contractor shall demonstrate that they have made all efforts reasonably possible to ensure that Minority and Female Business Enterprises (MFBE) have had a full and fair opportunity to compete and win subcontracts on this project. The Prime Contractor is required to include all outreach attempts that would demonstrate a “Good Faith Effort” in the solicitation of sub-consultants/subcontractors.

Written documentation demonstrating the Prime Contractor’s outreach efforts to identify, contact, contract with or utilize Minority or Female owned businesses shall include holding pre-bid conferences, publishing advertisements in general circulation media, trade association publications, minority-focused media, and the County’s bid board, as well as other efforts.

Include a list of publications where the advertisement was placed as well as a copy of the advertisement. Advertisement shall include at a minimum, scope of work, project location, location(s) of where plans and specifications may be viewed or obtained and trade or scopes of work for which subcontracts are being solicited.

6.4 REQUIRED FORMS AND EBO PLAN

In order to be compliant with the intent and provisions of the Fulton County Non-Discrimination in Purchasing and Contracting Ordinance (99-0960), bidders/proposers **must** submit the following completed documents. Failure to provide this information **shall** result in the proposal being deemed non-responsive.

-
- Exhibit A – Promise of Non-Discrimination
 - Exhibit B – Employment Report
 - Exhibit C – Schedule of Intended Subcontractor Utilization
 - Exhibit D – Letter of Intent to Perform as a Subcontractor or Provide Materials or Services
 - Exhibit E – Declaration Regarding Subcontractors Practices
 - Exhibit F – Joint Venture Disclosure Affidavit
 - Equal Business Opportunity Plan (EBO Plan). This document is not a form rather a statement created by the bidder/proposer on its company letter head addressing the EBO Plan requirements.
 - Exhibit H – First Source Jobs Program Information, Form 2

The following document must be completed as instructed if awarded the project:

- Exhibit G – Prime Contractor’s Subcontractor Utilization Report
- Exhibit H – First Source Jobs Program Agreement, Form 3

All Contract Compliance documents (Exhibits A – H and EBO Plan) are to be placed in a **separate sealed envelope** clearly marked “Contract Compliance”. The EBO Plan must be submitted on company letterhead. These documents are considered part of and should be submitted with the Technical Proposal.

EXHIBIT A – PROMISE OF NON-DISCRIMINATION

“Know all persons by these presents, that I/We (_____),
Name

_____ Title _____ Firm Name
Hereinafter “Company”, in consideration of the privilege to bid on or obtain contracts funded, in whole or in part, by Fulton County, hereby consent, covenant and agree as follows:

- 1) No person shall be excluded from participation in, denied the benefit of, or otherwise discriminated against on the basis of race, color, national origin or gender in connection with any bid submitted to Fulton County for the performance of any resulting there from,
- 2) That it is and shall be the policy of this Company to provide equal opportunity to all businesses seeking to contract or otherwise interested in contracting with this Company without regard to the race, color, gender or national origin of the ownership of this business,
- 3) That the promises of non-discrimination as made and set forth herein shall be continuing in nature and shall remain in full force and effect without interruption,
- 4) That the promise of non-discrimination as made and set forth herein shall be made a part of, and incorporated by reference into, any contract or portion thereof which this Company may hereafter obtain,
- 5) That the failure of this Company to satisfactorily discharge any of the promises of non-discrimination as made and set forth herein shall constitute a material breach of contract entitling the Board to declare the contract in default and to exercise any and all applicable rights and remedies, including but not limited to cancellation of the contract, termination of the contract, suspension and debarment from future contracting opportunities, and withholding and/or forfeiture of compensation due and owing on a contract; and
- 6) That the bidder shall provide such information as may be required by the Director of Contract Compliance pursuant to Section 4.4 of the Fulton County Non-Discrimination in Purchasing and Contracting Ordinance.

SIGNATURE: _____

ADDRESS: _____

TELEPHONE NUMBER: _____

EXHIBIT B – EMPLOYMENT REPORT

The demographic employment make-up for the bidder must be identified and submitted with this bid/proposal. In addition, if subcontractors will be utilized by the bidder/proposer to complete this project, then the demographic employment make-up of the subcontractor(s) must be identified and submitted with this bid.

JOB CATEGORIES	TOTAL EMPLOYED		TOTAL MINORITIES		WHITE (Not Hispanic Origin)		BLACK or AFRICAN AMERICAN (Not of Hispanic Origin)		HISPANIC or LATINO		AMERICAN INDIAN or ALASKAN NATIVE (AIAN)		ASIAN		NATIVE HAWAIIAN or OTHER PACIFIC ISLANDER (NHOP)		TWO or MORE RACES		
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	
EXECUTIVE/SENIOR LEVEL OFFICIALS and MANAGERS																			
FIRST/MID LEVEL OFFICIALS and MANAGERS																			
PROFESSIONALS																			
TECHNICIANS																			
SALES WORKERS																			
ADMINISTRATIVE SUPPORT WORKERS																			
CRAFT WORKERS																			
OPERATIVES																			
LABORERS & HELPERS																			
SERVICE WORKERS																			
TOTAL																			

FIRMS' NAME
 ADDRESS
 TELEPHONE

This completed form is for (Check only one):
 Submitted by: _____

Bidder/Proposer

Subcontractor

Date Completed: _____

EXHIBIT C - SCHEDULE OF INTENDED SUBCONTRACTOR UTILIZATION

If the bidder/proposer intends to subcontract any portion of this scope of work/service(s), this form **must be** completed and **submitted with the bid/proposal**. All prime bidders/proposers **must** include Letter(s) of Intent (Exhibit D) in the bid document for all subcontractors who will be utilized under the scope of work/services.

Prime Bidder/Proposer: _____

ITB/RFP Number: _____

Project Name or Description of Work/Service(s): _____

1. My firm, as Prime Bidder/Proposer on this scope of work/service(s) is _____ is not ___ a minority or female owned and controlled business enterprise. (Please indicate below the portion of work, including, percentage of bid/proposal amount that your firm will carry out directly):

2. If the Prime Bidder/Proposer is a Joint Venture, please complete Exhibit F: Joint Venture Disclosure Affidavit and attach a copy of the executed Joint Venture Agreement.

3. Sub-Contractors (including suppliers) to be utilized in the performance of this scope of work/service(s), if awarded, are:

SUBCONTRACTOR NAME: _____

ADDRESS: _____

PHONE: _____

CONTACT PERSON: _____

ETHNIC GROUP*: _____ COUNTY CERTIFIED** _____

WORK TO BE PERFORMED: _____

DOLLAR VALUE OF WORK: \$ _____ PERCENTAGE VALUE: _____ %

*Ethnic Groups: African American (AABE); Asian American (ABE); Hispanic American (HBE); Native American (NABE); White Female American (WFBE); **If yes, please attach copy of recent certification.

SUBCONTRACTOR NAME: _____
ADDRESS: _____
PHONE: _____
CONTACT PERSON: _____
ETHNIC GROUP*: _____ COUNTY CERTIFIED** _____
WORK TO BE PERFORMED: _____
DOLLAR VALUE OF WORK: \$ _____ PERCENTAGE VALUE: _____ %

SUBCONTRACTOR NAME: _____
ADDRESS: _____
PHONE: _____
CONTACT PERSON: _____
ETHNIC GROUP*: _____ COUNTY CERTIFIED** _____
WORK TO BE PERFORMED: _____
DOLLAR VALUE OF WORK: \$ _____ PERCENTAGE VALUE: _____ %

SUBCONTRACTOR NAME: _____
ADDRESS: _____
PHONE: _____
CONTACT PERSON: _____
ETHNIC GROUP*: _____ COUNTY CERTIFIED** _____
WORK TO BE PERFORMED: _____
DOLLAR VALUE OF WORK: \$ _____ PERCENTAGE VALUE: _____ %

SUBCONTRACTOR NAME: _____
ADDRESS: _____
PHONE: _____
CONTACT PERSON: _____
ETHNIC GROUP*: _____ COUNTY CERTIFIED** _____
WORK TO BE PERFORMED: _____
DOLLAR VALUE OF WORK: \$ _____ PERCENTAGE VALUE: _____ %

***Ethnic Groups: African American (AABE); Asian American (ABE); Hispanic American (HBE); Native American (NABE); White Female American (WFBE); **If yes, please attach copy of recent certification.**

Total Dollar Value of Subcontractor Agreements: (\$)

Total Percentage Value: (%)

CERTIFICATION: The undersigned certifies that he/she has read, understands and agrees to be bound by the Bid/Proposer provisions, including the accompanying Exhibits and other terms and conditions regarding sub-contractor utilization. The undersigned further certifies that he/she is legally authorized by the Bidder/Proposer to make the statement and representation in this Exhibit and that said statements and representations are true and correct to the best of his/her knowledge and belief. The undersigned understands and agrees that if any of the statements and representations are made by the Bidder/Proposer knowing them to be false, or if there is a failure of the intentions, objectives and commitments set forth herein without prior approval of the County, then in any such event the Contractor's acts or failure to act, as the case may be, shall constitute a material breach of the contract, entitling the County to terminate the Contract for default. The right to so terminate shall be in addition to, and in lieu of, any other rights and remedies the County may have for other defaults under the contract.

Signature: _____ **Title:** _____

Firm or Corporate Name: _____

Address: _____

Telephone: () _____

Fax Number: () _____

Email Address: _____

EXHIBIT D

**LETTER OF INTENT TO PERFORM AS A SUBCONTRACTOR
OR
PROVIDE MATERIALS OR SERVICES**

This form **must** be completed by **ALL** known subcontractor and submitted with the bid/proposal. The Prime Contractor **must** submit Letters of Intent for **ALL** known subcontractors at time of bid submission.

To: _____
(Name of Prime Contractor Firm)

From: _____
(Name of Subcontractor Firm)

ITB/RFP Number: _____

Project Name: _____

The undersigned is prepared to perform the following described work or provide materials or services in connection with the above project (specify in detail particular work items, materials, or services to be performed or provided):

Description of Work	Project Commence Date	Project Completion Date	Estimated Dollar Amount

(Prime Bidder)

(Subcontractor)

Signature _____

Signature _____

Title _____

Title _____

Date _____

Date _____

EXHIBIT E - DECLARATION REGARDING SUBCONTRACTING PRACTICES

If the bidder/proposer **does not intend to subcontract** any portion of the scope of work services(s), this form **must be** completed and submitted with the bid/proposal.

_____ hereby declares that it is my/our intent to
(Bidder)

perform 100% of the work required for _____
(ITB/RFP Number)

(Description of Work)

In making this declaration, the bidder/proposer states the following:

1. That the bidder/proposer does not customarily subcontract elements of this type project, and normally performs and has the capability to perform and will perform **all elements** of the work on this project with his/her own current work forces;
2. If it should become necessary to subcontract some portion of the work at a later date, the bidder/proposer will comply with all requirements of the County's Non-Discrimination Ordinance in providing equal opportunities to all firms to subcontract the work. The determination to subcontract some portion of the work at a later date shall be made in good faith and the County reserves the right to require additional information to substantiate a decision made by the bidder/proposer to subcontract work following the award of the contract. Nothing contained in this provision shall be employed to circumvent the spirit and intent of the County's Non-Discrimination Ordinances;
3. The bidder will provide, upon request, information sufficient for the County to verify Item Number one.

AUTHORIZED COMPANY REPRESENTATIVE

Name: _____ **Title:** _____ **Date:** _____

Signature: _____

Firm: _____

Address: _____

Phone Number: _____

Fax Number: _____

Email Address: _____

EXHIBIT F - JOINT VENTURE DISCLOSURE AFFIDAVIT

ITB/RFP No. _____

Project Name _____

This form must be completed and submitted with the bid/proposal if a joint venture approach is to be undertaken.

In order to evaluate the extent of small, minority and female business involvement being proposed by a Bidder/Proposer, certain relevant information must be provided prior to contract award. The information requested below is to clearly identify and explain the extent of small business participation in the proposed joint venture. All items must be properly addressed before the business entity can be evaluated.

1. Firms:

1) **Name of Business:** _____
Street Address: _____
Telephone No.: _____
Nature of Business: _____

2) **Name of Business:** _____
Street Address: _____
Telephone No.: _____
Nature of Business: _____

3) **Name of Business:** _____
Street Address: _____
Telephone No.: _____
Nature of Business: _____

NAME OF JOINT VENTURE (If applicable): _____

ADDRESS: _____

PRINCIPAL OFFICE: _____

OFFICE PHONE: _____

Note: Attach additional sheets as required

1. Describe the capital contributions by each joint venturer and accounting thereof.
2. Describe the financial controls of the joint venture, e.g., will a separate cost center be established? Which venturer will be responsible for keeping the books? How will the expense therefore be reimbursed? What is the authority of each joint venture to commit or obligate the order?
3. Describe any ownership, options for ownership, or loans between the joint ventures. Identify terms thereof.
4. Describe the estimated contract cash flow for each joint venturer.
5. To what extent and by whom will the on-site work be supervised?
6. To what extent and by whom will the administrative office be supervised?
7. Which joint venturer will be responsible for material purchases including the estimated cost thereof? How will the purchase be financed?
8. Which joint venturer will provide equipment? What is the estimated cost thereof? How will the equipment be financed?
9. Describe the experience and business qualifications of each joint venturer.
10. Submit a copy of all joint venture agreements and evidence of authority to do business in the State of Georgia as well as locally, to include all necessary business licenses.
11. Percent of Minority/Female Business Enterprises ownership by each joint venture in terms of profit and loss sharing: _____

12. The authority of each joint venturer to commit or obligate the other: _____

13. Number of personnel to be involved in project, their crafts and positions and whether they are employees of the Minority/Female Business Enterprises enterprise, the majority

firm or the joint venture: _____

14. Identification of control and participation in venture; list those individuals who are responsible for day-to-day management and policy decision-maker, including, but not limited to, those with prime responsibility for areas designated below; (use additional sheets if necessary)

<u>Name</u>	<u>Race</u>	<u>Sex</u>	<u>Financial Decisions</u>	<u>Supervision Field Operation</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

In connection with any work that these firms, as a joint venture, might be authorized to perform in connection with above captioned contract, we each do hereby authorize representatives of the Fulton County Department of Contract Compliance, Departments of Purchasing and Contract Compliance, and Finance, under the direction of the County Manger's Office, to examine, from time to time, the books, records and files to the extent that such relate to this County project.

WE DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THE FOREGOING DOCUMENT ARE TRUE AND CORRECT, AND THAT WE ARE AUTHORIZED, ON BEHALF OF THE ABOVE FIRMS, TO MAKE THIS AFFIDAVIT AND GRANT THE ABOVE PRIVILEGE.

FOR _____
(Company)

Date: _____

(Signature of Affiant)

(Printed Name)

(Company)

Date: _____

(Signature of Affiant)

(Printed Name)

State of _____:

County of _____:

On this ____ day of _____, 20__, before me, appeared _____, the undersigned officer, personally appeared _____ known to me to be the person described in the foregoing Affidavit and acknowledges that he (she) executed the same in the capacity therein stated and for the purpose therein contained.

Should you have questions regarding any of the documents contained in Section 6, please feel free to contact the Office of Contract Compliance at (404) 763-6300, for further assistance.

EXHIBIT H

FULTON COUNTY FIRST SOURCE JOBS PROGRAM

STATEMENT OF POLICY:

It is the policy of Fulton County Government to provide employment opportunities to the citizens of Fulton County. This policy will apply to all contracts procured through the Department of Purchasing & Contract Compliance valued in excess of \$200,000. The Prime Contractor is expected to utilize the First Source Jobs Program to fill 50% of the entry level jobs which arise as a result of any project funded in whole or in part with County funds with residents of Fulton County.

PURPOSE:

The purpose of this policy is to create a pool of employable persons who are residents of Fulton County to be called upon as a source to fill jobs created as a result of any eligible project funded in whole or in part with County funds in order to provide stable economic opportunities for families throughout the County. The First Source Jobs Program will be implemented by the Department of Purchasing & Contract Compliance and the Office of Workforce Development.

MONITORING POLICY:

Upon execution of a contract with Fulton County Government, the First Source Jobs Agreement (FSJ Form 2) will become a part of the contract between the bidder/proposer and Fulton County Government. The First Source Jobs Program will be monitored during routine site visits by the Office of Contract Compliance along with the Office of Workforce Development.

FORM 1

FULTON COUNTY

First Source Jobs Program Information

Company Name: _____

Project Number: _____

Project Name: _____

The following entry-level positions will become available as a result of the above referenced contract with Fulton County.

- 1. _____
- 2. _____
- 3. _____
- 4. _____
- 5. _____
- 6. _____

Include a job description and all required qualifications for each position listed above.

Identify a company representative and contact phone number who will be responsible for coordinating with the First Source Jobs Program:

Company Representative: _____

Phone Number: _____

Email Address: _____

FORM 2

FULTON COUNTY
First Source Jobs Program Agreement

Awarded Contractor's Name: _____

Formal Contract Name: _____

RFP/ITB Number: _____

Contact Person: _____

Contact Phone: _____

The contractor listed above agrees to the following:

1. The contractor shall make a good faith effort to fill 50% of the entry level position(s) created by this project using the Fulton County First Source Jobs Program.
2. The contractor shall provide the applicable details of every entry level job in writing within the required form.
3. The contractor shall be expected to present documentation that confirms employment terms to both the employee and Fulton County.

The Office of Contract Compliance will assist with monitoring the participation of First Source Jobs Program employees during routine site visits and report findings to the Office of Workforce Development for confirmation and follow-up. The Office of Workforce Development shall notify the Director of Human Services and the Purchasing Agent of any determination of non-compliance with the requirements of this policy and recommend a resolution or action to be taken.

Upon a determination by the Purchasing Agent and the Director of Human Services that a contractor has failed to comply with any portion of this policy, the County may impose the following:

1. Ten percent (10%) of all future payments under the involved eligible project shall be entitled to be withheld from a contractor that has violated this policy until the contractor complies with the provisions of this policy.

The undersigned agrees to the terms and conditions set forth in this agreement.

Contractor's Official Title: _____ Date: _____

Contractor's Name: _____

Contractor's Signature: _____

FORM 3

SECTION 7

**Insurance and Risk Management Provisions
Defined Contribution Plan Administrator Services**

It is Fulton County Government’s practice to obtain Certificates of Insurance from our Contractors and Vendors. Insurance must be written by a licensed agent in a company licensed to write insurance in the State of Georgia, with an A.M. Best rating of at least A- VI, subject to final approval by Fulton County. Respondents shall submit with the bid/proposal evidence of insurability satisfactory to Fulton County Government as to form and content. Either of the following forms of evidence is acceptable:

- A letter from an insurance carrier stating that upon your firm/company being the successful Bidder/Respondent that a Certificate of Insurance shall be issued in compliance with the Insurance and Risk Management Provisions outlined below.
- A Certificate of Insurance complying with the Insurance and Risk Management Provisions outlined below (Request for Bid/Proposal number and Scope of Services must appear on the Certificate of Insurance).
- A combination of specific policies written with an umbrella policy covering liabilities in excess of the required limits is acceptable to achieve the applicable insurance coverage levels.

Upon award, the Contractor/Vendor must maintain at their expense, insurance with policy limits equal to or greater than the limits described below. Proof of insurance must be provided to Fulton County Government prior to the start of any activities/services as described in the bid document(s). Any and all Insurance Coverage(s) and Bonds required under the terms and conditions of the contract shall be maintained during the entire length of the contract, including any extensions or renewals thereto, and until all work has been completed to the satisfaction of Fulton County Government.

Accordingly the Respondent shall provide a certificate evidencing the following:

1. WORKERS COMPENSATION/EMPLOYER’S LIABILITY INSURANCE – STATUTORY (In compliance with the Georgia Workers Compensation Acts and any other State or Federal Acts or Provisions in which jurisdiction may be granted)

Employer’s Liability Insurance	BY ACCIDENT	EACH ACCIDENT	\$100,000
Employer’s Liability Insurance	BY DISEASE	POLICY LIMIT	\$500,000
Employer’s Liability Insurance	BY DISEASE	EACH EMPLOYEE	\$100,000

2. COMMERCIAL GENERAL LIABILITY INSURANCE (Including contractual Liability Insurance)

Bodily Injury and Property Damage Liability	Each Occurrence	\$1,000,000
(Other than Products/Completed Operations)General Aggregate		\$2,000,000
Products\Completed Operation	Aggregate Limit	\$2,000,000
Personal and Advertising Injury	Limits	\$1,000,000
Damage to Rented Premises	Limits	\$100,000

3. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Combined Single Limits Each Occurrence \$1,000,000
Including operation of non-owned, owned, and hired automobiles.

4. UMBRELLA LIABILITY Each Occurrence \$1,000,000
In excess of General Liability, Auto Liability and Employers Liability.

5. PROFESSIONAL (E & O) LIABILITY Per Claim/Aggregate \$10,000,000/\$10,000,000
To be provided for the duration of the contract with copies of annual policy renewals to Fulton County. Once contract has been completed or if contract is terminated at the direction of Fulton County, Vendor to provide evidence of policy renewal for 3 years thereafter.

Certificates of Insurance

Certificates shall state that the policy or policies shall not expire, be cancelled or altered without at least thirty (30) days prior written notice to Fulton County Government. Policies and Certificates of Insurance are to list Fulton County Government as an Additional Insured (except for Workers' Compensation) and shall conform to all terms and conditions (including coverage of the indemnification and hold harmless agreement) contained in the Insurance and Risk Management Provisions. The General Liability Additional Insured language should apply to on-going and completed-operations, using ISO form CG 2010 (11/85 version) or equivalent.

The Contractor agrees to name the Owner and all other parties required of the Contractor/Vendor shall be included as additional insureds on the CGL, using ISO Additional Insured Endorsement forms CG 2010 11/85 or its equivalent coverage to the additional insureds. This insurance for the additional insureds shall be as broad as the coverage provided for the named insured Contractor. It shall apply as Primary Insurance before any other insurance or self-insurance, including any deductible, non-contributory, and Waiver of Subrogation provided to the Additional Insureds.

Additional Insured under the General Liability, Auto Liability, Umbrella Policies (with exception of Workers Compensation and Professional Liability), with no Cross Suits exclusion.

If Fulton County Government shall so request, the Respondent, Contractor or Vendor will furnish the County for its inspection and approval such policies of insurance with all endorsements, or confirmed specimens thereof certified by the insurance company to be true and correct copies.

Such certificates and notices **must** identify the "Certificate Holder" as follows:

Fulton County Government – Purchasing and Contract Compliance Department
130 Peachtree Street, S.W.
Suite 1168
Atlanta, Georgia 30303-3459

Certificates **must** list Project Name (where applicable).

Important:

It is understood that **Insurance in no way Limits the Liability of the Contractor/Vendor.**

USE OF PREMISES

Contractor/Vendor shall confine its apparatus, the storage of materials and the operations of its workers to limits/requirements indicated by law, ordinance, permits and any restrictions of Fulton County Government and shall not unreasonably encumber the premises with its materials.

PROTECTION OF PROPERTY

Contractor/Vendor will adequately protect its own work from damage, will protect Fulton County Government's property from damage or loss and will take all necessary precautions during the progress of the work to protect all persons and the property of others from damage or loss.

Contractor/Vendor shall take all necessary precautions for the safety of employees of the work and shall comply with all applicable provisions of the Federal, State and local safety laws and building codes to prevent accidents or injury to persons on, about, or adjacent to the premises where work is being performed.

Contractor/Vendor shall erect and properly maintain at all times as required by the conditions and progress of the work, all necessary safeguards for the protection of its employees, Fulton County Government employees and the public and shall post all applicable signage and other warning devices to protect against potential hazards for the work being performed.

INDEMNIFICATION AND HOLD HARMLESS AGREEMENT

To the fullest extent of the Law, Contractor/Vendor hereby agrees to release, indemnify, defend and hold harmless Fulton County, its Commissioners, officers, employees, subcontractors, successors, assigns and agents, from and against any and all losses (including death), claims, damages, liabilities, costs and expenses (including but not limited to all actions, proceedings, or investigations in respect thereof and any costs of judgments, settlements, court costs, attorney's fees or expenses, regardless of the outcome of any such action, proceeding, or investigation), caused by, relating to, based upon or arising out of any act or omission by Contractor/Vendor, its directors, officers, employees, subcontractors, successors, assigns or agents, or otherwise in connection (directly or indirectly) with its acceptance, or the performance, or nonperformance, of its obligations under these agreements. Such obligations shall not be construed to negate, abridge or otherwise reduce any other rights or obligations of indemnity which would otherwise exist as to any party or person as set forth in this paragraph.

Contractor/Vendor's obligation to protect, defend, indemnify and hold harmless, as set forth hereinabove, shall also include, but is not limited to, any matter arising out of any actual or alleged infringement of any patent, trademark, copyright, or service mark, or other actual or alleged unfair competition disparagement of product or service, or other tort or any type whatsoever, or any actual or alleged violation of trade regulations.

DC Plan Administrator Services

Contractor/Vendor further agrees to protect, defend, indemnify and hold harmless Fulton County, its Commissioners, officers, employees, subcontractors, successors, assigns and agents from and against any and all claims or liability for compensation under the Worker's Compensation Act, Disability Benefits Act, or any other employee benefits act arising out of injuries sustained by any employees of Contractor/Vendor. These indemnities shall not be limited by reason of the listing of any insurance coverage.

CONTRACTOR/VENDOR ACKNOWLEDGES HAVING READ, UNDERSTANDING, AND AGREEING TO COMPLY WITH THIS INDEMNIFICATION AND HOLD HARMLESS AGREEMENT, AND THE REPRESENTATIVE OF THE CONTRACTOR/VENDOR IDENTIFIED BELOW IS AUTHORIZED TO SIGN CONTRACTS ON BEHALF OF THE RESPONDING CONTRACTOR/VENDOR.

COMPANY: _____ SIGNATURE: _____

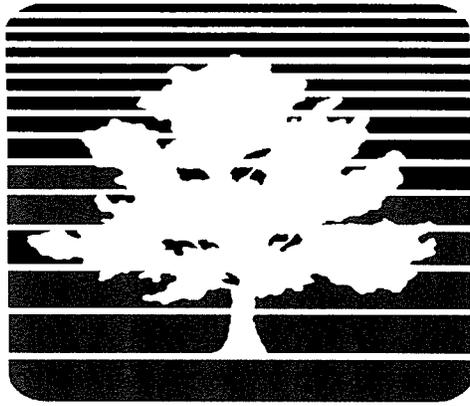
NAME: _____ TITLE: _____

DATE: _____

**SECTION 8
SAMPLE CONTRACT**

[Insert Sample Contract following this page]

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FULTON COUNTY

People *Vision* *Families* *Neighborhoods*

Mission
To serve, protect and govern in concert with local municipalities

People *Values* *Customer Services*
Ethics *Resource Management*
Innovation *Equal Opportunity*

CONTRACT DOCUMENTS FOR

PROJECT NUMBER

PROJECT TITLE

For

DEPARTMENT NAME

Index of Articles

ARTICLE 1.	<u>CONTRACT DOCUMENTS</u>
ARTICLE 2.	<u>SEVERABILITY</u>
ARTICLE 3.	<u>DESCRIPTION OF PROJECT</u>
ARTICLE 4.	<u>SCOPE OF WORK</u>
ARTICLE 5.	<u>DELIVERABLES</u>
ARTICLE 6.	<u>SERVICES PROVIDED BY COUNTY</u>
ARTICLE 7.	<u>MODIFICATIONS/CHANGE ORDERS</u>
ARTICLE 8.	<u>SCHEDULE OF WORK</u>
ARTICLE 9.	<u>CONTRACT TERM</u>
ARTICLE 10.	<u>COMPENSATION AND PAYMENT FOR CONSULTANT SERVICES</u>
ARTICLE 11.	<u>PERSONNEL AND EQUIPMENT</u>
ARTICLE 12.	<u>SUSPENSION OF WORK</u>
ARTICLE 13.	<u>DISPUTES</u>
ARTICLE 14.	<u>TERMINATION OF AGREEMENT FOR CAUSE</u>
ARTICLE 15.	<u>TERMINATION FOR CONVENIENCE OF COUNTY</u>
ARTICLE 16.	<u>WAIVER OF BREACH</u>
ARTICLE 17.	<u>INDEPENDENT CONSULTANT</u>
ARTICLE 18.	<u>RESPONSIBILITY OF CONSULTANT</u>
ARTICLE 19.	<u>COOPERATION WITH OTHER CONSULTANTS</u>
ARTICLE 20.	<u>ACCURACY OF WORK</u>
ARTICLE 21.	<u>REVIEW OF WORK</u>
ARTICLE 22.	<u>INDEMNIFICATION</u>
ARTICLE 23.	<u>CONFIDENTIALITY</u>
ARTICLE 24.	<u>OWNERSHIP OF INTELLECTUAL PROPERTY AND INFORMATION</u>
ARTICLE 25.	<u>COVENANT AGAINST CONTINGENT FEES</u>
ARTICLE 26.	<u>INSURANCE</u>
ARTICLE 27.	<u>PROHIBITED INTEREST</u>
ARTICLE 28.	<u>SUBCONTRACTING</u>
ARTICLE 29.	<u>ASSIGNABILITY</u>
ARTICLE 30.	<u>ANTI-KICKBACK CLAUSE</u>
ARTICLE 31.	<u>AUDITS AND INSPECTORS</u>
ARTICLE 32.	<u>ACCOUNTING SYSTEM</u>
ARTICLE 33.	<u>VERBAL AGREEMENT</u>
ARTICLE 34.	<u>NOTICES</u>
ARTICLE 35.	<u>JURISDICTION</u>
ARTICLE 36.	<u>EQUAL EMPLOYMENT OPPORTUNITY</u>
ARTICLE 37.	<u>FORCE MAJEURE</u>
ARTICLE 38.	<u>OPEN RECORDS ACT</u>
ARTICLE 39.	<u>CONSULTANT'S COMPLIANCE WITH ALL ASSURANCES OR PROMISES MADE IN RESPONSE TO PROCUREMENT</u>
ARTICLE 40.	<u>INVOICING AND PAYMENT</u>
ARTICLE 41.	<u>TAXES</u>
ARTICLE 42.	<u>PERMITS, LICENSES AND BONDS</u>
ARTICLE 43.	<u>NON-APPROPRIATION</u>
ARTICLE 44.	<u>WAGE CLAUSE</u>

Exhibits

- EXHIBIT A: GENERAL CONDITIONS
- EXHIBIT B: SPECIAL CONDITIONS
- EXHIBIT C: SCOPE OF WORK
- EXHIBIT D: PROJECT DELIVERABLES
- EXHIBIT E: COMPENSATION
- EXHIBIT F: PURCHASING FORMS
- EXHIBIT G: CONTRACT COMPLIANCE FORMS
- EXHIBIT H: INSURANCE AND RISK MANAGEMENT FORMS

Instructions to Purchasing Staff: Please make sure the above Exhibits List matches the Exhibits List in Article 1 and that those Exhibits are inserted into the Contract Agreement.

APPENDICES

- APPENDIX 1: POLICY 800-6, PROCEDURES FOR HANDLING CHANGE ORDERS
- APPENDIX 2: APPLICATION FORMS
- APPENDIX 3: PROCEDURES

Instructions to Purchasing Staff: Appendix 1, Policy 800-6 is required. Only use Appendices if you are attaching Appendices, examples are listed above. Please make sure the above Appendices List matches the Appendices List in Article 1 of the Contract Agreement and that those Appendices are inserted into the Contract Agreement.

PURCHASING STAFF, REMOVE ALL INSTRUCTIONS IN YELLOW BEFORE INSERTING THIS DOCUMENT INTO THE RFP!!

CONTRACT AGREEMENT

Consultant: *[Insert Consultant Name]*
Contract No.: *[Insert Project Number and Title]*
Address: *[Insert Consultant Address]*
City, State
Telephone: *[Insert Consultant telephone #]*
Email: *[Insert Consultant Email]*
Contact: *[Insert Consultant Contact Name]*
[Insert Consultant Contact Title]

This Agreement made and entered into effective the _____ day of _____, 20__ by and between **FULTON COUNTY, GEORGIA**, a political subdivision of the State of Georgia, hereinafter referred to as “**County**”, and **[Insert Consultant Company Name]**, hereinafter referred to as “**Consultant**”, authorized to transact business in the State of Georgia.

WITNESSETH

WHEREAS, County through its *[Insert User Department Name]* hereinafter referred to as the “**Department**”, desires to retain a qualified and experienced Consultant to perform *[Insert project description/services to be provided]*, hereinafter, referred to as the “**Project**”.

WHEREAS, Consultant has represented to County that it is experienced and has qualified and local staff available to commit to the Project and County has relied upon such representations.

NOW THEREFORE, for and in consideration of the mutual covenants contained herein, and for other good and valuable consideration, County and Consultant agree as follows:

ARTICLE 1. CONTRACT DOCUMENTS

County hereby engages Consultant, and Consultant hereby agrees, to perform the services hereinafter set forth in accordance with this Agreement, consisting of the following contract documents:

- I. Form of Agreement;
- II. Addenda;
- III. Exhibit A: General Conditions;
- IV. Exhibit B: Special Conditions [where applicable];

- V. Exhibit C: Scope of Work
- VI. Exhibit D: Project Deliverables;
- VII. Exhibit E: Compensation;
- VIII. Exhibit F: Purchasing Forms
- IX. Exhibit G: Office of Contract Compliance Forms;
- X. Exhibit H: Insurance and Risk Management Forms
- XI. Appendix 1: Policy 800-6, Procedure for Handling Change Orders

The foregoing documents constitute the entire Agreement of the parties pertaining to the Project hereof and is intended as a complete and exclusive statement of promises, representations, discussions and agreements oral or otherwise that have been made in connection therewith. No modifications or amendment to this Agreement shall be binding upon the parties unless the same is in writing, conforms to Fulton County Policy and Procedure 800-6 governing change orders, is signed by the County's and the Consultant's duly authorized representatives, and entered upon the meeting minutes of the Fulton County Board of Commissioners.

If any portion of the Contract Documents shall be in conflict with any other portion, the various documents comprising the Contract Documents shall govern in the following order of precedence: 1) the Agreement, 2) the RFP, 3) any Addenda, 4) change orders, 5) the exhibits, and 6) portions of Consultant's proposal that was accepted by the County and made a part of the Contract Documents.

The Agreement was approved by the Fulton County Board of Commissioners on **[Insert Board of Commissioners approval date and item number]**.

ARTICLE 2. **SEVERABILITY**

If any provision of this Agreement is held to be unenforceable for any reason, the unenforceability thereof shall not affect the remainder of the Agreement, which shall remain in full force and effect, and enforceable in accordance with its terms.

ARTICLE 3. **DESCRIPTION OF PROJECT**

County and Consultant agree the Project is to perform **[Insert project description]**. All exhibits referenced in this agreement are incorporated by reference and constitute an integral part of this Agreement as if they were contained herein.

ARTICLE 4. **SCOPE OF WORK**

Unless modified in writing by both parties in the manner specified in the agreement, duties of Consultant shall not be construed to exceed those services

specifically set forth herein. Consultant agrees to provide all services, products, and data and to perform all tasks described in Exhibit C, Scope of Work.

ARTICLE 5. DELIVERABLES

Consultant shall deliver to County all reports prepared under the terms of this Agreement that are specified in Exhibit D, Project Deliverables. Consultant shall provide to County all deliverables specified in Exhibit D, Project Deliverables. Deliverables shall be furnished to County by Consultant in a media of form that is acceptable and usable by County at no additional cost at the end of the project.

ARTICLE 6. SERVICES PROVIDED BY COUNTY

Consultant shall gather from County all available non-privileged data and information pertinent to the performance of the services for the Project. Certain services as described in Exhibit C, Scope of Work, if required, will be performed and furnished by County in a timely manner so as not to unduly delay Consultant in the performance of said obligations. County shall have the final decision as to what data and information is pertinent.

County will appoint in writing a County authorized representative with respect to work to be performed under this Agreement until County gives written notice of the appointment of a successor. The County's authorized representative shall have complete authority to transmit instructions, receive information, and define County's policies, consistent with County rules and regulations. Consultant may rely upon written consents and approvals signed by County's authorized representative that are consistent with County rules and regulations.

ARTICLE 7. MODIFICATIONS

If during the course of performing the Project, County and Consultant agree that it is necessary to make changes in the Project as described herein and referenced exhibits, such changes will be incorporated by written amendments in the form of Change Orders to this Agreement. Any such Change Order and/or supplemental agreement shall not become effective or binding unless approved by the Board of Commissioners and entered on the minutes. Such modifications shall conform to the requirements of Fulton County Policy 800-6, specified in Appendix 1.

ARTICLE 8. SCHEDULE OF WORK

Consultant shall not proceed to furnish such services and County shall not become obligated to pay for same until a written authorization to proceed (Notice to Proceed) has been sent to Consultant from County. The Consultant shall begin work under this Agreement no later than five (5) days after the effective date of notice to proceed.

ARTICLE 9. CONTRACT TERM

[Insert contract term and any renewal options] Make sure the contract term matches the contract term in the solicitation document exactly.

ARTICLE 10. COMPENSATION

Compensation for work performed by Consultant on Project shall be in accordance with the payment provisions and compensation schedule, attached as Exhibit E, Compensation.

The total contract amount for the Project shall not exceed ***[Insert amount approved by BOC]***, which is full payment for a complete scope of work/services.

ARTICLE 11. PERSONNEL AND EQUIPMENT

Consultant shall designate in writing a person(s) to serve as its authorized representative(s) who shall have sole authority to represent Consultant on all manners pertaining to this contract.

Consultant represents that it has secured or will secure, at its' own expense, all equipment and personnel necessary to complete this Agreement, none of whom shall be employees of or have any contractual relationship with County. All of the services required hereunder will be performed by Consultant under his supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under law to perform such services.

Written notification shall be immediately provided to County upon change or severance of any of the authorized representative(s), listed key personnel or sub-consultant performing services on this Project by Consultant. No changes or substitutions shall be permitted in Consultant's key personnel or sub-consultant as set forth herein without the prior written approval of the County. Requests for changes in key personnel or sub-consultants will not be unreasonably withheld by County.

ARTICLE 12. SUSPENSION OF WORK

Suspension Notice: The County may by written notice to the Consultant, suspend at any time the performance of all or any portion of the services to be performed under this Agreement. Upon receipt of a suspension notice, the Consultant must, unless the notice requires otherwise:

- 1) Immediately discontinue suspended services on the date and to the extent specified in the notice;

- 2) Place no further orders or subcontracts for material, services or facilities with respect to suspended services, other than to the extent required in the notice; and
- 3) Take any other reasonable steps to minimize costs associated with the suspension.

Notice to Resume: Upon receipt of notice to resume suspended services, the Consultant will immediately resume performance under this Agreement as required in the notice.

ARTICLE 13. DISPUTES

Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by **[insert user department name]**. The representative shall reduce the decision to writing and mail or otherwise furnish a copy thereof to the Consultant. The Consultant shall have 30 days from date the decision is sent to appeal the decision to the County Manager or his designee by mailing or otherwise furnishing to the County Manager or designee, copy of the written appeal. The decision of the County Manager or his designee for the determination of such appeal shall be final and conclusive. Pending any final decision of a dispute hereunder, Consultant shall proceed diligently with performance of the Agreement and in accordance with the decision of the **[department]** designated representative.

ARTICLE 14. TERMINATION OF AGREEMENT FOR CAUSE

- (1) Either County or Consultant may terminate work under this Agreement in the event the other party fails to perform in accordance with the provisions of the Agreement. Any party seeking to terminate this Agreement is required to give thirty (30) days prior written notice to the other party.
- (2) Notice of termination shall be delivered by certified mail with receipt for delivery returned to the sender.
- (3) **TIME IS OF THE ESSENCE** and if the Consultant refuses or fails to perform the work as specified in Exhibit C, Scope of Work and maintain the scheduled level of effort as proposed, or any separable part thereof, with such diligence as will insure completion of the work within the specified time period, or any extension or tolling there of, or fails to complete said work within such time. The County may exercise any remedy available under law or this Agreement. Failure to maintain the scheduled level of effort as proposed or deviation from the aforesaid proposal without prior approval of County shall constitute cause for termination

- (4) The County may, by written notice to Consultant, terminate Consultant's right to proceed with the Project or such part of the Project as to which there has been delay. In such event, the County may take over the work and perform the same to completion, by contract or otherwise, and Consultant shall be required to provide all copies of finished or unfinished documents prepared by Consultant under this Agreement to the County as stated in Exhibit D, "Project Deliverables".
- (5) Consultant shall be entitled to receive compensation for any satisfactory work completed on such documents as reasonably determined by the County.
- (6) Whether or not the Consultant's right to proceed with the work has been terminated, the Consultant shall be liable for any damage to the County resulting from the Consultant's refusal or failure to complete the work within the specified time period, and said damages shall include, but not be limited to, any additional costs associated with the County obtaining the services of another Consultant to complete the project.

ARTICLE 15. TERMINATION FOR CONVENIENCE OF COUNTY

Notwithstanding any other provisions, the County may terminate this Agreement for its convenience at any time by a written notice to Consultant. If the Agreement is terminated for convenience by the County, as provided in this article, Consultant will be paid compensation for those services actually performed. Partially completed tasks will be compensated for based on a signed statement of completion to be submitted by Consultant which shall itemize each task element and briefly state what work has been completed and what work remains to be done.

If, after termination, it is determined that the Consultant was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the government.

ARTICLE 16. WAIVER OF BREACH

The waiver by either party of a breach or violation of any provision of this Agreement, shall not operate or be construed to be, a waiver of any subsequent breach or violation of the same or other provision thereof.

ARTICLE 17. INDEPENDENT CONSULTANT

Consultant shall perform the services under this Agreement as an independent Consultant and nothing contained herein shall be construed to be inconsistent with such relationship or status. Nothing in this Agreement shall be interpreted or

construed to constitute Consultant or any of its agents or employees to be the agent, employee or representative of County.

ARTICLE 18. PROFESSIONAL RESPONSIBILITY

Consultant represents that it has, or will secure at its own expenses, all personnel appropriate to perform all work to be completed under this Agreement;

All the services required hereunder will be performed by Consultant or under the direct supervision of Consultant. All personnel engaged in the Project by Consultant shall be fully qualified and shall be authorized or permitted under applicable State and local law to perform such services.

None of the work or services covered by this Agreement shall be transferred, assigned, or subcontracted by Consultant without the prior written consent of the County.

ARTICLE 19. COOPERATION WITH OTHER CONSULTANTS

Consultant will undertake the Project in cooperation with and in coordination with other studies, projects or related work performed for, with or by County's employees, appointed committee(s) or other Consultants. Consultant shall fully cooperate with such other related Consultants and County employees or appointed committees. Consultant shall provide within his schedule of work, time and effort to coordinate with other Consultants under contract with County. Consultant shall not commit or permit any act, which will interfere with the performance of work by any other consultant or by County employees. Consultant shall not be liable or responsible for the delays of third parties not under its control nor affiliated with the Consultant in any manner.

ARTICLE 20. ACCURACY OF WORK

Consultant shall be responsible for the accuracy of his work and shall promptly correct its errors and omissions without additional compensation. Acceptance of the work by the County will not relieve Consultant of the responsibility of subsequent corrections of any errors and the clarification of any ambiguities. Consultant shall prepare any plans, report, fieldwork, or data required by County to correct its errors or omissions. The above consultation, clarification or correction shall be made without added compensation to Consultant. Consultant shall give immediate attention to these changes so there will be a minimum of delay to others.

ARTICLE 21. REVIEW OF WORK

Authorized representatives of County may at all reasonable times review and inspect Project activities and data collected under this Agreement and amendments thereto. All reports, drawings, studies, specifications, estimates,

maps and computations prepared by or for Consultant, shall be available to authorized representatives of County for inspection and review at all reasonable times in the main office of County. Acceptance shall not relieve Consultant of its professional obligation to correct, at its expense, any of its errors in work. County may request at any time and Consultant shall produce progress prints or copies of any work as performed under this Agreement. Refusal by Consultant to submit progress reports and/or plans shall be cause for County, without any liability thereof, to withhold payment to consultant until Consultant complies with County's request in this regard. County's review recommendations shall be incorporated into the plans by Consultant.

ARTICLE 22. INDEMNIFICATION

Consultant hereby agrees to release, indemnify, defend and hold harmless Fulton County, its Commissioners, officers, employees, sub-consultants, successors, assigns and agents, from and against any and all losses (including death), claims, damages, liabilities, costs and expenses (including but not limited to all actions, proceedings, or investigations in respect thereof and any costs of judgments, settlements, court costs, attorney's fees or expenses, regardless of the outcome of any such action, proceeding, or investigation), caused by, relating to, based upon or arising out of any act or omission by Consultant, its directors, officers, employees, sub-consultants, successors, assigns or agents, or otherwise in connection (directly or indirectly) with its acceptance, or the performance, or nonperformance, of its obligations under these agreements. Such obligations shall not be construed to negate, abridge or otherwise reduce any other rights or obligations of indemnity which would otherwise exist as to any party or person as set forth in this paragraph.

Consultant obligation to protect, defend, indemnify and hold harmless, as set forth hereinabove, shall also include, but is not limited to, any matter arising out of any actual or alleged infringement of any patent, trademark, copyright, or service mark, or other actual or alleged unfair competition disparagement of product or service, or other tort or any type whatsoever, or any actual or alleged violation of trade regulations.

Consultant further agrees to protect, defend, indemnify and hold harmless Fulton County, its Commissioners, officers, employees, sub-consultants, successors, assigns and agents from and against any and all claims or liability for compensation under the Worker's Compensation Act, Disability Benefits Act, or any other employee benefits act arising out of injuries sustained by any employees of Consultant. These indemnities shall not be limited by reason of the listing of any insurance coverage.

These indemnity provisions are for the protection of the County indemnities only and shall not establish, of themselves, any liability to third parties. The provisions of this article shall survive termination of this Agreement.

ARTICLE 23. CONFIDENTIALITY

Consultant agrees that its conclusions and any reports are for the confidential information of County and that it will not disclose its conclusions in whole or in part to any persons whatsoever, other than to submit its written documentation to County, and will only discuss the same with it or its authorized representatives, except as required under this Agreement to provide information to the public. Upon completion of this Agreement term, all documents, reports, maps, data and studies prepared by Consultant pursuant thereto and any equipment paid for by County as a result of this Agreement, shall become the property of County and be delivered to the **[insert user department name]**.

Articles, papers, bulletins, reports, or other materials reporting the plans, progress, analyses, or results and findings of the work conducted under this Agreement shall not be presented publicly or published without prior approval in writing of County.

It is further agreed that if any information concerning the Project, its conduct results, or data gathered or processed should be released by Consultant without prior approval from County, the release of the same shall constitute grounds for termination of this Agreement without indemnity to Consultant, but should any such information be released by County or by Consultant with such prior written approval, the same shall be regarded as Public information and no longer subject to the restrictions of this Agreement.

ARTICLE 24. OWNERSHIP OF INTELLECTUAL PROPERTY AND INFORMATION

Consultant agrees that Fulton County is the sole owner of all information, data, and materials that are developed or prepared subject to this Agreement. Consultant or any sub-consultant is not allowed to use or sell any information subject to this contract for educational, publication, profit, research or any other purpose without the written and authorized consent of the County. All electronic files used in connection to this Agreement, which are by definition, any custom software files used in connection to this Agreement, (collectively, the "Software"), shall be turned over to the County for its use after termination hereof and Consultant shall have no interest of any kind in such electronic files. Any required licenses and fees for the Software or other required materials shall be purchased and/or paid for by Consultant and registered in the name of the County, if possible. The Software as defined hereunder, specifically excludes all software, documentation, information, and materials in which Consultant has pre-existing proprietary rights and/or has otherwise been licensed to Consultant prior to this Agreement, and any upgrades, updates, modifications or enhancements thereto. Consultant agrees to provide at no cost to County any upgrades to any software used in connection with this Agreement which may be subsequently developed or upgraded for a period of three (3) years from the date of completion of the work under the Agreement, except in the case of commercial Software

licensed to the County. Any information developed for use in connection with this Agreement may be released as public domain information by the County at its sole discretion.

ARTICLE 25. COVENANT AGAINST CONTINGENT FEES

Consultant warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees maintained by Consultant for the purpose of securing business and that Consultant has not received any non-County fee related to this Agreement without the prior written consent of County. For breach or violation of this warranty, County shall have the right to annul this Agreement without liability or at its discretion to deduct from the Contract Price or consideration the full amount of such commission, percentage, brokerage or contingent fee.

ARTICLE 26. INSURANCE

Consultant agrees to obtain and maintain during the entire term of this Agreement, all of the insurance required as specified in the Agreement documents, Exhibit G, Insurance and Risk Management Forms, with the County as an additional insured and shall furnish the County a Certificate of Insurance showing the required coverage. The cancellation of any policy of insurance required by this Agreement shall meet the requirements of notice under the laws of the State of Georgia as presently set forth in the Georgia Code.

ARTICLE 27. PROHIBITED INTEREST

Section 27.01 Conflict of interest:

Consultant agrees that it presently has no interest and shall acquire no interest direct or indirect that would conflict in any manner or degree with the performance of its service hereunder. Consultant further agrees that, in the performance of the Agreement, no person having any such interest shall be employed.

Section 27.02 Interest of Public Officials:

No member, officer or employee of County during his tenure shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

ARTICLE 28. SUBCONTRACTING

Consultant shall not subcontract any part of the work covered by this Agreement or permit subcontracted work to be further subcontracted without prior written approval of County.

ARTICLE 29. ASSIGNABILITY

Consultant shall not assign or subcontract this Agreement or any portion thereof without the prior expressed written consent of County. Any attempted assignment or subcontracting by Consultant without the prior expressed written consent of County shall at County's sole option terminate this Agreement without any notice to Consultant of such termination. Consultant binds itself, its successors, assigns, and legal representatives of such other party in respect to all covenants, agreements and obligations contained herein.

ARTICLE 30. ANTI-KICKBACK CLAUSE

Salaries of engineers, surveyors, draftsmen, clerical and technicians performing work under this Agreement shall be paid unconditionally and not less often than once a month without deduction or rebate on any account except only such payroll deductions as are mandatory by law. Consultant hereby promises to comply with all applicable "Anti-Kickback" Laws, and shall insert appropriate provisions in all subcontracts covering work under this Agreement.

ARTICLE 31. AUDITS AND INSPECTORS

At any time during normal business hours and as often as County may deem necessary, Consultant shall make available to County and/or representatives of the County for examination all of its records with respect to all matters covered by this Agreement.

It shall also permit County and/or representative of the County to audit, examine and make copies, excerpts or transcripts from such records of personnel, conditions of employment and other data relating to all matters covered by this Agreement. Consultant's records of personnel, conditions of employment, and financial statements (hereinafter "Information") constitute trade secrets and are considered confidential and proprietary by Consultant. To the extent County audits or examines such Information related to this Agreement, County shall not disclose or otherwise make available to third parties any such Information without Consultant's prior written consent unless required to do so by a court order. Nothing in this Agreement shall be construed as granting County any right to make copies, excerpts or transcripts of such information outside the area covered by this Agreement without the prior written consent of Consultant. Consultant shall maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred on the Project and used in support of its proposal and shall make such material available at all reasonable times during the period of the Agreement and for eight years from the date of final payment under the Agreement, for inspection by County or any reviewing agencies and copies thereof shall be furnished upon request and at no additional cost to County. Consultant agrees that the provisions of this Article shall be included in any Agreements it may make with any sub-consultant, assignee or transferee.

ARTICLE 32. **ACCOUNTING SYSTEM**

Consultant shall have an accounting system, which is established, and maintaining in accordance with generally accepted accounting principles. Consultant must account for cost in a manner consistent with generally accepted accounting procedures, as approved by Fulton County.

ARTICLE 33. **VERBAL AGREEMENT**

No verbal agreement or conversation with any officer, agent or employee of County either before, during or after the execution of this Agreement, shall affect or modify any of the terms of obligations herein contained, nor shall such verbal agreement or conversation entitle Consultant to any additional payment whatsoever under the terms of this Agreement. All changes to this shall be in writing and the form of a change order in supplemental agreement, approved by the County, and entered on the Minutes of the Board of Commissioners.

ARTICLE 34. **NOTICES**

All notices shall be in writing and delivered in person or transmitted by certified mail, postage prepaid.

Notice to County, shall be addressed as follows:

[Insert User Department Representative Position for project]

[Insert User Department Address]

Atlanta, Georgia 30303

Telephone:

Email:

Attention: ***[Insert User Department Representative for project]***

With a copy to:

Department of Purchasing & Contract Compliance

Director

130 Peachtree Street, S.W. Suite 1168

Atlanta, Georgia 30303

Telephone: (404) 612-5800

Email: cecil.moore@fultoncountyga.gov

Attention: Cecil S. Moore

Notices to Consultant shall be addressed as follows:

[Insert Consultant Representative for project]

[Insert Consultant Address]

Telephone:

Email:

Attention: **[Insert Consultant Representative for project]**

ARTICLE 35. **JURISDICTION**

This Agreement will be executed and implemented in Fulton County. Further, this Agreement shall be administered and interpreted under the laws of the State of Georgia. Jurisdiction of litigation arising from this Agreement shall be in the Fulton County Superior Courts. If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void insofar as it is in conflict with said laws, but the remainder of this Agreement shall be in full force and effect.

Whenever reference is made in the Agreement to standards or codes in accordance with which work is to be performed, the edition or revision of the standards or codes current on the effective date of this Agreement shall apply, unless otherwise expressly stated.

ARTICLE 36. **EQUAL EMPLOYMENT OPPORTUNITY**

During the performance of this Agreement, Consultant agrees as follows:

Section 36.01 Consultant will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin;

Section 36.02 Consultant will, in all solicitations or advertisements for employees placed by, or on behalf of, Consultant state that all qualified applicants, will receive consideration for employment without regard to race, creed, color, sex or national origin;

Section 36.03 Consultant will cause the foregoing provisions to be inserted in all subcontracts for any work covered by the Agreement so that such provision will be binding upon each sub-consultant, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

ARTICLE 37. **FORCE MAJEURE**

Neither County nor Consultant shall be deemed in violation of this Agreement if either is prevented from performing its obligations hereunder for any reason beyond its control, including but not limited to acts of God, civil or military authority, act of public enemy, accidents, fires, explosions, earthquakes, floods or catastrophic failures of public transportation, provided however, that nothing herein shall relieve or be construed to relieve Consultant from performing its obligations hereunder in the event of riots, rebellions or legal strikes.

ARTICLE 38. OPEN RECORDS ACT

The Georgia Open Records Act, O.C.G.A. Section 50-18-70 et seq., applies to this Agreement. The Consultant acknowledges that any documents or computerized data provided to the County by the Consultant may be subject to release to the public. The Consultant also acknowledges that documents and computerized data created or held by the Consultant in relation to the Agreement may be subject to release to the public, to include documents turned over to the County. The Consultant shall cooperate with and provide assistance to the County in rapidly responding to Open Records Act requests. The Consultant shall notify the County of any Open Records Act requests no later than 24 hours following receipt of any such requests by the Consultant. The Consultant shall promptly comply with the instructions or requests of the County in relation to responding to Open Records Act requests.

ARTICLE 39. CONSULTANT'S COMPLIANCE WITH ALL ASSURANCES OR PROMISES MADE IN RESPONSE TO PROCUREMENT

Where the procurement documents do not place a degree or level of service relating to the scope of work, M/FBE participation, or any other matter relating to the services being procured, should any Consultant submit a response to the County promising to provide a certain level of service for the scope of work, M/FBE participation, or any other matter, including where such promises or assurances are greater than what is required by the procurement documents, and should this response containing these promises or assurances be accepted by the County and made a part of the Contract Documents, then the degree or level of service promised relating to the scope of work, M/FBE participation, or other matter shall be considered to be a material part of the Agreement between the Consultant and the County, such that the Consultant's failure to provide the agreed upon degree or level of service or participation shall be a material breach of the Agreement giving the County just cause to terminate the Agreement for cause, pursuant to ARTICLE 14 of the Agreement.

ARTICLE 40. INVOICING AND PAYMENT

Consultant shall submit monthly invoices for work performed during the previous calendar month, in a form acceptable to the County and accompanied by all support documentation requested by the County, for payment and for services that were completed during the preceding phase. The County shall review for approval of said invoices. The County shall have the right not to pay any invoice or part thereof if not properly supported, or if the costs requested or a part thereof, as determined by the County, are reasonably in excess of the actual stage of completion.

Time of Payment: Invoices for payment shall be submitted to County by the first (1st) calendar day of the month to facilitate processing for payment in that same month. Invoices received after the first (1st) calendar day of the month may not

be paid until the last day of the following month. The County shall make payments to Consultant by U.S. mail approximately thirty (30) days after receipt of a proper invoice. Parties hereto expressly agree that the above contract term shall supersede the rates of interest, payment periods, and contract and subcontract terms provided for under the Georgia Prompt Pay Act, O.C.G.A. 13-11-1 et seq., pursuant to 13-11-7(b), and the rates of interest, payment periods, and contract and subcontract terms provided for under the Prompt Pay Act shall have no application to this Agreement; parties further agree that the County shall not be liable for any interest or penalty arising from late payments.

Submittal of Invoices: Consultant shall submit all invoices in original and one (1) copy to:

[Insert User Department Representative Position for project]

[Insert User Department Address]

Atlanta, Georgia 30303

Telephone:

Email:

Attention: **[Insert User Department Representative for project]**

Consultant's cumulative invoices shall not exceed the total not-to-exceed fee established for this Agreement.

Optional: [A narrative of one (1) page only, listing the scope of work/ services billed for shall accompany each invoice.]

County's Right to Withhold Payments: The County may withhold payments for services that involve disputed costs, involve disputed audits, or are otherwise performed in an inadequate fashion. Payments withheld by the County will be released and paid to the Consultant when the services are subsequently performed adequately and on a timely basis, the causes for disputes are reconciled or any other remedies or actions stipulated by the County are satisfied. The County shall promptly pay any undisputed items contained in such invoices.

Payment of Sub-consultants/Suppliers: The Consultant must certify in writing that all sub-consultants of the Consultant and suppliers have been promptly paid for work and materials and previous progress payments received. In the event the prime Consultant is unable to pay sub-consultants or suppliers until it has received a progress payment from Fulton County, the prime Consultant shall pay all sub-consultants or supplier funds due from said progress payments within forty-eight (48) hours of receipt of payment from Fulton County and in no event later than fifteen days as provided for by State Law.

Acceptance of Payments by Consultant; Release. The acceptance by the Consultant of any payment for services under this Agreement will, in each instance, operate as, and be a release to the County from, all claim and liability

to the Consultant for work performed or furnished for or relating to the service for which payment was accepted, unless the Consultant within five (5) days of its receipt of a payment, advises the County in writing of a specific claim it contends is not released by that payment.

ARTICLE 41. TAXES

The Consultant shall pay all sales, retail, occupational, service, excise, old age benefit and unemployment compensation taxes, consumer, use and other similar taxes, as well as any other taxes or duties on the materials, equipment, and labor for the work provided by the Consultant which are legally enacted by any municipal, county, state or federal authority, department or agency at the time bids are received, whether or not yet effective. The Consultant shall maintain records pertaining to such taxes as well as payment thereof and shall make the same available to the County at all reasonable times for inspection and copying. The Consultant shall apply for any and all tax exemptions which may be applicable and shall timely request from the County such documents and information as may be necessary to obtain such tax exemptions. The County shall have no liability to the Consultant for payment of any tax from which it is exempt.

ARTICLE 42. PERMITS, LICENSES AND BONDS

All permits and licenses necessary for the work shall be secured and paid for by the Consultant. If any permit, license or certificate expires or is revoked, terminated, or suspended as a result of any action on the part of the Consultant, the Consultant shall not be entitled to additional compensation or time.

ARTICLE 43. NON-APPROPRIATION

This Agreement states the total obligation of the County to the Consultant for the calendar year of execution. Notwithstanding anything contained in this Agreement, the obligation of the County to make payments provided under this Agreement shall be subject to annual appropriations of funds thereof by the governing body of the County and such obligation shall not constitute a pledge of the full faith and credit of the County within the meaning of any constitutional debt limitation. The Director of Finance shall deliver written notice to the Consultant in the event the County does not intend to budget funds for the succeeding Contract year.

Notwithstanding anything contained in this Agreement, if sufficient funds have not been appropriated to support continuation of this Agreement for an additional calendar year or an additional term of the Agreement, this Agreement shall terminate absolutely and without further obligation on the part of the County at the close of the calendar year of its execution and at the close of each succeeding calendar year of which it may be renewed, unless a shorter

termination period is provided or the County suspends performance pending the appropriation of funds.

ARTICLE 44. **WAGE CLAUSE**

Consultant shall agree that in the performance of this Agreement the Consultant will comply with all lawful agreements, if any, which the Consultant had made with any association, union, or other entity, with respect to wages, salaries, and working conditions, so as not to cause inconvenience, picketing, or work stoppage.

IN WITNESS THEREOF, the Parties hereto have caused this Contract to be executed by their duly authorized representatives as attested and witnessed and their corporate seals to be hereunto affixed as of the day and year date first above written.

OWNER:

CONSULTANT:

FULTON COUNTY, GEORGIA

[Insert Consultant COMPANY NAME]

John H. Eaves, Commission Chair
Board of Commissioners

[Insert Name & Title of person authorized to sign contract]

ATTEST:

ATTEST:

Mark Massey
Clerk to the Commission (Seal)

Secretary/
Assistant Secretary

(Affix Corporate Seal)

APPROVED AS TO FORM:

Office of the County Attorney

APPROVED AS TO CONTENT:

[Insert Department Head Name]
[Insert Department Head Title]

ADDENDA

Instructions for Users: Acknowledgement(s) of any addenda should be inserted behind this cover sheet.

EXHIBIT A

GENERAL CONDITIONS

Instructions for Users: Insert any General Conditions that were in the solicitation document behind this cover sheet.

Example: “Fulton County Purchasing Department Request For Proposal (RFP) General Requirements”.

EXHIBIT B

SPECIAL CONDITIONS

Instructions for Users: Insert any Special Conditions that were in the solicitation document behind this cover sheet. If no Special Conditions were required, on a separate page behind this cover page please use the following language:

No Special Conditions were required for this Project

EXHIBIT C

SCOPE OF WORK

Instructions for Users: Insert the detailed Scope of Work to be provided by the Consultant behind this cover sheet.

EXHIBIT D

PROJECT DELIVERABLES

Instructions for Users: Insert any Project Deliverables to be provided by the Consultant behind this cover sheet.

EXHIBIT E

COMPENSATION

Instructions for Users: Insert the detailed Compensation to Consultant (payment to consultant providing service) behind this cover sheet.

EXHIBIT F

PURCHASING FORMS

Instructions for Users: Insert the Purchasing forms submitted by the Consultant. Please contact Purchasing to insure you have the correct forms. Insert forms behind this cover sheet.

EXHIBIT G

OFFICE OF CONTRACT COMPLIANCE FORMS

Instructions for Users: Insert the Contract Compliance forms submitted by the Consultant. Please contact Contract Compliance to insure you have the correct forms. Insert forms behind this cover sheet.

EXHIBIT H

INSURANCE AND RISK MANAGEMENT FORMS

Instructions for Users: Insert the following information behind this cover sheet.

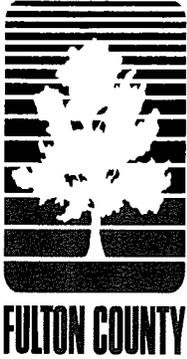
1. Insurance and Risk Management Provisions from Solicitation Document

The following information should be inserted after you have received submittals from the Consultant:

2. Certificate of Insurance
3. Payment Bonds (if applicable)
4. Performance Bonds (if applicable)

APPENDIX 1

POLICY 800-6, PROCEDURES FOR HANDLING CHANGE ORDERS



POLICY AND PROCEDURE

SUBJECT: Procedures for Handling Change Orders

DATE: September 19, 2001

800-6

A. STATEMENT OF POLICY:

Fulton County is committed to a policy of open, non-discriminatory and competitive purchasing. When circumstances arise after award of a contract, requiring modification of that contract, such modification will be accomplished in accordance with this Change Order Policy and Procedure, to achieve the following goals:

- (1) Ensure that Fulton County does not pay more than is necessary to complete the contract;
- (2) Preclude a contractor from tendering the lowest bid and then increasing the cost of the contract through the change order process;
- (3) Ensure that the terms and conditions upon which the contract was awarded are met throughout the term of the contract, including any and all change orders;
- (4) Ensure that the change order procedure is not used to bypass the competitive bidding process; and
- (5) Ensure that change orders are not used for work that is independent of and outside the scope of the original contract.

B. BACKGROUND:

A change order is a written order from Fulton County to a contractor, directing a change within the scope of the contract and necessary for completion of the contract, in the specifications, services, time of performance or terms and conditions of the contract. A change is within the scope of a contract if it concerns the work required by the original contract documents and any subsequent change orders approved to accomplish the intent of the project as described in the solicitation documents.

A contractor is any person or entity, whether designated as a contractor, vendor, consultant or by any other title, having a contractual relationship with Fulton County. In Fulton County, except as otherwise provided in this Policy and Procedure, change orders shall be effected only through a written, bilateral agreement (Modification) between the County,

acting through its Board of Commissioners, and the contractor. The Modification modifies the contract and will specify all changes to the contract and the costs thereof.

C. JUSTIFICATION FOR CHANGE ORDERS:

Change orders are authorized only for the following reasons:

- (1) Situations creating an immediate need to protect the public health, safety or welfare;
- (2) Corrections of deficiencies in design or construction documents provided by architects or engineers other than the contractor;
- (3) Changes in applicable laws or regulations, or changes that result from public participation when such participation is mandated by laws or regulations;
- (4) Concealed conditions, differing site conditions or abnormal inclement weather;
- (5) Owner requested changes within the scope of the original contract. Such changes may include: deductive change orders and accommodation of value engineering and administrative matters such as closeout change orders for unit price contracts, deductions for approved material substitutions and administrative no-cost change orders.

D. CHANGE ORDER AUTHORITY: Except as otherwise provided in this procedure, change orders may be approved only by the Board of Commissioners of Fulton County. Such approval shall be demonstrated by a formal vote on the Contract Modification.

E. CHANGE ORDER PROCEDURE: The ordinary sequence of a change order is as follows:

- (1) Need for contract change is identified.
- (2) Contractor is requested to propose price for change and if necessary, schedule changes.
- (3) Contractor and County negotiate price and scope of change.
- (4) Agreement between County and contractor for change is clearly defined in a written Modification.
- (5) Contractor signs Modification and returns it to County.
- (6) Modification is submitted to Board of Commissioners for approval and signature.

Circumstances may alter this general description of change order procedure. The administrative actions necessary to accomplish a change order are described in Section "F" of this Policy and Procedure.

- F. **ADMINISTRATIVE ACTIONS:** Department heads have primary responsibility for completion of the administrative steps necessary to complete a change order. Such responsibility may be exercised through designees and in consultation with other interested departments. Except for change orders falling under Section G, the following regular administrative procedures will govern all change orders:
- (1) The department head will confirm the necessity for and the appropriateness of a change order under this procedure.
 - (2) The department head will submit to the contractor a written description of the proposed change and request that the contractor submit a cost proposal. The written description must provide sufficient details of the change to permit the contractor to submit a realistic price.
 - (3) The department head, in conjunction with the Purchasing Agent, shall review the cost proposal for general reasonableness and compliance with applicable County purchasing policies.
 - (4) If appropriate and necessary, the department head may negotiate the cost and scope of the proposed change with the contractor.
 - (5) If agreement is reached with the contractor, the terms of the agreement shall be reduced to a written Contract Modification suitable for execution by the contractor and Fulton County. The Modification shall clearly describe the changes to the contract, including any changes to the schedule and the obligations of the parties. The Modification also shall clearly describe all elements of the cost of the changes, all previous change orders and the total change to the contract cost.
 - (6) The department head shall submit the proposed Modification to the County Attorney for preliminary review, and to the Purchasing Agent, the Director of Finance and the Director of Contract Compliance for their review. The department head shall attach to the Modification, the documents listed in Attachment 1 to this Procedure. When change order packages are submitted to the County Attorney's Office for review, the original contract and all previous change orders must be attached.
 - (7) Upon completion of the reviews, the department head shall make such changes to the proposed Modification and related documents as necessary and then shall submit five copies of the Modification to the contractor for execution.
 - (8) The Modification, as executed by the contractor, the explanatory memorandum and the Uniform Contract/Purchasing Sign-Off Sheet (Sign-Off Sheet) shall be submitted to the County Attorney's Office for final review, to include review of the formalities of execution by the contractor.
 - (9) The Modification and accompanying documentation shall be submitted to the County Manager for approval and placement on the Board of Commissioners' agenda. The County Manager shall ensure that all required reviews have been

completed and that all necessary documents are attached to the Modification. However, the County Manager may disapprove a change order and return it to the department head to have the work procured through the competitive process.

- (10) Following approval by the Board of Commissioners and receipt of the approval letter from the County Manager, the user department shall forward the originals (with a copy of the approval letter and the routing sheet) to the County Manager for execution. The County Manager shall forward the documents to the Chairman's Office for his/her signature. The Chairman's Office shall forward the documents to the Clerk to the Commission for his/her signature. The Clerk's Office shall retain one original for the file designated by the Board of Commissioners for filing contracts and making them available for public inspection, and shall forward one original to Purchasing and the remainder of the documents to the user department.
- (11) The user department shall distribute copies of the approved and signed Modifications as set out in Section H. The Purchasing Agent shall issue any necessary purchase order modifications to the contractor and the department concerned, and the department head shall issue to the contractor any necessary notices to proceed.

G. COUNTY MANAGER'S AUTHORITY: In the following described situations, the County Manager is authorized to approve change orders and authorize the commencement of work pursuant to such change orders, subject to ratification by the Board of Commissioners. The Board of Commissioners will not withhold ratification unless there is credible evidence showing that the contractor induced or procured the change order by fraud.

(1) Change orders less than 10% of original contract amount:

- (a) The County Manager is authorized to approve change orders having a total cost that is less than 10% of the original contract cost. A change order may be approved under this procedure if its cost, when combined with that of all previous change orders to the same contract, is an amount less than 10% of the original contract cost. The County Manager may decline to exercise this authority and return change orders for processing through the regular change order procedure, or may direct that the work be procured through the competitive process.
- (b) Change orders submitted under this authority shall be processed according to the regular administrative procedure described in the preceding Section F, up through Step (8).

The procedure thereafter shall be as follows, substituting the numbered steps below:

- (9) The Modification and required documentation shall be submitted to the County Manager for approval. The County Manager shall review the

documents for compliance with this Policy and Procedure and the completion of all required reviews. The County Manager may decline to exercise the authority to approve the change order and may either submit it to the Board of Commissioners under the regular administrative procedure or return it to the department head to procure the work through the competitive process.

- (10) The County Manager shall document approval of the change order by signature on the Sign-Off Sheet and shall notify the user department and the Purchasing Agent of such approval. The department head and the Purchasing Agent shall issue any necessary notices to proceed and purchase order amendments. Work may proceed upon approval by the County Manager.
- (11) Not more than sixty (60) days following approval of a change order under this authority, the County Manager shall have it spread on the minutes by placing it on the consent agenda and subsequently obtaining the signature of the Chairman of the Board of Commissioners on the Modification. The user department shall distribute copies of the executed Modification as stipulated under the regular procedure.

(2) Extraordinary Circumstances:

- (a) The County Manager is authorized to approve change orders regardless of the amount when due to extraordinary circumstances, work must be implemented before the Board of Commissioners can act. The County Manager may decline to exercise the authority granted hereunder and may require that the change order be submitted under the regular procedure, or he/she may direct that the work be procured through the competitive process.
- (b) The authority granted in this section may be exercised when immediate action must be taken to protect the County's interests, and only under the following circumstances (in addition to meeting the requirements of Section C):
 - (i) Threat to public health, welfare or safety; or
 - (ii) Threat of litigation when it appears likely that litigation will be commenced and that Fulton County's legal position may be compromised by delay in implementing the change order. Change orders citing this circumstance must be approved by the Office of the County Attorney; or
 - (iii) Loss of substantial resources due to delay, including delay to critical path schedule.
- (c) Department heads proceeding under this authority must comply with as much of the procedure set out in Section G (1) as the situation will permit.

- (d) At a minimum, the following procedures must be observed:
 - (i) The contractor shall execute a written contract Modification that clearly describes the work to be done and its cost. If costs cannot be fully detailed due to the exigencies of the situation, the Modification must set out a maximum cost and state that the cost will be definitized in a final change order.
 - (ii) The department head shall obtain the approval of the Purchasing Agent, prior to submitting the change order to the County Manager.
 - (iii) The work may proceed upon approval by the County Manager. The department head shall prepare all other documentation normally required for a change order, including completion of the Sign-Off Sheet.
 - (iv) Not later than sixty (60) days following approval of the change order, the County Manager shall place the change order on the consent agenda.
 - (v) In cases of change orders without definitized costs under Subsection (i) above, the department head shall commence processing a final change order as soon as circumstances permit.

**SECTION 9
EXHIBITS**

EXHIBIT 1

Request to Proposal (RFP) Submittal Check List for

The following submittals shall be completed and submitted with each proposal (see table below "Required Proposal Submittal Check List."). Please check to make sure that the required submittals are in the envelope before it is sealed. Failure to submit all required submittals may deem your proposal non-responsive.

Submit one (1) Original proposal and five (5) CD's as required in Section 3.1.2 of the RFP.

Item #	Required Proposal Submittal Check List	Check (√)
1	One (1) Proposal marked " Original " and Four (4) Proposals marked " Copy ", and five (5) CD's	
2	*Form E: Georgia Security and Immigration Contractor Affidavit(s) and Agreements <i>Note: If prime contractor is a joint venture, partnership, LLC, each member of the entity must submit an affidavit</i>	
3	*Form F: Georgia Security and Immigration Subcontractor Affidavit (s)	
4	Technical Proposal	
5	Cost Proposal (submitted in a separate sealed envelope)	
6	Financial Information (submitted in a separate sealed envelope)	
7	Acknowledgement of each Addendum	
8	Executive Summary Project Plan or Project Approach Project Team Qualifications/Qualifications of Key Personnel Availability of Key Personnel Local Preference Service Disabled Veterans Preference Relevant Project Experience/Past Performance Proposer Financial Information Disclosure Form and Questionnaire Core Questionnaire Due Diligence Questionnaire	
9	Purchasing Forms Form A: Certificate Regarding Debarment Form B: Non-Collusion Affidavit of Bidder/Offer or Form C: Certificate of Acceptance of Request Proposal requirements Form D: Disclosure Form & Questionnaire Form G: Professional License Form H: Local Preference Affidavit of Bidder/Offeror	
10	Office of Contract Compliance Requirements (separate envelope) Exhibit A: Promise of Non-Discrimination Exhibit B: Employment Record Exhibit C: Schedule of Intended Subcontractor Utilization Exhibit D: Letter of Intent to Perform as Subcontractor Exhibit E: Declaration Regarding Subcontractor Practices Exhibit F: Joint Venture Disclosure Affidavit	

EXHIBIT 1**Request to Proposal (RFP) Submittal Check List for**

	Exhibit G: Prime Contractor/Subcontractor Utilization Report Equal Business Opportunity Plan (EBO Plan) Exhibit H – First Source Jobs Program Information Form 1 Exhibit H – First Source Jobs Program Agreement Form 2	
	Evidence of Insurability, proposer must submit one (1) of the following: Letter from insurance carrier Certificate of Insurance An umbrella policy in excess of required limits for this project	
	Verify that Bidder/Proposer is registered w/Georgia Secretary of State and attach a copy of print out for each	
	Verify Georgia Utility License Number and attach a copy of print out for each Bidder/Proposer (If applicable)	
	Verify Professional License and attach a copy of the print out for each Bidder/Proposer (If applicable)	

**FULTON COUNTY DEFINED CONTRIBUTION PLAN
PLAN DOCUMENT**

**FULTON COUNTY
DEFINED CONTRIBUTION PLAN**

Effective as of April 4, 2007

FULTON COUNTY
DEFINED CONTRIBUTION PLAN

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ARTICLE I

PURPOSE

Effective as of July 1, 1999, Fulton County (the "Employer"), adopted a defined contribution plan for the benefit of its employees (the "Plan"). The purpose of the Plan is to provide funds at retirement for the employees and, in the event of death, to provide funds for their beneficiaries all through an arrangement by which contributions are made to the Plan by Employees and the Employer. The Plan has been amended eight times between 1999 and April, 2007 for discretionary and required provisions. This amendment and restatement is intended to incorporate all prior Plan amendments and should be construed as a continuation of the Plan as previously in effect.

This Plan is intended to be a money purchase pension plan within the meaning of Treas. Reg. § 1.401-1(b)(1)(i) and is intended to meet the applicable requirements of Sections 401(a), 414(h) and 501(a) of the Internal Revenue Code of 1986, as amended (the "Code"). Except where otherwise noted, the terms of the Plan that are in effect when a Participant terminates employment, govern the accumulation and vesting of benefits during his or her period of employment.

ARTICLE II

DEFINITIONS

Where the following words and phrases appear in this Plan, they shall have the respective meanings set forth in this Article, unless the context clearly indicates to the contrary.

For purposes of the Plan, the following terms, when used with an initial capital letter, shall have the meanings set forth below unless a different meaning plainly is required by the context.

2.1 Account means, with respect to a Participant or Beneficiary, the amount of money or other property in the Trust Fund, evidenced by the last balance posted to the account established for such individual. The Administrative Committee may establish and maintain separate subaccounts for each such individual. "Account" shall refer to the aggregate of all separate subaccounts or to individual, separate subaccounts, as may be appropriate in context.

2.2 Active Participant means, for any Plan Year (or any portion thereof), any Eligible Employee who, pursuant to the terms of Article III, has been admitted to, and not removed from, active participation in the Plan since the last date his employment commenced or recommenced.

2.3 Administrative Committee means the Retirement Committee which shall act on behalf of the Employer to administer the Plan as provided in Article IX. The Administrative Committee shall be the Plan administrator, as that term is defined in Code §414(g); provided, the Employer may act in lieu of the Administrative Committee as it deems appropriate or desirable.

2.4 Affiliate means Fulton County and any company, person or organization which is a member of the same controlled group of corporations [within the meaning of Code §414(b)] as the Employer; is a trade or business (whether or not incorporated) which controls, is controlled by or is under common control with [within the meaning of Code §414(c)] the Employer; is a member of an affiliated service group [as defined in Code §414(m)] which includes the Employer; or is required to be aggregated with the Employer pursuant to regulations promulgated under Code §414(o). Solely for purposes of Code §415 and Section 5.3 of the Plan, the term "Affiliate" as defined in this Section shall be deemed to include corporations that would be Affiliates if the phrase "more than 50 percent" were substituted for the phrase "at least 80 percent" in each place the latter phrase appears in Code §1563(a)(1).

2.5 Annual Addition means the sum of the amounts described in Section 5.3(d).

2.6 Beneficiary means the person(s) designated in accordance with Section 7.4 to receive any death benefits that may be payable under the Plan upon the death of a Participant.

2.7 Code means the Internal Revenue Code of 1986, as amended, and any succeeding federal tax provisions.

2.8 Compensation means all of a Participant's wages as defined in Code §3401(a) for purposes of income tax withholding at the source (that is, income reportable on IRS Form W-2), but determined without regard to employee suggestion pay and any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code §3401(a)(2)). Compensation shall include before-tax or salary deferral contributions made under Code §§125, 402(g)(3) or 457 to the Plan or other plans, on behalf of a Participant for such Plan Year. On a plan year-by-plan year basis, the Administrative Committee may elect to use any definition of "Compensation" that satisfies Code §415(c)(3) and the regulations promulgated thereunder. Effective January 1, 2001, Compensation as described in this paragraph shall be increased by the amount by which the Participant's Compensation is reduced by salary reduction or similar arrangement under Section 132(f)(4) of the Code (i.e., a qualified transportation fringe benefit program).

Notwithstanding the foregoing, in no event shall the annual compensation taken into account under the Plan for Plan Years (or other applicable periods) exceed \$150,000 (as adjusted by the Internal Revenue Service under Code §401(a)(17) for cost of living increases) and prorated on the basis of months for any period less than 12 months. Effective January 1, 2002, the annual compensation taken into account under the Plan shall not exceed \$200,000 as adjusted for cost-of-living in accordance with Code section 401(a)(17)(b).

2.9 Contribution means, individually or collectively, the Mandatory Employee, Employer Basic, Employer Matching, Transfer and Rollover Contributions as permitted under the Plan.

2.10 County means Fulton County.

2.11 Disabled or Disability means "disabled" or "disability" as defined under the Long Term Disability Insurance policy provided by the County to its employees. However, if the Participant is a peace officer employee of the County he will be considered disabled if he meets the definition of "disabled" or "disability" as set forth in the Supplemental Long Term Disability Plan for Peach Officer Employees of Fulton County.

2.12 Effective Date means July 1, 1999 (the "Original Effective Date") and April 4, 2007, the Amended and Restated Effective Date.

2.13 Eligible Employee means any full-time Employee of the Employer or any other Employee of the Employer who is participating in a Prior Plan as of July 1, 1999.

Notwithstanding the foregoing, the following individuals shall not be eligible to participate in the Plan:

(a) Any individual who is an Employee solely by means of being a “leased employee” under Section 414(n)(2) of the Code.

(b) Temporary or causal Employees.

(c) Employees hired on a contract basis.

(d) Poll officers and election workers who are not regular Employees.

(e) Members of the Fulton County Board of Commissioners and personnel such as attorneys in the Fulton County Legal Department who are not required by law or the terms of their employment to work on a full time basis for the Employer and who were initially employed, appointed or elected after August 1, 1988.

(f) Employees of the Fulton County Department of Family and Children Services, Atlanta Fulton County Recreation Authority, or the State Department of Corrections.

(g) Any assistant district attorney for the Atlanta Judicial Circuit who participates in any retirement system for the officers or employees of the State of Georgia.

(h) Any person who becomes a judge of the State Court of Fulton County on or after July 1, 2004, or any judge of the State Court of Fulton County who elected to participate in the Georgia Judicial Retirement System on or before December 31, 2004.

2.14 Eligible Retirement Plan means a plan which is a defined contribution plan, the terms of which permit the acceptance of rollover distributions and which is either (a) an individual retirement account described in Code §408(a), (b) an individual retirement annuity described in Code §408(b) (other than an endowment contract), (c) a qualified trust described in Code §401(a) and exempt from taxation under Code §501(a), or (d) an annuity plan described in Code §403(a). Effective for distributions made after December 31, 2001, an Eligible Retirement Plan shall also mean an annuity contract described in Code section 403(b) and an eligible plan under Code section 457(b) which is maintained by a state, political subdivision or agency or instrumentality of a state and which agrees to separately account for amounts transferred to such plan from this Plan. This definition shall also apply in the case of a distribution to a Spouse.

2.15 Eligible Rollover Distribution means any distribution on or after January 1, 1993 to an Eligible Employee of all or any portion of the balance to his credit in a qualified trust (including any distribution to a Participant of all or any portion of his Account); provided an Eligible Employee's "Eligible Rollover Distribution" shall not include (a) any distribution which is one of a series of substantially equal periodic payments made not less frequently than

annually, (i) for the life of the employee and his beneficiary, or (ii) for a specified period of 10 years or more, (b) any distribution to the extent such distribution is required under Code §401(a)(9), and (c) the portion of any distribution that is not includable in gross income of the employee. Effective for distributions made after December 31, 2001, a portion of a distribution shall not fail to be an Eligible Rollover Distribution merely because the portion consists of after-tax employee contributions, which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Code section 408(a) or (b) or to a qualified defined contribution plan described in Code section 401(a) or 403(a) that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution that is includible in gross income and the portion that is not.

2.16 Employee means any individual who is employed by the Employer (including elected or appointed officials) and shall include leased employees of the Employer within the meaning of Code §414(n). Notwithstanding the foregoing, if leased employees constitute 20 percent or less of the Employer's non-highly compensated work force within the meaning of Code §414(n)(5)(C)(ii), the term "Employee" shall not include those leased employees covered by a plan described in Code §414(n)(5)(B).

2.17 Employer means Fulton County, a Georgia governmental entity, and any Affiliate that affirmatively elects to adopt this Plan for the benefit of its employees and such adoption is agreed to by Fulton County.

2.18 Employer Basic Contributions mean the contributions made by the Employer behalf of Participants under the terms of the Plan pursuant to Section 4.2.

2.19 Employer Basic Contribution Account means the separate subaccount established and maintained on behalf of a Participant, his Joint Annuitant or his Beneficiary to reflect his interest in the Trust Fund attributable to Employer Basic Contributions and any earnings or losses thereon.

2.20 Employer Matching Contribution means the Contributions made by the Employer that are based on the Employee's voluntary contributions to a Code §457 Plan pursuant to the terms of Section 4.3 of the Plan.

2.21 Employer Matching Contribution Account means the separate subaccount established and maintained on behalf of a Participant or his Beneficiary to reflect his interest in the Trust Fund attributable to Employer Matching Contributions.

2.22 Employment Date means the date on which the Employee first performs an Hour of Service for the Employer or Affiliates.

2.23 Entry Date means the later of the first day of the first pay period beginning after July 1, 1999; (ii) the first day of the first pay period beginning on or after Participant's date of hire or (iii) the effective date of the Employee's transfer from the Prior Plan to this Plan as described in Appendix A.

2.24 Forfeiture means, for any Plan Year, the dollar amount of an Account of a Former Participant which is removed from the Account during the Plan Year and used first to reduce Restoration Contributions and the remaining amount used to reduce future Employer Basic Contributions or Employer Matching Contributions. Effective for Plan Year beginning on and after January 1, 2002, Forfeiture means the dollar amount of an Account of a Former Participant which is removed from the Account during the Plan Year and is used to pay any expenses in the administration of the Plan (to the extent not paid out of the Trust), to reduce Restoration Contributions, or to reduce future Employer Basic Contributions or Employer Matching Contributions.

2.25 Former Participant means a Participant whose employment with the Employer has terminated but who has a vested Account balance under the Plan which has not been paid in full and who, therefore, is continuing to participate in the allocation of earnings or losses under the Trust.

2.26 Hour of Service means each hour for which an Employee is paid, or entitled to payment, for the performance of duties for the Employer or an Affiliate.

2.27 Investment Committee means the committee which shall act on behalf of the Employer with respect to making and effecting investment decisions, as provided in Article VIII. Unless the Employer specifies otherwise, the Administrative Committee or its delegates shall serve as the Investment Committee.

2.28 Investment Fund or Funds means those funds identified and established by the Investment Committee from time to time pursuant to the terms of Sections 8.2 and 8.3.

2.29 Leave of Absence means an excused leave of absence granted to an Employee by the Employer or an Affiliate in accordance with applicable federal or state law. Among other things, Leave of Absence shall be granted to an Employee:

(a) who leaves the service of the Employer or an Affiliate, voluntarily or involuntarily, to enter the Armed Forces of the United States; provided, (i) the Employee is legally entitled to reemployment under the veteran's reemployment rights provisions as codified at 38 USC §2021, *et seq.*, its predecessors and successors; and (ii) the Employee applies for and reenters service with the Employer or an Affiliate within the time, in the manner and under the conditions prescribed by law; and

(b) under such other circumstances as the Administrative Committee shall determine are fair, reasonable and equitable as applied uniformly among Employees under similar circumstances.

2.30 Limitation Year means the Plan Year, which shall be the "limitation year" for purposes of Code §415 and the regulations promulgated thereunder.

2.31 Mandatory Employee Contributions means the amounts paid by the Employer to the Trust Fund on behalf of each Participant pursuant to Plan Section 3.1.

2.32 Mandatory Employee Contribution Account means the separate subaccount established and maintained on behalf of a Participant or his Beneficiary to reflect his interest in the Trust Fund attributable to Mandatory Employee Contributions.

2.33 Maternity or Paternity Leave means any period during which an Employee is absent from work as an employee of the Employer or an Affiliate (a) because of the pregnancy of such Employee; (b) because of the birth of a child of such Employee; (c) because of the placement of a child with such Employee in connection with the adoption of such child by such Employee; or (d) for purposes of such Employee caring for a child immediately after the birth or placement of such child.

2.34 Normal Retirement Age means age 65.

2.35 Normal Retirement Date. The first day of the month coincident with or next following the date a Participant attains Normal Retirement Age.

2.36 Participant means any person who has been admitted to, and has not been removed from, participation in the Plan pursuant to the provisions of Article III. "Participant" shall include Active Participants and Former Participants who have an Account under the Plan.

2.37 Period of Service means the aggregate of all service performed by the Employee for the Employer or Affiliate commencing with the Employee's Employment Date and ending with the first date a Period of Severance begins.

2.38 Period of Severance means a continuous period of time during which the Employee is not employed by the Employer. Such period begins on the date the Employee retires, quits or is discharged or if earlier, the 12-month anniversary of the date on which the Employee was first absent from service. A one year Period of Severance shall be a Period of Severance of at least 12 consecutive months. A Period of Severance shall not be deemed to have occurred during any period for which he is granted a Leave of Absence if he returns to the service of the Employer or an Affiliate within the time permitted as set forth in the Plan.

(a) Maternity or Paternity Leave. In the case of an Employee absent from work due to a Maternity or Paternity Leave, the 12-consecutive month period beginning on the first anniversary of the first date of such absence shall not constitute a Period of Severance.

(b) Family and Medical Leave Act. For purposes of determining whether or not an Employee has incurred a Period of Severance, and solely for the purpose of avoiding a Period of Severance, to the extent required under the Family and Medical Leave Act of 1993 and the regulations thereunder, an Employee shall be deemed to be performing services for the Employer or an Affiliate during any period the Employee is granted leave under such Act (i) for the birth of a child, (ii) for the placement with the Employee of a child for adoption or foster care, (iii) to care for a spouse, child or parent of the Employee with a serious health condition, or (iv) for a serious health condition that makes the Employee unable to perform the functions of the Employee's job.

2.39 Plan means the Fulton County Defined Contribution Plan as contained herein and all amendments thereto. The Plan is intended to be a money purchase plan qualified under the applicable provisions of Code §401(a).

2.40 Plan Year means initially July 1, 1999 to December 31, 1999 and thereafter the 12-month period beginning on January 1st of each year and ending on the following December 31st.

2.41 Prior Plan means the Fulton County Employees Retirement System (the "1991 Pension Law"), the Fulton County Employees Pension Fund (the "1982 Pension Law"), the Fulton County General Employees Pension Fund as originally adopted March 3, 1939, and thereafter amended (the "1939-1978 Pension Law"), the Fulton County Public Safety Employees Pension Fund, or the Fulton County Judges and Solicitors Pension Fund.

2.42 RESERVED.

2.43 Reemployment Date means the date on which the Employee first performs an Hour of Service following a one year Period of Severance.

2.44 Restoration Contributions mean the amounts paid to the Trust Fund by or on behalf of a rehired individual pursuant to the terms of Section 4.7.

2.45 Retirement Committee means the Chairman of the County Commissioners, the Fulton County Finance Director and the Fulton County Manager or their delegates.

2.46 Rollover Account means the separate subaccount established and maintained on behalf of a Participant or his Beneficiary to reflect his interest in the Trust Fund attributable to Rollover Contributions and any earnings or losses thereon.

2.47 Rollover Contributions means the amounts contributed to the Plan (and received and accepted by the Trustee) as "rollover" contributions as defined in Code §402 and Eligible Rollover Distributions. An amount shall be treated as a Rollover Contribution only to the extent that its acceptance by the Trustee is permitted under the Code (including the regulations and rulings promulgated thereunder).

2.48 Severance from Service Date means the date the Employee quits, is discharged, retires, dies or otherwise ceases to be employed by the Employer.

2.49 Spouse or Surviving Spouse means, with respect to a Participant, the person who is treated as married to such Participant under the laws of the state in which the Participant resides. The determination of a Participant's Spouse or Surviving Spouse shall be made as of the earlier of the date as of which benefit payments from the Plan to such Participant are made or commence (as applicable) or the date of such Participant's death.

2.50 Terminate or Termination of Employment means an Employee's termination of employment which may result from retirement, death, disability, voluntary or involuntary termination, unauthorized absence, or by failure to return to active employment with the Employer by the date on which an authorized Leave of Absence expires.

2.51 Transfer Account means the separate subaccount established and maintained on behalf of a Participant or his Beneficiary to reflect his interest in the Trust Fund attributable to amounts transferred to the Plan on behalf of the Participant from a Prior Plan.

2.52 Transfer Contributions mean amounts transferred to the Plan (and received and accepted by the Trustee) from a Prior Plan.

2.53 Trust Fund means the total amount of cash and other property held by the Trustee (or its nominee) at any time under the Trust Agreement with the Trustee.

2.54 Trustee(s) means Nationwide Trust Company, FSB.

2.55 Trust(s) or Trust Agreement means the separate agreement between the County and the Trustee governing the creation of the Trust Fund.

2.56 Valuation Date means each business day.

2.57 Year of Service means a period of twelve (12) consecutive months during which an Employee completes at least one (1) Hour of Service with the Employer during each such month. Participants receive credit for any Period of Severance of less than 12 consecutive months.

ARTICLE III

PARTICIPATION AND SERVICE

3.1 Participation.

(a) Except as provided below, each Eligible Employee whose Employment Date is on or after July 1, 1999, shall become a Participant in this Plan effective upon the first Entry Date thereafter and shall be required to participate in the Plan.

(b) Except for the continuing participation in earnings and losses of the Account of a Former Participant, participation in the Plan shall cease upon Termination of Employment with the Employer.

(c) Each Eligible Employee whose Employment Date or reemployment date is prior to the first day of the first pay period after July 1, 1999 (or, effective January 1, 2002, such other dates as approved by the Board of Commissioners), may elect to participate in the Plan or may elect to remain a Participant in one of the Prior Plans. The requirements with respect to such election are set forth in Appendix A.

(d) A Judge of the Fulton County Superior Court or the District Attorney of the Atlanta Judicial Circuit shall participate in the Plan only if he files an election to participate within six months of taking office.

(e) Elected officials and department heads may waive in writing the right to participate in the Plan. Such waiver shall be irrevocable.

3.2 Reemployment.

Upon the reemployment of an Eligible Employee, the following rules shall apply in determining his participation in the Plan under Section 3.1:

(a) If an Eligible Employee is rehired and was previously a Participant, he shall participate in the Plan as of his date of reemployment.

(b) If an Eligible Employee was employed by the Employer prior to July 1, 1999, and either (i) terminates employment prior to July 1, 1999 and is later rehired or (ii) elects to remain a Participant in a Prior Plan(s), later terminates employment with the Employer and is rehired, and if such Employee has withdrawn his employee contributions to the Prior Plan, he shall automatically become a Participant in this Plan on his first day of reemployment. Provided however, any such Employee who has not withdrawn his employee contributions from the Prior Plan or is reemployed within six (6) months of withdrawing his employee contributions may

make an election within thirty (30) days of his reemployment to participate in this Plan under the terms as described in the Prior Plan(s) document.

3.3 Transfers.

If a Participant is transferred to employment with any other Affiliate that has not adopted the Plan, his participation under the Plan shall be suspended; provided, however, that during the period of his employment in such ineligible position: (a) he shall continue to participate in allocations of earnings and losses pursuant to Section 5.2(d); (b) his Employer Account shall receive no Employer Basic Contributions; (c) he shall make no Mandatory Employee Contributions to the Plan during that time and (d) the applicable provisions of Articles V, VI and VII shall continue to apply.

3.4 Omission of Eligible Employee.

If, in any Plan Year, any Employee who should be included as a Participant in the Plan is omitted erroneously and discovery of such omission is not made until after a contribution by the Employer has been made and allocated for such year, the Employer shall make a subsequent contribution with respect to the omitted Eligible Employee in the amount which the said Employer would have contributed with respect to him had he not been omitted.

3.5 Inclusion of Ineligible Employee.

If, in any Plan Year, any person who should not have been included as a Participant in the Plan is included erroneously, and discovery of such incorrect inclusion is not made until after a contribution by the Employer has been made and allocated for such year, the Employer shall not be entitled to recover the contribution made with respect to the ineligible person. In such event, the amount contributed with respect to the ineligible person shall constitute a Forfeiture for the Plan Year in which the discovery is made and shall be used to reduce the subsequent Employer Basic Contributions or Employer Matching Contributions due under the Plan. Effective January 1, 2002, Forfeitures may also be used to pay Plan expenses.

ARTICLE IV

CONTRIBUTIONS

4.1 Mandatory Employee Contributions.

(a) Mandatory Employee Contributions. There shall be deducted from the Compensation paid by the Employer to each individual who becomes a Participant in the Plan on or after an Entry Date occurring after July 1, 1999, the sum of 6% of such Compensation as a Mandatory Employee Contribution to the Plan.

(b) Employer Pick-Up Contributions. The Employer or Affiliate shall contribute to the Plan, as applicable, as of each payroll period on behalf of and to the credit of each Participant, the amount of Mandatory Employee Contributions required for participation. No Participant shall be entitled under any circumstances to receive such contributions in cash in lieu of having them contributed to the Plan by the Employer in accordance with the preceding sentence. Such contributions shall be made pursuant to §414(h) of the Code and shall be treated as employer contributions in determining their federal income tax treatment under the Code.

The Employer may reduce the Compensation payable to a Participant in an amount not exceeding the amount of the contribution paid by it on behalf of such individual pursuant to this subsection. Such reduction in Compensation may be made, notwithstanding the fact that the Compensation provided by or pursuant to law for the individual may be reduced thereby.

Mandatory Employee Contributions made by the Employer on behalf of Plan Participants shall otherwise be treated as Employee contributions for all purposes under the Plan.

4.2 Employer Basic Contributions.

(a) Formula for Determining Employer Basic Contribution. For each pay period, the Employer shall contribute on behalf of each Participant eight percent (8%) of such Participant's Compensation paid or accrued for the pay period.

(b) Failure to Make Contribution for a Plan Year. Should the Employer, for any reason, fail to make a contribution for any pay period or should the Employer fail to make a contribution as provided herein, such deficiency shall be corrected in subsequent pay periods. Such contribution shall be paid by the Employer to the Trust and shall equal the amount of the deficiency plus interest at a reasonable rate from the date the contribution was due until the date the deficiency was corrected. All contributions by the Employer shall be made in cash or cash equivalents.

4.3 Employer Matching Contributions.

(a) For each Active Participant who is also making voluntary employee contributions under a Code §457 Plan, the Employer will make an Employer Matching Contribution of 50% of the total of such contribution made by the Participant to such Code §457 Plan for the Plan Year, limited as described below.

(b) The Employer Matching Contribution will be limited to 50% of the first 4% of the Participant's Compensation for the Plan Year that is contributed to the Code §457 Plan. Therefore, a maximum contribution of 2% of Compensation per year may be made on behalf of any Participant.

4.4 Timing of Contribution.

The Employer shall pay to the Trustee all Mandatory Employee Contributions, Employer Basic Contributions and Employer Matching Contributions as soon as possible following each payroll period and in no event later than the time prescribed by law.

4.5 Rollover Amount From Other Plans.

(a) All Participants are eligible to transfer an Eligible Rollover Distribution to the Plan. The procedures approved by the Administrative Committee shall provide that such a transfer may be made only if the following conditions are met:

(1) the amount is received directly from an Eligible Retirement Plan or the transfer occurs on or before the 60th day following the Eligible Employee's receipt of the distribution from the Eligible Retirement Plan; and

(2) the amount transferred is equal to any portion of the distribution the Eligible Employee received from the Eligible Retirement Plan, subject to the maximum rollover provisions of Code §402(c)(2).

(b) Notwithstanding the foregoing, if an Eligible Employee had deposited an Eligible Rollover Distribution previously received from an Eligible Retirement Plan into an individual retirement account ("IRA"), as defined in Code §408, and that IRA contains no other money from any other source, he may transfer the amount of such distribution, plus earnings thereon from the IRA to this Plan; provided, such rollover amount is deposited with the Trustee on or before the 60th day following receipt thereof from the IRA.

(c) The Administrative Committee shall develop such procedures, and may require such information from an Eligible Employee desiring to make such a transfer, as it deems necessary or desirable to determine that the proposed transfer will meet the requirements of this Section. Upon approval by the Administrative Committee, the amount transferred shall be

deposited in the Plan and shall be credited to a Rollover Account. Such Rollover Accounts shall be one hundred percent (100%) vested and shall share in earnings and losses (net appreciation or net depreciation) in accordance with Section 5.2(d). Upon termination of employment, the total amount of the Employee's Rollover Account shall be distributed in accordance with Article VI.

4.6 Transfer Contributions.

Each Active Participant who elects to participate in this Plan in accordance with Section 3.1(c) of the Plan, shall have an amount transferred to this Plan from the Prior Plan at the time specified by the Retirement Committee. Such amount shall be determined under the guidelines specified in the Prior Plan document and Appendix B hereof.

4.7 Restoration Contributions.

(a) Restoration Upon Buy-Back. If a Participant who is not 100 percent vested in his Account has received a distribution of the entire vested portion of his Account [such that he forfeited the nonvested portion of his Account in accordance with the terms of Section 6.3], and such Participant subsequently is rehired as an Eligible Employee prior to the occurrence of 5 consecutive one year Periods of Severance, that individual may repay the full amount of the distribution to the Trustee (unadjusted for gains or losses), prior to the earlier of (i) 5 years after the first date on which he is rehired or (ii) the close of the first period of 5 consecutive one year Periods of Severance commencing after the distribution. Upon such repayment, his Account will be credited with (i) all of the benefits (unadjusted for gains or losses) which were forfeited, and (ii) the amount of the repayment.

(b) Restoration of Other Forfeitures. If a Participant has forfeited his nonvested Account and such Participant subsequently is rehired as an Eligible Employee prior to the occurrence of 5 consecutive one year Periods of Severance, his Account shall be credited with all of the benefits (unadjusted for gains or losses) which were forfeited.

(c) Restoration Contribution. The assets necessary to fund the Account of the rehired individual (in excess of the amount of the repayment, if any) shall be provided no later than as of the end of the Plan Year following the Plan Year in which repayment occurs (if subsection (a) hereof applies) or in which the individual is rehired (if subsection (b) hereof applies), and shall be provided in the discretion of the Administrative Committee from (i) income or gain to the Trust Fund, (ii) Forfeitures arising from the Accounts of Participants employed or formerly employed by the Employer, or (iii) contributions by the Employer.

(d) Notice of Buy-Back Rights. It shall be the duty of the Administrative Committee to give timely notice to any rehired individual who is eligible to make a repayment, of his right to make such repayment in accordance with this Section by the time required in subsection (a) hereof, and of the consequences of not making such repayment; namely that the nonvested portion of the benefits accrued under the Plan during his previous employment will

not be restored by the Plan, will remain forfeited, and will not become vested even though he may perform additional Years of Service.

4.8 Reemployed Veterans.

(a) To the extent and in the manner required under the Uniformed Services Employment and Reemployment Rights Act of 1994, a Participant who is absent from employment for service in the uniformed services and returns to employment with the Employer or Affiliate shall be permitted to make Mandatory Employee Contributions to the Plan with respect to such period of uniformed service, and the Employer or Affiliate shall make any Employer Basic Contributions required to be made under such Act on behalf of such Employee for the period of absence, based on the contribution rates in effect for the Plan Year(s) in which the Employee was in qualified military service. The Employee shall designate the plan year(s) to which Mandatory Employee Contributions made-up by such Employee relate. Such contributions may be made during the period beginning on the date of the reemployment of such Employee, and must be made by the end of the period that is the lesser of (i) the product of 3 and the period of qualified military service, or (ii) five years following the date of such reemployment. In the event any Mandatory Employee Contributions are made pursuant to this Section, the Employee shall not be entitled to retroactive earnings on such contributions.

(b) Any Employee who returns to employment with the Employer following a period of qualified military service shall, for purposes of this Section, be treated as receiving Compensation equal to the Compensation the Employee would have received during such period if the Employee were not in qualified military service, determined based on the rate of pay the Employee would have received but for the absence; provided, however if the Compensation the Employee would have received during such period is not reasonably certain, Compensation for this purpose shall equal the Employee's average Compensation during the 12 months immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service).

(c) Any contributions made pursuant to subsection (a) above are not subject to the limits under Code §415 in the Plan Year(s) in which made; rather, such contributions are subject to such limits in the Plan Year(s) to which the contributions relate as determined according to the Employee's election under subsection (a).

4.9 Form of Contributions.

All contributions shall be paid to the Trustee in the form of cash or cash equivalents.

4.10 Circumstances Permitting Return of Employer Basic Contributions.

A contribution to the Plan and Trust by the Employer or an Affiliate that was made by a mistake of fact shall be returned to the Employer. Any such contribution shall be returned within one year after the mistaken payment of the contribution. The amount of the contribution that may be returned to the Employer is the excess of (i) the amount contributed over (ii) the amount that would have been contributed had there not occurred a mistake of fact. Earnings attributable to the excess contribution may not be returned to the Employer, but losses attributable thereto must reduce the amount to be so returned.

4.11 Trustee-to-Trustee Transfer.

Effective January 1, 2003, a Participant may request a one-time, trustee-to-trustee transfer of all or part of the Participant's vested Account balance under this Plan, to any qualified governmental defined benefit plan (the "transferee plan") for the purpose of purchasing service credit under the transferee plan. The Plan shall agree to make such a transfer only if:

- (a) the transferee plan is not sponsored by Fulton County,
- (b) the Participant provides the Committee with written proof that the Participant is a member of the transferee plan,
- (c) the Participant provides written evidence that the transferee plan will accept such trustee-to-trustee transfer and the amount required to be transferred, for purposes of granting service credit to the Participant making the request, and
- (d) the transferee plan provides written evidence, to the satisfaction of the Committee, that it is a qualified governmental retirement plan under the Internal Revenue Code.

Effective July 1, 2004, any person serving as a judge of the State Court of Fulton County on June 30, 2004, may make an irrevocable election on or before December 31, 2004, to become a member of the State of Georgia Judicial Retirement System. The Plan, upon receiving written proof of such election, shall remove such judge from the Plan and shall make a trustee-to-trustee transfer of the judge's Account balance under the Plan as of December 31, 2004, to the State of Georgia Judicial Retirement System. The Plan shall provide any information required by the State of Georgia Judicial Retirement System relating to the judge's compensation and service history.

ARTICLE V

ALLOCATIONS TO PARTICIPANTS' ACCOUNTS

5.1 Individual Accounts.

To the extent appropriate, the Administrative Committee shall establish and maintain, on behalf of each Participant or Beneficiary, an Account which shall be divided into segregated subaccounts. The subaccounts shall include Mandatory Employee Contribution, the Employer Basic Contribution, Employer Matching Contribution, the Transfer and the Rollover Accounts, and such other subaccounts as the Administrative Committee shall deem appropriate or helpful. Each Account shall be credited with Contributions or transfers allocated to such Account and generally shall be credited with earnings and losses on investments derived from the assets of such Accounts. Each Account of a Participant or Beneficiary shall be maintained until the value thereof has been distributed to or on behalf of such person.

5.2 Allocations.

The Accounts of Participants, Former Participants and Beneficiaries shall be adjusted, subject to the provisions of Sections 5.3, 5.4 and 5.5, in accordance with the following:

(a) Mandatory Employee Contributions. As of each payroll period for which the Mandatory Employee Contributions are made, such Mandatory Employee Contributions shall be allocated and credited directly to the such Participant's Mandatory Employee Contribution Account.

(b) Employer Basic and Employer Matching Contributions. As of each payroll period, the Employer shall provide the Administrative Committee with all information required to make a proper allocation of the Employer Basic Contribution and Employer Matching Contributions (if any) for that period. As soon as practicable after the date of receipt by the Administrative Committee of such information, the Administrative Committee shall allocate the Employer Basic Contribution and Employer Matching Contributions (if any) to each Participant's Employer Basic Contribution and Employer Matching Contributions (if any) Accounts in accordance with Sections 4.2 and 4.3.

(c) Restoration Contributions. As of the date on which a Restoration Contribution is received from an Active Participant, such Contribution (together with the nonvested benefits restored by the Plan as a result of such Contribution) shall be credited to the appropriate Mandatory Employee, Employer Matching, Employer Basic, Rollover and Transfer Accounts of the Active Participant, in the amounts held by such Accounts immediately prior to the earlier distribution to such Participant.

(d) Income. As of each Valuation Date, any earnings or losses (net appreciation or net depreciation) shall be allocated to each Participant's Account. Each segregated Account maintained on behalf of a Participant shall be credited or charged with its separate earnings and losses.

5.3 Code §415 Limitations on Maximum Contributions.

(a) General Limit on Annual Additions. In no event shall the Annual Addition to a Participant's Account for any Limitation Year, under the Plan and any other Defined Contribution Plan (as defined below) maintained by an Affiliate, exceed the lesser of:

- (1) \$30,000 or
- (2) 25 percent of such Participant's Compensation.

Effective January 1, 2002, in no event shall the Annual Addition to a Participant's Account for any Limitation Year, under the Plan and any other Defined Contribution Plan (as defined below) maintained by the Employer, exceed the lesser of (1) and (2) below:

- (1) 100% of the Participant's Compensation or
- (2) \$40,000 (in 2002) adjusted in subsequent years as determined in accordance with regulations prescribed by the Secretary of Treasury or his delegate, pursuant to the provisions of Code section 415(d).

The Compensation limit referred to in (1) above shall not apply to any contribution for medical benefits after separation from service (within the meaning of Code section 401(h) or 419(f)(2)) which is otherwise treated as an Annual Addition.

(b) Combined Plan Limitation. For Plan Years prior to January 1, 2000, if an Employee is a Participant in the Plan and any one or more Defined Benefit Plans (as defined below) maintained by the Employer or an Affiliate, the sum of his Defined Benefit Plan Fraction and his Defined Contribution Plan Fraction, as set forth in subsections 5.3(d)(3) and (5), respectively, shall not exceed 1.0 for any Limitation Year. (For purposes of this subsection, any adjustments in the definition of "Compensation" permitted by the Internal Revenue Service for purposes of determining this combined limit are included herein by reference.) If any corrective adjustment in any Participant's benefits is required to comply with this subsection, such adjustment shall be made exclusively under the Defined Benefit Plans maintained by the Employer. If an Employee is a Participant in the Plan and any one or more other Defined Contribution Plans maintained by the Employer or an Affiliate and a corrective adjustment in such Participant's benefits is required to comply with this subsection, such adjustment shall be made under the Plan.

(c) Correction of Excess Annual Additions. If, as a result of either the allocation of Forfeitures to an Account, a reasonable error in estimating a Participant's Compensation or such other occurrences as the Internal Revenue Service permits, the Annual Addition made on behalf of a Participant exceeds the limitations set forth in this Section, the excess amount shall be held in a suspense account and shall be applied to reduce permissible Employer Basic or Employer Matching Contributions in each successive year until such amount is fully allocated; provided, so long as any suspense account is maintained pursuant to this Section: (1) no Employer Basic or Employer Matching Contributions shall be made to the Plan which would be precluded by this Section; (2) investment gains and losses shall not be allocated to such suspense account; and (3) amounts in the suspense account shall be allocated in the same manner as Employer Basic or Employer Matching Contributions, until such suspense account is exhausted.

(d) Special Definitions Applicable to Code § 415 Limitations.

(1) Annual Addition. For purposes of this Section, the term "Annual Addition" for any Participant means the sum for any Limitation Year of:

(A) contributions made by the Employer or an Affiliate on behalf of the Participant under all Defined Contribution Plans;

(B) contributions made by the Participant under all Defined Contribution Plans of the Employer or Affiliate [excluding rollover contributions as defined in Code Sections 402(a)(5), 403(a)(4), 403(b)(8), 408(d)(3) and 414(h) and contributions of previously distributed benefits which result in such a Plan's restoration of previously forfeited benefits pursuant to Treasury Regulations §1.411(a)-7(d)];

(C) forfeitures allocated to the Participant under all Defined Contribution Plans of the Employer or an Affiliate; and

(D) amounts allocated for the benefit of the Participant to an individual medical account established under a pension or annuity plan maintained by the Employer or an Affiliate, as described in Code §415(l).

(2) Defined Benefit Plan. The term "Defined Benefit Plan" means any qualified retirement plan maintained by an Affiliate which is not a Defined Contribution Plan.

(3) Defined Benefit Plan Fraction. The term "Defined Benefit Plan Fraction" means, with respect to a Participant for any Limitation Year, a fraction, the numerator of which is his projected annual benefit under all Defined Benefit Plans

maintained by an Affiliate, as determined as of the close of the Limitation Year, and the denominator of which is the lesser of:

(A) 125 percent of the dollar limitation in effect for such year under Code §415(b)(1)(A); or

(B) 140 percent of his average compensation for his highest three consecutive plan years of participation in such Defined Benefit Plans.

In appropriate cases, the Defined Benefit Plan Fraction will be adjusted to reflect applicable transition rules provided by the Code and the regulations thereunder.

(4) Defined Contribution Plan. The term "Defined Contribution Plan" means any qualified retirement plan maintained by an Affiliate which provides for an individual account for each Participant and for benefits based solely on the amount contributed to the Participant's account and any income, expenses, gains, losses and forfeitures of accounts of other Participants, which may be allocated to such Participant's account.

(5) Defined Contribution Plan Fraction. The term "Defined Contribution Plan Fraction" means, with respect to a Participant for any Limitation Year, a fraction, the numerator of which is the sum of the Annual Additions to his Accounts in this Plan and to his accounts in any other Defined Contribution Plans required to be aggregated with this Plan under Code §415(h), as of the close of the Limitation Year, and the denominator of which is the sum of the lesser of the following amounts determined separately for the current Limitation Year and for each prior Limitation Year in which the Participant was employed by an Affiliate:

(A) 125 percent of the dollar limitation in effect under Code §415(c)(1)(A) as of the last day of such Limitation Year; or

(B) 35 percent of the Participant's Compensation from all Affiliates for the Limitation Year.

In appropriate cases, the Defined Contribution Plan Fraction will be adjusted to reflect applicable transition rules provided by the Code and regulations thereunder.

(e) Compliance with Code § 415. The limitations in this Section are intended to comply with the provisions of Code §415 so that the maximum benefits permitted under plans of the Affiliates shall be exactly equal to the maximum amounts allowed under Code §415 and the regulations promulgated thereunder. If there is any discrepancy between the provisions of this Section and the provisions of Code §415 and the regulations promulgated thereunder, such discrepancy shall be resolved in such a way as to give full effect to the provisions of the Code.

5.4 ACP or Average Contribution Percentage.

(a) Definitions. Employer Matching Contributions shall be subject to the following Average Contribution Percentage test to the extent required by the Internal Revenue Service.

(1) For each Plan Year ACP means:

(A) with respect to the group of Participants comprised of Highly Compensated Employees for a Plan Year, the average of the ratios (calculated separately for each Participant in such group and rounded to the nearest 1/100th of a percent) of (i) the total of the amount of Employer Matching Contributions actually paid to the Trustee on behalf of each such Participant for such Plan Year, to (ii) such Participant's Compensation for such Plan Year, and

(B) with respect to the group of Participants comprised of non-Highly Compensated Employees for a Plan Year, the average of the ratios (calculated separately for each Participant in such group and rounded to the nearest 1/100th of a percent) of (i) the total of the amount of Employer Matching Contributions actually paid to the Trustee on behalf of each such Participant for the Plan Year immediately preceding the Plan Year for which such determination is being made, to (ii) such Participant's Compensation for the Plan Year immediately preceding the Plan Year for which such determination is being made.

(2) If a Highly Compensated Employee participates in the Plan and one or more other plans of any Affiliates to which matching or after tax contributions are made, the matching and after tax contributions made with respect to such Highly Compensated Employee shall be aggregated for purposes of determining his ACP. The ACP shall be rounded to the nearest 1/100th of a percent and shall be calculated in a manner consistent with the terms of Code §401(m) and the regulations thereunder. If a Participant is eligible to participate in the Plan for all or a portion of a Plan Year but receives no Employer Matching Contributions such Participant's ACP for such Plan Year shall be zero.

(3) For purposes of this section, Highly Compensated Employee means an Employee of the Employer or an Affiliate who is described below:

(A) General Rule. An Employee who at any time during the immediately preceding Plan Year received Compensation from the Employer or an Affiliate in excess of \$80,000 (which amount shall be adjusted for changes in the cost of living as provided in regulations issued by the Secretary of the Treasury) and, if the Employer elects for any Plan Year, was within the group

consisting of the most highly compensated 20 percent of the Employees of all Affiliates.

(B) Excluded Employees. For purposes of this subsection, the following may be excluded when determining the most highly compensated 20 percent of the Employees and the total number of officers, respectively, of an Affiliate:

- (i) Employees who have not completed 6 months of service;
- (ii) Employees who normally work fewer than 17-1/2 hours per week;
- (iii) Employees who normally work during not more than 6 months during any Plan Year;
- (iv) Employees who have not attained age 21; and
- (v) Employees who are included in a unit of Employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between Employee representatives and an Affiliate.

(C) Former Employees. For purposes of this Section, a former Employee shall be treated as a Highly Compensated Employee if (i) the former Employee was a Highly Compensated Employee at the time the Employee separated from service with all Affiliates or (ii) the former Employee was a Highly Compensated Employee at any time after he attained age 55.

(D) Nonresident Aliens. For purposes of this Section, nonresident aliens who receive no earned income from an Affiliate which constitutes income from sources within the United States [as described in Code §414(q)(11)] shall not be treated as Employees.

(E) Compliance with Code §414(q). The determination of who is a "Highly Compensated Employee", including all of the parts of that definition, shall be made in accordance with Code §414(q) and the regulations promulgated thereunder.

(b) ACP Test. The amount of the aggregate of all Employer Matching Contributions, shall satisfy at least one of the following ACP Tests:

(1) The ACP for the Highly Compensated Employees who are Active Participants during the Plan Year shall not exceed the product of (A) the ACP for the Active Participants who are not Highly Compensated Employees during the Plan Year, multiplied by (B) 1.25; or

(2) The ACP for the Highly Compensated Employees who are Active Participants during the Plan Year shall not exceed the ACP for the Active Participants who are not Highly Compensated Employees during the Plan Year by more than 2 percentage points, nor shall it exceed the product of (A) the ACP of the Active Participants who are not Highly Compensated Employees during the Plan Year, multiplied by (B) 2.

(c) Multiple Plans. If matching or after tax contributions are made to one or more other plans [other than employee stock ownership plans as described in Code §4975(e)(7)] which, along with the Plan, are considered as a single plan for purposes of Code §401(a)(4) or §410(b), such plans shall be treated as one plan for purposes of this Section, and the after-tax contributions made to those other plans shall be combined with the Employer Matching Contributions for purposes of performing the tests described in subsection (b) hereof.

(d) Adjustments to Average Contribution Percentages. In the event that the Employer Matching Contributions for a Plan Year, after the application of subsections (a), (b) and (c) hereof, does not satisfy the ACP Test, the Administrative Committee shall cause such Employer Matching Contributions for the Plan Year to be adjusted as follows. By the last day of the Plan Year following the Plan Year in which the annual allocation failed the ACP Test, the Administrative Committee may direct the Trustee to reduce the Employer Matching Contributions taken into account with respect to Highly Compensated Employees under such failed ACP Test by an amount necessary to satisfy the ACP Test. Any amount by which Employer Matching Contributions are so reduced, plus any earnings attributable thereto, shall be distributed to the Highly Compensated Employees from whose Accounts such reductions have been made. Such reductions in Contributions shall be made in accordance with, and solely to the Accounts of those Highly Compensated Employees who are affected by, the following procedure:

(1) First, the Employer Matching Contributions of the Highly Compensated Employee(s) with the greatest amount of Employer Matching Contributions for such Plan Year shall be reduced by the lesser of (A) the entire amount necessary to satisfy the ACP Test, or (B) that part of the amount necessary to satisfy the ACP Test as shall cause the level of such Employer Matching Contributions of each such Highly Compensated Employee to equal the next highest level of such contributions of each of the Highly Compensated Employees for such Plan Year.

(2) The Administrative Committee shall follow substantially identical steps for making further reductions in the Contributions of each of the Highly

Compensated Employees with the next highest level of Employer Matching Contributions for such Plan Year until the ACP Test has been satisfied.

5.5 Construction of Limitations and Requirements.

The descriptions of the limitations and requirements set forth in this Article are intended to serve as statements of the minimum legal requirements necessary for the Plan to remain qualified under the applicable terms of the Code. The Employer does not desire or intend, and the terms of this Article shall not be construed, to impose any more restrictions on the operation of the Plan than required by law. Therefore, the terms of this Article and any related terms and definitions in the Plan shall be interpreted and operated in a manner which imposes the least restrictions on the Plan. For example, if use of a more liberal definition of "Compensation" or a more liberal multiple use test is permissible at any time under the law, then the more liberal provisions may be applied as if such provisions were included in the Plan.

5.6 Notice to Participants of Account Balances.

At least once each calendar quarter, the Administrative Committee shall cause a written statement of a Participant's Account balance to be distributed to the Participant.

5.7 Good Faith Valuation Binding.

In determining the value of the Trust Fund and the Accounts, the Trustee and the Administrative Committee shall exercise their best judgment, and all such determinations of value (in the absence of bad faith) shall be binding upon all Participants and Beneficiaries.

5.8 Errors and Omissions in Accounts.

If an error or omission is discovered in the Account of a Participant or Beneficiary, the Administrative Committee shall cause appropriate, equitable adjustments to be made as soon as practical.

ARTICLE VI

RETIREMENT/TERMINATION BENEFITS

6.1 Retirement.

If a Participant's employment with the Employer is terminated at or after his Normal Retirement Date, he is entitled to receive one hundred percent (100%) of his Account credited as of his Normal Retirement Date. However, a Participant may postpone the termination of his employment with the Employer to a later date, in which event the participation of such Participant in the Plan shall continue until his actual retirement date. Upon a Participant's actual retirement date, or as soon thereafter as is practicable, the Trustee shall distribute all amounts credited to such Participant's Account in accordance with this Article VI.

6.2 Termination for Other Reasons.

(a) If a Participant's employment with the Employer is terminated before his Normal Retirement Date for any reason other than death, he is entitled to receive the vested amount of his Account as of the date that the Administrative Committee processes his distribution request.

(b) All Participants shall at all times be fully vested in their Mandatory Employee Contributions and Rollover Accounts. Except as provided below, the Employer Matching Contribution Accounts, Employer Basic Contribution Accounts or Transfer Account of a Participant shall vest in accordance with the following vesting schedule, based on the total of the Participant's Years of Service:

<u>Years of Service Completed by Participant</u>	<u>Vested Percentage</u>
Less than 1	0%
1 Year, but less than 2	20%
2 Years, but less than 3	40%
3 Years, but less than 4	60%
4 Years, but less than 5	80%
5 Years or more	100%

Notwithstanding the rules above, a Participant's Employer Matching Contribution, Employer Basic Contribution and Transfer Account shall become 100 percent vested and nonforfeitable upon the occurrence of any of the following events:

(1) The Participant's attainment of Normal Retirement Age while still employed as an Employee of the Employer or Affiliate;

(2) The Participant's death while still employed as an Employee of the Employer or Affiliate; or

(3) The Participant's becoming Disabled while still employed as an Employee of the Employer or Affiliate.

(4) The Participant has an involuntary termination of employment with the Employer on or after December 27, 2005, due to a reduction in force.

(c) For purposes of determining Years of Service for vesting, all Years of Service credited under a Prior Plan will be counted under this Plan.

6.3 Timing and Application of Forfeitures; Vesting After Restoration Contributions.

If a Participant who is not yet 100% vested in his Employer Matching Contribution Account, Employer Basic Contribution Account or Transfer Account, Terminates Employment as an Employee of the Employer and all Affiliates and receives an immediate distribution of the vested amounts in his Employer Matching Contribution Account, Employer Basic Contribution Account or Transfer Account, the nonvested amounts held in such Accounts shall become a Forfeiture as of the last day of the Plan Year in which the distribution is made. If a Participant has no vested interest in his Account at the time his employment Terminates, he shall be deemed to have received a cash-out distribution at the time his employment Terminates, and the forfeiture provisions of this Section shall apply. Forfeitures shall be used first to reduce the Employer's obligation to make Restoration Contributions, and second to reduce the Employer's obligation to make Employer Basic Contributions and third to reduce Employer Matching Contributions. Effective January 1, 2002, Forfeitures shall be used to pay expenses in the administration of the Plan (to the extent not paid out of the Trust), to reduce Restoration Contributions, or to reduce future Employer Basic Contributions or Employer Matching Contributions. If such a Participant resumes employment with the Employer or an Affiliate after he has incurred 5 or more consecutive one-year Periods of Severance, his nonvested amount shall not be restored. If such a Participant resumes employment with an Affiliate before he has incurred 5 consecutive one-year Periods of Severance, the nonvested amount shall be restored as follows:

(a) Reemployment and Vesting After Cash-Out Distribution. If by the date of reemployment such a Participant has received a distribution of the entire vested interest in his Account not later than the close of the second Plan Year following the Plan Year in which his Termination of Employment with all Affiliates occurred, the provisions of Section 4.7(a) shall apply (requiring repayment by such a Participant as a condition for restoration of the nonvested amount). Upon such repayment, the rehired individual immediately shall be credited on the vesting schedule set forth in Section 6.2(b) with all previously earned Years of Vesting Service.

(b) Reemployment and Vesting Before Any Distribution. If by the date of reemployment such a Participant has not received any distributions of his vested interest in his Account, or if he has no vested interest in his Account, the nonvested amount of his Accounts shall be restored pursuant to the terms of Section 4.7(b) and shall be credited to those Accounts. The Participant's Account then shall be subject to all of the vesting rules in this Article as if no Forfeitures had occurred.

(c) Reemployment and Vesting After Other Distribution or Prior to Distribution. If by the date of reemployment such a Participant (i) has received a distribution of a portion but not all of the vested portion of his Account, or (ii) has received a distribution of the entire vested interest in his Account later than the close of the second Plan Year following the Plan Year in which Termination of Employment with all Affiliates occurred, then the nonvested amount of his Account shall be restored pursuant to the terms of Section 4.7(b) and the total amount of his undistributed Accounts (including the restored amount) shall be credited to his Accounts. The vested interest of such Participant in such Accounts prior to the date such Participant (i) again terminates his employment with all Affiliates, (ii) incurs 5 consecutive one-year Periods of Severance (such that the nonvested portion of his Accounts are forfeited), or (iii) becomes 100% vested pursuant to the terms of Section 6.2 hereof (whichever is earliest), shall be determined pursuant to the following formula:

$$X = P (AB + [R \times D]) - (R \times D)$$

where X is the vested interest at the relevant time (that is, the time at which the vested percentage in such Accounts cannot increase); P is the vested percentage at the relevant time; AB is the balance of his Accounts at the relevant time; D is the amount of the distribution; and R is the ratio of his Account balance at the relevant time to such Account balance immediately after the distribution.

6.4 Benefit Payments.

(a) Application for Benefits. Before payment of any benefit hereunder, the Administrative Committee shall require that the Participant or Beneficiary, as the case may be, make an application for such benefit and submit the application to the Administrative Committee or its delegee in such form and manner as it shall uniformly prescribe.

(b) Effect of Payment. Any payment made in accordance with the provisions of the Plan to a Participant or Beneficiary, or to his legal representative, shall, to the extent of the method of computation as well as the amount thereof, constitute full satisfaction of claims hereunder against the Trustee, the Administrative Committee and the Employer, any of whom may require such Participant, Beneficiary or legal representative, as a condition precedent to such payment, to execute a receipt and release therefor.

6.5 Normal Payment Forms.

Except as otherwise provided herein, a benefit described in this Article VI shall be paid on one lump sum payment.

6.6 Assets Distributed.

Any distribution to a Participant or his Beneficiary shall be made in the form of cash. Cash distributions shall be paid directly from the Trust Fund.

6.7 Time of Payment.

(a) Except as provided below, benefits payable to a Participant under this Section shall be distributed, or shall commence to be distributed, as soon as administratively feasible after the date the benefits are requested by the Participant following such Participant's Termination of Employment for any reason other than death.

(b) Notwithstanding the foregoing, in the event that the value of the Participant's Account exceeds \$5,000 at the time of distribution, benefits shall not be distributed to such Participant at the time set forth in subsection (a) hereof without the Participant's written election, on a form provided by the Administrative Committee (or its designee). In order for such Participant's election to be valid, his employment must actually Terminate, his election must be filed with the Administrative Committee within the 90-day period beginning on the date of termination, and the Administrative Committee (or its designee) (no later than 30 days and no earlier than 90 days before his distribution) must have presented him with a notice informing him of his right to defer his distribution. If the Participant does not consent in writing to the distribution of his benefit at such time, his benefit shall be distributed as soon as practicable after he files an election with the Administrative Committee requesting such payment. If a Participant fails to file an election specifying the time of payment, his benefit shall be distributed as soon as administratively feasible after the end of the Plan Year in which he attains Normal Retirement Age, but in no event later than the 60th day after the end of such Plan Year. Effective for distributions on and after January 1, 2002, whether a Participant's vested Account exceeds \$5,000, shall be determined by ignoring any amount held in his Rollover Contribution Account. Notwithstanding the foregoing, effective January 1, 2006, in the event of a mandatory distribution of greater than \$1,000, if the Participant does not elect to have such distribution paid directly to an Eligible Retirement Plan specified by the Participant in a direct rollover or to receive the distribution directly, then the Administrative Committee will pay the distribution in a direct rollover to an individual retirement plan designated by the Administrative Committee.

(c) Notwithstanding anything in the Plan to the contrary, in no event shall payment of a Participant's benefit be made later than 60 days after the end of the Plan Year which includes the latest of (i) the date on which the Participant attained Normal Retirement Age, (ii) the date which is the 10th anniversary of the date he commenced participation in the

Plan, or (iii) the date he actually Terminates Employment as an Employee of the Employer and all Affiliates; provided, if the amount of the payment cannot be ascertained by the date as of which payments are scheduled to be made hereunder, payment shall be made no later than 60 days after the earliest date on which such payment can be ascertained under the Plan; and, provided further, the Participant's benefit payments shall be made no later than the later of April 1 following the calendar year (i) in which the Participant attains age 70½, or (ii) in which the Participant Terminates. All distributions will be made in accordance with Code §401(a)(9), the regulations promulgated under Code §401(a)(9) and any other provisions reflecting the requirements of Code §401(a)(9) and prescribed by the Internal Revenue Service; and the terms of the Plan reflecting the requirements of Code §401(a)(9) override the distribution options (if any) in the Plan which are inconsistent with those requirements.

(d) In-service Distribution After Age Seventy. Notwithstanding anything in the Plan to the contrary, effective January 1, 2007, any Participant who is age seventy (70) or older while continuing to be actively employed by the Employer, may request a distribution of all or part of his Account under the Plan at any time. Such distribution shall be made as soon as administratively feasible after the request is made.

6.8 Nonalienation of Benefits.

Except with respect to federal income tax withholding, benefits payable under this Plan shall not be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution, or levy of any kind, either voluntary or involuntary, including any such liability which is for alimony or other payments for the support of a Spouse or former spouse or for any other relative of the Employee, prior to actually being received by the person entitled to the benefit under the terms of the Plan; and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge or otherwise dispose of any right to benefits payable hereunder, shall be void.

6.9 Forfeiture of Benefits.

Notwithstanding any other provision to the contrary, a Participant's Employer Basic Contribution and Employer Matching Contribution Accounts under the Plan shall be forfeited in the manner and to the extent provided under O.C.G.A. §47-1-21 through §47-1-24, if convicted of a public employment, drug related or other covered crime.

6.10 Unclaimed Benefits.

In the event a Participant becomes entitled to benefits under the Plan other than death benefits and the Administrative Committee is unable to locate such Participant (after sending a letter, return receipt requested, to the Participant's last known address, and after such further diligent efforts as the Administrative Committee in its sole discretion deems appropriate) within one year from the date upon which he becomes so entitled, the Administrative Committee

shall direct that such benefits be paid to the person(s) who have been designated as the Participant's Beneficiary or, if none, who have been designated as the Beneficiary by operation of the Plan; and, provided further, if the distribution is payable upon termination of the Plan, the Administrative Committee shall not be required to wait until the end of such 1-year period. If neither the Participant nor his Beneficiary can be located and all of them fail to claim such benefits by the end of the fifth Plan Year following the Plan year in which such Participant becomes entitled to such benefits, then the full Account of the Participant shall be deemed abandoned and treated as a Forfeiture; provided, in the event such Participant or Beneficiary is located or makes a claim subsequent to the allocation of the abandoned Account but prior to the expiration of the time within which any such person's claim to the Account would expire under appropriate state law, then the amount of the abandoned Account (unadjusted for any investment gains or losses from the time of abandonment) shall be restored (from abandoned Accounts, Trust earnings or Contributions made by the Employer) to such Participant or Beneficiary, as appropriate; and, provided further, the Administrative Committee, in its sole discretion, may delay the deemed date of abandonment of any such Account for a period longer than the prescribed five Plan Years if it believes that it is in the best interest of the Plan to do so.

6.11 Maintenance of Account.

Upon the occurrence of circumstances which entitle a Participant or his Beneficiary to benefit payments under the Plan, the amount from which benefits are payable to or with respect to him, computed in accordance with the provisions of the Plan, may be retained in the Trust Fund as such Participant's Account. Any such Account shall benefit proportionately from any earnings of the Trust Fund and any appreciation in the value of its assets and shall suffer the detriment of any losses or depreciation in the value of the Trust assets. The Account balance shall be distributed to the Participant or his Beneficiary at such time and in such manner as provided in the Plan.

6.12 Claims.

(a) Procedure. Claims for benefits under the Plan shall be approved by the Administrative Committee or its designee.

(b) Review Procedure. Any Participant or Beneficiary who has been denied a benefit, or his duly authorized representative, shall be entitled, upon request to the Administrative Committee, to appeal the denial of his claim. To do so, the claimant must obtain a form from the Administrative Committee on which to request further consideration of his position. The claimant, or his duly authorized representative, may review pertinent documents related to the Plan and in the Administrative Committee's possession in order to prepare the appeal. The form containing the request for review, together with a written statement of the claimant's position, must be filed with the Administrative Committee no later than 60 days after receipt of the written notification of denial of a claim. The Administrative Committee's decision shall be made within 120 days following the filing of the request for review and shall be

communicated in writing to the claimant. If unfavorable, the notice of decision shall explain the reason or reasons for denial and indicate the provisions of the Plan or other documents used to arrive at the decision.

6.13 Explanation of Certain Rollover Distributions.

Within a reasonable period of time [as defined for purposes of Code §402(f)] before making an Eligible Rollover Distribution from the Plan to a Participant or Beneficiary, the Administrative Committee shall provide such Participant or Beneficiary with a written explanation of (a) the provisions under which the distributee may have the distribution directly transferred to another Eligible Retirement Plan, (b) the provisions which require the withholding of tax on the distribution if it is not directly transferred to another Eligible Retirement Plan, (c) the provisions under which the distribution will not be subject to tax if transferred to an Eligible Retirement Plan within 60 days after the date on which the distributee receives the distribution, and (d) such other terms and provisions as may be required under Code §402(f) and the regulations promulgated thereunder.

ARTICLE VII

DEATH BENEFITS

7.1 Death.

If the termination of employment of a Participant is caused by his death, or if a Former Participant dies before he receives a distribution of his Account, his death benefit shall be equal to one hundred percent (100%) of his Account credited as of the Valuation Date coincident with or next following his date of death and the Beneficiary is entitled to receive the entire amount in his Account to be paid in one lump sum payment. The Participant's Beneficiary shall be the person(s) designated in accordance with Section 7.4 of the Plan to receive any death benefits that may be payable under the Plan. The Administrative Committee may require such proper proof of death and such evidence of the right of any person to receive payment of the value of the Account of a deceased Participant or a deceased Former Participant as the Administrative Committee may deem desirable. The Administrative Committee's determination of death and of the right of any person to receive payment shall be conclusive.

Payment of benefits due under this Section shall be made in accordance with the provisions of this Article VII.

7.2 Payment of Survivor Benefits.

(a) Payments to Spouse. Except as provided in Section 6.10, if the Participant's Spouse is his Beneficiary and is eligible to receive a survivor benefit under Section 7.1, payment of such benefit shall be made as soon as practical following the later of (i) the date on which the Participant would have attained his Normal Retirement Age (if he had survived) or (ii) the Participant's date of death; provided, if the Participant dies before his Normal Retirement Age, his Spouse instead may elect (on a form provided for this purpose by the Administrative Committee) for the payment of his survivor benefit to be paid as of the first day of any calendar month following the Participant's date of death.

(b) Payments to a Non-Spouse Beneficiary. If a Beneficiary who is not the Participant's Spouse is eligible to receive a survivor benefit under Section 7.1, payment of such benefit shall be made as soon as practical following the Participant's date of death.

(c) Minimum Benefit Rules. All distributions will be made in accordance with Code §401(a)(9), the regulations promulgated under Code §401(a)(9), including Treasury Regulation §1.401(a)(9)-2 and any other provisions reflecting the requirements of Code §401(a)(9) and prescribed by the Internal Revenue Service; and the terms of the Plan reflecting the requirements of Code §401(a)(9) override the distribution options (if any) in the Plan which are inconsistent with those requirements.

7.3 Cash-Out Payment of Survivor Benefits.

If the Participant's vested Account balance is \$5,000 or less on the Participant's date of death, the full amount of such vested Account balance automatically shall be paid to his Beneficiary in one single-sum, cash-out distribution as soon as practicable after the Participant's date of death.

7.4 Beneficiary Designation.

(a) General. In accordance with the terms of this Section 7.4, Participants shall designate and from time to time may redesignate their Beneficiary or Beneficiaries in such form and manner as the Administrative Committee may determine. If no Beneficiary designation is made by the Participant, the Beneficiary shall be his Surviving Spouse. If there is no Surviving Spouse, a Beneficiary designation will be made according to Georgia law.

(b) No Designation or Designee Dead or Missing. In the event that:

- (1) a Participant dies without designating a Beneficiary;
- (2) the Beneficiary designated by a Participant is not surviving when a payment is to be made to such person under the Plan, and no contingent Beneficiary has been designated; or
- (3) the Beneficiary designated by a Participant cannot be located by the Administrative Committee within one year after the date benefits are to commence to such person;

then, in any of such events, the Beneficiary of such Participant with respect to any benefits that remain payable under the Plan shall be the Participant's Surviving Spouse, if any, and if not, then the estate of the Participant.

7.5 Distribution for Minor Beneficiary.

In the event a distribution is to be made to a minor, then the Administrative Committee may, in the Administrative Committee's sole discretion, direct that such distribution be paid to the legal guardian, or if none, to a parent of such Beneficiary or a responsible adult with whom the Beneficiary maintains his residence, or to the custodian for such Beneficiary under the Uniform Gift to Minors Act or similar statute, if such is permitted by the laws of the state in which said Beneficiary resides. Such a payment to the legal guardian or parent of a minor Beneficiary shall fully discharge the Trustee, Employer and Plan from further liability on account thereof.

ARTICLE VIII

TRUST FUND

8.1 Establishment of Trust Fund.

All Contributions are to be paid over to the Trustee to be held in the Trust Fund and invested in accordance with the terms of the Plan and the separate Trust Agreement which is incorporated herein and made a part hereof.

8.2 Investment Funds.

(a) Named Investment Funds. In accordance with instructions from the Investment Committee and the terms of the Plan, the Trustee shall establish Investment Funds for the investment of Contributions and Accounts. Such Investment Funds may be established, modified or eliminated from time to time without necessity of amendment to the Plan and shall have the investment objectives prescribed by the Investment Committee.

(b) Reinvestment of Cash Earnings. Any investment earnings received in the form of cash with respect to any Investment Fund (in excess of the amounts necessary to pay Plan or Trust expenses) shall be reinvested in such Investment Fund.

8.3 Participant Direction of Investments.

Each Participant or Beneficiary generally may direct the manner in which his Accounts shall be invested in and among the Investment Funds; provided, such investment directions shall be made in accordance with the following terms:

(a) Investment of Account. As of each day, Contributions, plus earnings (or losses) thereon, will be transferred to the Investment Funds in the proportion designated by such Participant pursuant to his most recent election, as described below. If the Participant does not make an investment election, his contributions shall be allocated to the investment fund determined by the Investment Committee as the "default" fund.

In addition, effective as of each day following his Entry Date into the Plan, each Participant (or Beneficiary) may elect, the percentage of his Account that will be invested in each Investment Fund. Each such election shall remain in effect until changed by such Participant or Beneficiary. In the event an individual fails to make an election for his Accounts pursuant to the terms of this subsection or if an investment election is incomplete or insufficient in some manner, the Accounts will continue to be invested in the same manner provided under the terms of the most recent election affecting such Accounts.

(b) Conditions Applicable to Elections. Allocations of investments in the various Investment Funds, as described in subsection (a) hereof, shall be made in whole percentages as directed by the Participant or Beneficiary. The Administrative and Investment Committees shall have complete discretion to adopt and revise procedures to be followed in making such investment elections. Such procedures may include, but are not limited to, the format of the election forms, use of interactive telephone system, the deadline for filing elections and the effective date of such elections; provided, elections must be permitted at least once every three months. Any procedures adopted by the Administrative and Investment Committees that are inconsistent with the deadlines specified in this Section shall supersede such provisions of this Section without the necessity of a Plan amendment.

8.4 Expenses.

The Employer shall pay all expenses in the administration of the Plan to the extent not paid out of the Trust.

8.5 Voting and Tender Offer Rights with Respect to Investment Funds.

Only if, to the extent and in the manner, permitted by the Trust and/or any documents establishing or controlling any of the Investment Funds, shall Participants and Beneficiaries be given the opportunity to vote and tender their interests in each such Investment Funds. Otherwise, such interests shall be voted and/or tendered by the Investment Manager or other fiduciary that controls such Investment Fund, as may be provided in the controlling documents.

8.6 Appointment of Investment Manager.

(a) Investment Advisor. The Investment Committee may appoint any one or more individuals or entities to serve as an Investment Advisor to the Committee. Such Investment Advisor would aid the Investment Committee in the selection of Investment Funds.

(b) Investment Manager. The Investment Committee may appoint any one or more individuals or entities to serve as the Investment Manager or Managers of the entire Trust or of all or any designated portion of a particular Investment Fund or Investment Funds. The Investment Manager shall certify that it is qualified to act as an "investment manager" within the meaning of §3(38) of ERISA and shall acknowledge in writing its fiduciary status with respect to the assets placed under its control. The appointment of the Investment Manager shall be effective upon the Trustee's receipt of a copy of an appropriate Investment Committee resolution (or such later effective date as may be contained therein), and the appointment shall continue in effect until receipt by the Trustee of a copy of an Investment Committee resolution removing or accepting the resignation of the Investment Manager (or such later effective date as may be specified therein). If an Investment Manager is appointed, the Investment Manager shall have the power to manage, acquire and dispose of any and all assets of the Trust Fund, as the case

may be, which have been placed under its control, except to the extent that such power is reserved to the Trustee by the Controlling Company. If an Investment Manager is appointed, the Trustee shall be relieved of any and all liability for the acts or omissions of the Investment Manager, and the Trustee shall not be under any obligation to invest or otherwise manage any assets which are subject to the management of the Investment Manager.

8.7 Purchase of Life Insurance.

Life insurance contracts shall not be purchased.

ARTICLE IX

ADMINISTRATION

9.1 Administrative Committee; Appointment and Term of Office.

(a) The Administrative Committee shall consist of not less than three members who shall be appointed by and serve at the pleasure of the Fulton County Commissioners. Initially, the members shall be the Chairman of the Fulton County Commissioners, the Fulton County Finance Director, and the Fulton County Manager or their delegates.

(b) The Fulton County Commissioners shall have the right to remove any member of the Administrative Committee at any time. A member who is also an Employee of the Employer or an Affiliate, shall be deemed to have been removed as of his termination of employment with the Employer and all Affiliates. If a vacancy in the Administrative Committee should occur, a successor may be appointed by the Commissioners.

(c) A written certification shall be given to the Trustee of all members of the Administrative Committee together with a specimen signature of each member. For all purposes hereunder, the Trustee shall be conclusively entitled to rely upon such certification until the Trustee is otherwise notified in writing.

9.2 Organization of Administrative Committee.

The Administrative Committee may elect a Chairman and a Secretary/Treasurer from among its members. In addition to those powers set forth elsewhere in the Plan, the Administrative Committee may appoint such agents, who need not be members of such Administrative Committee, as it may deem necessary for the effective performance of its duties and may delegate to such agents such powers and duties, whether ministerial or discretionary, as the Administrative Committee may deem expedient or appropriate. The Administrative Committee shall act by majority vote. Its members shall serve as such without compensation.

9.3 Powers and Responsibility.

The Administrative Committee shall have complete control of the administration of the Plan hereunder, with all powers necessary to enable it properly to carry out its duties as set forth in the Plan and the Trust Agreement. The Administrative Committee shall have the following duties and responsibilities:

(a) to construe the Plan and to determine all questions that shall arise thereunder;

- (b) to select and/or remove all service providers to the Plan including the Trustee, recordkeeper, broker and investment advisor;
- (c) to decide all questions relating to the eligibility of Employees to participate in the Plan;
- (d) to determine the benefits of the Plan to which any Participant or Beneficiary may be entitled;
- (e) to maintain and retain records relating to Participants and Beneficiaries;
- (f) to prepare and furnish to Participants all information required under state or federal law or provisions of the Plan to be furnished to them;
- (g) to prepare and furnish to the recordkeeper and/or Trustee sufficient employee data and the amount of Contributions received from all sources so that the recordkeeper and/or Trustee may maintain separate accounts for Participants and Beneficiaries and make required payments of benefits;
- (h) to prepare and file or publish with all other appropriate government officials all reports and other information required under law to be so filed or published;
- (i) to provide directions to the Trustee with respect to methods of benefit payment and all other matters where called for in the Plan or requested by the Trustee;
- (j) to engage assistants and professional advisers;
- (k) to arrange for fiduciary bonding, if necessary;
- (l) to provide procedures for determination of claims for benefits; and
- (m) to delegate any or all of these responsibilities.

9.4 Records of Administrative Committee.

(a) Any notice, direction, order, request, certification or instruction of the Administrative Committee to the Trustee shall be in writing and shall be signed by a member of the Administrative Committee. The Trustee and every other person shall be entitled to rely conclusively upon any and all such notices, directions, orders, requests, certifications and instructions received from the Administrative Committee and reasonably believed to be properly executed, and shall act in accordance therewith.

(b) All acts and determinations of the Administrative Committee shall be duly recorded by its Secretary or under his supervision, and all such records, together with such other documents as may be necessary for the administration of the Plan, shall be preserved in the custody of such Secretary.

9.5 Reporting and Disclosure.

The Administrative Committee shall keep all individual and group records relating to Participants and Beneficiaries and all other records necessary for the proper operation of the Plan. Such records shall be made available to each Participant and Beneficiary for examination during normal business hours except that a Participant or Beneficiary shall examine only such records as pertain exclusively to the examining Participant or Beneficiary and the Plan and Trust Agreement. The Administrative Committee shall prepare and shall file as required by law or regulation all reports, forms, documents and other items required by the Code and every other relevant statute, each as amended, and all regulations thereunder. This provision shall not be construed as imposing upon the Administrative Committee the responsibility or authority for the preparation, preservation, publication or filing of any document required to be prepared, preserved or filed by the Trustee to whom such responsibilities are delegated by law or by the Plan.

9.6 Construction of the Plan.

The Administrative Committee shall take such steps as are considered necessary and appropriate to remedy any inequity that results from incorrect information received or communicated in good faith or as the consequence of an administrative error. The Administrative Committee shall interpret the Plan and shall determine the questions arising in the administration, interpretation and application of the Plan. The Administrative Committee shall endeavor to act, whether by general rules or by particular decisions, so as not to discriminate in favor of or against any person and so as to treat all persons in similar circumstances uniformly. The Administrative Committee shall correct any defect, reconcile any inconsistency or supply any omission with respect to the Plan.

9.7 Assistants and Advisers.

(a) The Administrative Committee shall have the right to delegate any of its responsibility hereunder and to hire such professional assistants and consultants as it, in its sole discretion, deems necessary or advisable. To the extent that the costs for such assistants and advisers are not paid by the County, they shall be paid at the direction of the Administrative Committee from the Trust Fund as an expense of the Trust Fund.

(b) The Administrative Committee shall be entitled to rely upon all certificates and reports made by an accountant, attorney or other professional adviser selected pursuant to this Section; the Administrative Committee shall be fully protected in respect to any

action taken or suffered by them in good faith in reliance upon the advice or opinion of any such accountant, attorney or other professional adviser; and any action so taken or suffered shall be conclusive upon each of them and upon all other persons interested in the Plan.

9.8 Investment Committee.

(a) The Investment Committee may be named to act on behalf of the Administrative Committee to establish and carry out a funding policy consistent with the Plan objectives and with the requirements of any applicable law. Such policy shall be in writing and shall have due regard for the liquidity needs of the Trust. Such funding policy shall also state the general investment objectives of the Trust and the philosophy upon which maintenance of the Plan is based.

(b) The Administrative Committee shall determine the membership of the Investment Committee, and the members shall serve at the pleasure of the Administrative Committee or until their resignation.

(c) The Investment Committee also shall carry out the Administrative Committee's responsibility and authority as follows, to the extent delegated thereto by the Administrative Committee:

(1) To appoint one or more persons to serve as investment manager or investment advisors with respect to all or part of the Plan assets;

(2) To allocate the responsibility and authority being carried out by the Investment Committee among the members of the Committee;

(3) To take any action appropriate to assure that the Plan assets are invested for the exclusive purpose of providing benefits to Participants and their Beneficiaries in accordance with the Plan and defraying reasonable expenses of administering the Plan, subject to the requirements of any applicable law; and

(4) To employ one or more persons to render advice with respect to any responsibility or authority being carried out by the Investment Committee. To the extent that the costs for such assistants and advisers are not paid by the County, they shall be paid at the direction of the Administrative Committee from the Trust Fund as an expense of the Trust Fund.

9.9 Direction of Trustee.

The Administrative Committee shall have the power to provide the Trustee with general investment policy guidelines and directions to assist the Trustee respecting investments made in compliance with, and pursuant to, the terms of the Plan.

9.10 Bonding.

The Administrative Committee shall arrange for fiduciary bonding if required by law, but no bonding in excess of the amount required by law shall be required by the Plan.

ARTICLE X

ALLOCATION OF AUTHORITY AND RESPONSIBILITIES

10.1 General Responsibilities.

The County Commissioners are fiduciaries with respect to the Plan and, as Plan sponsor, have the following authority and responsibilities:

- (a) To appoint the Trustee, the Administrative Committee and the recordkeeper, and to monitor each of their performances;
- (b) To communicate such information to the Trustee, the Administrative Committee and the recordkeeper as each needs for the proper performance of its duties;
- (c) To provide channels and mechanisms through which the Administrative Committee, the recordkeeper and/or the Trustee can communicate with Participants and Beneficiaries;
- (d) To delegate responsibilities to officers, employees or to other individuals, all of whom shall serve at the pleasure of the County;
- (e) To perform such duties as are imposed by law or by regulation; and
- (f) To serve as Plan Administrator in the absence of an appointed Administrative Committee.

In the event any of the areas of authority and responsibilities of the County overlap with that of any other Plan fiduciary, the County shall coordinate with such other fiduciaries the execution of such authority and responsibilities; provided, the decision of the County with respect to such authority and responsibilities ultimately shall be controlling.

10.2 Administrative Committee.

The Administrative Committee shall have the authority and responsibilities imposed by Article IX hereof. With respect to said authority and responsibilities, the Administrative Committee shall be a fiduciary, and as such, shall have no authority or responsibilities other than as granted in the Plan or as imposed as a matter of law.

10.3 Investment Committee.

The Investment Committee, if any is appointed, shall be a fiduciary with respect to its authority and responsibilities, as imposed by Article IX. The Investment Committee shall have no authority or responsibilities other than those granted in the Plan and the Trust.

10.4 Trustee.

To the extent provided in the Trust Agreement, the Trustee shall be a fiduciary with respect to investment of Trust Fund assets and shall have the powers and duties set forth in the Trust Agreement.

10.5 Recordkeeper.

The recordkeeper shall have the responsibility of maintaining the Plan's records and such further responsibilities and duties as set forth in a written agreement between the County and the recordkeeper.

10.6 Limitations on Obligations of Fiduciaries.

No fiduciary shall have authority or responsibility to deal with matters other than as delegated to it under the Plan, under the Trust Agreement or by operation of law. A fiduciary shall not in any event be liable for breach of fiduciary responsibility or obligation by another fiduciary if the responsibility or authority for the act or omission deemed to be a breach was not within the scope of such fiduciary's authority or delegated responsibility.

10.7 Delegation.

Fiduciaries shall have the power to delegate specific fiduciary responsibilities (other than Trustee responsibilities). Such delegations may be to officers or employees of the County or to other persons, all of whom shall serve at the pleasure of the fiduciary making such delegation and, if full-time employees of the County, without compensation. Any such person may resign by delivering a written resignation to the delegating fiduciary. Vacancies created by any reason may be filled by the appropriate fiduciary or the assigned responsibilities may be reabsorbed or redelegated by the fiduciary.

10.8 Multiple Fiduciary Roles.

Any person may hold more than one position of fiduciary responsibility and shall be liable for each such responsibility separately.

10.9 ERISA Standard. The Fulton County Commissioners and the Administrative Committee may look to the standards of fiduciary conduct prescribed by ERISA and the common law of trusts for general guidance with respect to their responsibilities.

ARTICLE XI

MISCELLANEOUS

11.1 No Guarantee of Employment.

Nothing contained in this Plan shall be construed as a contract of employment between the Employer and any Employee, or as a right of any Employee to be continued in the employment of the Employer, or as a limitation of the right of the Employer to discharge any of its Employees, with or without cause.

11.2 Rights to Assets.

No Employee or Beneficiary shall have any right to, or interest in, any assets of the Plan upon termination of his employment or otherwise, except as provided from time to time under this Plan, and then only to the extent of the benefits payable under the Plan to such Employee or Beneficiary out of the assets of the Plan. All payments of benefits as provided for in this Plan shall be made solely out of the assets of the Plan and none of the fiduciaries shall be liable therefor in any manner.

11.3 Nonforfeitability of Benefits.

Subject only to the specific provisions of this Plan, nothing shall be deemed to divest a Participant of his right to the nonforfeitable benefit to which he becomes entitled in accordance with the provisions of this Plan.

11.4 Governing Law.

The Plan shall be governed by the laws of the State of Georgia to the extent applicable, and to the extent not applicable, by federal law.

11.5 Construction.

The masculine gender, where appearing in the Plan, shall be deemed to include the feminine gender, unless the context clearly indicates to the contrary. The words "hereof," "herein," "hereunder" and other similar compounds of the word "here" shall mean and refer to the entire Plan and not to any particular provision or Section. Article and Section headings are included for convenience of reference and are not intended to add to, or subtract from, the terms of the Plan.

11.6 Action by the Employer.

Whenever the Employer under the terms of the Plan is permitted or required to do or perform any act or matter, it shall be done and performed by a duly authorized individual.

11.7 Uniformity.

All provisions of the Plan shall be interpreted and applied in a uniform and nondiscriminatory manner.

ARTICLE XII

AMENDMENT, TERMINATION AND ADOPTION

12.1 Amendment.

The provisions of the Plan may be amended at any time and from time to time by written amendment approved by the County Commissioners; provided:

- (a) No amendment shall increase the duties or liabilities of the Trustee without the consent of such party;
- (b) No amendment shall impair the contract rights of any Eligible Employee;
and
- (c) No amendment shall be made which would divert any of the assets of the Trust Fund to any purpose other than the exclusive benefit of Participants and Beneficiaries, except that the Plan and Trust Agreement may be amended retroactively and to affect the Accounts of Participants and Beneficiaries if necessary to cause the Plan and Trust to be qualified under the Code.

12.2 Termination.

- (a) Right to Terminate. The Employer expects the Plan to be continued indefinitely, but it reserves the right to terminate the Plan or to completely discontinue Contributions to the Plan at any time by action of the County Commissioners. In either event, the Administrative Committee, Investment Committee, each Affiliate and the Trustee shall be promptly advised of such decision in writing.
- (b) Vesting Upon Complete Termination. If the Plan is terminated by the Employer or Contributions to the Plan are completely discontinued, the Accounts of all Participants and Beneficiaries or other successors in interest as of such date shall become 100 percent vested and nonforfeitable. Upon termination of the Plan, the Administrative Committee, in its sole discretion, shall instruct the Trustee either (i) to continue to manage and administer the assets of the Trust for the benefit of the Participants and their Beneficiaries pursuant to the terms and provisions of the Trust Agreement, or (ii) if there is no successor plan or no benefits subject to the restrictions in said Section, to pay over to each Participant or Beneficiary the value of his interest in a single sum and to thereupon dissolve the Trust.
- (c) Dissolution of Trust. In the event that the Administrative Committee decides to dissolve the Trust, as soon as practicable following the termination of the Plan or the Administrative Committee's decision, whichever is later, the assets under the Plan shall be converted to cash or other distributable assets, to the extent necessary to effect a complete

distribution of the Trust assets as described hereinbelow. Following completion of the conversion, on a date selected by the Administrative Committee, each individual with an Account under the Plan on such date shall receive a distribution of the total amount then credited to his Account. The amount of cash and other property distributable to each such individual shall be determined as of the date of distribution. In the case of a termination distribution as provided herein, the Administrative Committee may direct the Trustee to take any action dealing with unclaimed benefits, except that it shall not be necessary to hold funds for any period of time stated in such Section. Within the expense limitations set forth in the Plan, the Administrative Committee may direct the Trustee to use assets of the Trust Fund to pay any due and accrued expenses and liabilities of the Trust and any expenses involved in termination of the Plan.

(d) Vesting Upon Partial Termination. In the event of a partial termination of the Plan, the Accounts of those Participants and Beneficiaries affected shall become 100 percent vested and nonforfeitable and, unless transferred to another qualified plan, shall be distributed in a manner and at a time consistent with the terms of this Section.

IN WITNESS WHEREOF, the Employer has caused this Amended and Restated Plan to be effective April 4, 2007, executed as of this _____ day of _____, 2007, in its name, by and through the Fulton County Commissioners.

Attest: (SEAL)

FULTON COUNTY

By: _____
Secretary

By: _____
Title: _____

APPENDIX A

EFFECTIVE DATES AND ELECTION PROCEDURES

- Effective Date of Plan July 1, 1999
- First Entry Date for new hires July 7, 1999
- Open election period for current Employees July 1, 1999
- Employee meetings and enrollment of current Employees July 6, 1999 - October 31, 1999
- Close election period November 1, 1999
- Benefit accruals cease under a Prior Plan November 9, 1999
- Entry Date for current Employees electing into Plan November 10, 1999
- Transfer assets of all Employees electing to transfer No later than December 31, 1999

Effective January 1, 2002, Eligible Employees enrolled in the Prior Plans shall be permitted to elect to join this Plan on an annual basis. The election period shall be on or about March 1st through April 30th of each year. The benefit accruals for those Eligible Employees electing into the Plan will cease under the Prior Plan as of April 30th of each year. Assets attributable thereto will be transferred to this Plan no later than June 30th of the same year. Electing Employees will join the Plan as of the first payroll period following April 30th.

Effective January 4, 2006, any Employee who is an active participant in the any of the Prior Plans on the date his or her job with the Employer is abolished by operation of law or a reduction in force, shall be permitted to elect to join this Plan and cease participation in the Prior Plan, within thirty (30) days of the effective date of the job abolishment. If such Employee (or former Employee) makes the election in accordance with the requirements under the terms of the DB Plan, he shall cease participating in the Prior Plans, assets attributable to his accrued benefit under the Prior Plans shall be transferred to this Plan and all benefits shall be paid from this Plan.

APPENDIX B

TRANSFER ASSUMPTIONS

For purposes of determining the amount that will be transferred out of the Fulton County Employees Retirement System (the "Prior Plan") into the Fulton County Defined Contribution Plan (the "DC Plan") the following assumptions will be used in calculating the lump sum value of the Participant's Accrued Benefit Transfer Amount, as defined under the Prior Plan. Except as otherwise specifically provided below, all terms have the meaning specified in the particular Prior Plan under which the Employee is participating at the time he or she makes the election to transfer.

The lump sum value of the Participant's Accrued Benefit Transfer Amount under the Prior Plan will be determined by using the following:

- The benefit accrual formula described under the Prior Plan under which the Employee participates as of November 9, 1999.
- The actual marital status of the Employee as of November 9, 1999. For purposes of determining a spouse's age, it is assumed all spouses are 4 years younger than the Participant to whom they are married.
- The 1971 Group Annuity Mortality table weighted 50% male and 50% female.
- Interest rate specified in the January 1, 1999 Prior Plan actuarial valuation.
- The accrued benefit, determined as of the date of transfer, is assumed to commence at the earliest age at which the participant would otherwise be eligible to receive an unreduced normal retirement benefit under the terms of the Prior Plan in which he participates, taking into account any special provisions for specified occupations. For purposes of determining eligibility for unreduced normal retirement benefits, accumulated sick leave will not be taken into account.
- A two percent (2%) annual Cost of Living Adjustment.
- The Participant's annual salary rate as of July 7, 1999 divided by twelve will be used as "average monthly earnings", "average monthly salary" or "Final Average Monthly Earnings" under the Prior Plan.

The amount transferred will never be less than the Participants' accumulated Employee contributions with interest credited as provided under the terms of the Prior Plan.

All Employees electing to participate in the DC Plan shall be required to transfer the lump sum present value of his or her Accrued Benefit Transfer Amount to the DC Plan.

**FIRST AMENDMENT TO THE
FULTON COUNTY DEFINED CONTRIBUTION PLAN**

This FIRST AMENDMENT is made as of this 5th day of November, 2008, by Fulton County Board of Commissioners (the "Board of Commissioners").

WITNESSETH:

WHEREAS, Fulton County (the "County") maintains the Fulton County Defined Contribution Plan (the "Plan"), which was last amended and restated effective as of April 3, 2007; and

WHEREAS, the County now wishes to amend the Plan to update the rollover provisions of the Plan for applicable law changes, to comply with final Treasury Regulations issued under Section 415 of the Internal Revenue Code, to update the Plan for certain law changes permitted by the Pension Protection Act of 2006, and to make other miscellaneous changes to the Plan;

NOW, THEREFORE, the County does hereby amend the Plan, effective as of January 1, 2008, except as otherwise provided herein, as follows:

1. By adding the following new sentence to the end of Section 2.14 of the Plan:

"Effective for Plan Years beginning on or after January 1, 2006, if any portion of an Eligible Rollover Distribution is attributable to payments or distributions from a designated Roth account (as defined in Code §402A), an Eligible Retirement Plan with respect to such portion shall include only another designated Roth account and a Roth IRA."

2. By deleting Section 5.3 of the Plan in its entirety and substituting therefor the following:

"5.3 Code §415 Limitations on Maximum Contributions.

(a) General Limit on Annual Additions. In no event shall the Annual Addition to a Participant's Account for any Limitation Year, under the Plan and any other Defined Contribution Plan (as defined below) maintained by the Employer, exceed the lesser of (1) and (2) below:

- (1) 100% of the Participant's Compensation or
- (2) \$46,000 (in 2008) adjusted in subsequent years as determined in accordance with regulations prescribed by the Secretary of the Treasury or his delegate, pursuant to the provisions of Code §415(d).

The Compensation limit referred to in (1) above shall not apply to any contribution for medical benefits after separation from service (within the meaning of Code §401(h) or 419(f)(2)) which is otherwise treated as an Annual Addition.

For purposes of applying the Code §415 limitations, Compensation shall include compensation paid to the Participant by the later of 2-1/2 months after the Participant's Severance from Service Date with the Employer or the end of the Limitation Year that includes the Participant's Severance from Service Date if such compensation is regular compensation for services during or outside the Participant's regular working hours, commissions, bonuses, or other similar payments and the compensation would have been paid to the Participant prior to a severance from employment if the Participant had continued in employment with the Employer. Compensation shall also include compensation paid to the Participant by the later of 2-1/2 months after the Participant's Severance from Service Date with the Employer or the end of the Limitation Year that includes the Participant's Severance from Service Date if such compensation is for vacation or other leave and the Participant would have been able to use the leave if the Participant had continued in employment with the Employer. A Participant's Compensation for a Limitation Year shall not include Compensation in excess of the limitation under Code §401(a)(17) that is in effect for the calendar year in which the Limitation Year begins.

(b) Correction of Excess Annual Additions. If, as a result of either the allocation of Forfeitures to an Account, a reasonable error in estimating a Participant's Compensation or such other occurrences as the Internal Revenue Service permits, the Annual Addition made on behalf of a Participant exceeds the limitations set forth in this Section, the excess amount will be corrected in any method permitted by the Internal Revenue Service's Employee Plans Compliance Resolution System (EPCRS) or any successor guidance.

(c) Special Definitions Applicable to Code §415 Limitations.

(1) Annual Addition. For purposes of this Section, the term 'Annual Addition' for any Participant means the sum for any Limitation Year of:

(A) contributions made by the Employer or an Affiliate on behalf of the Participant under all Defined Contribution Plans;

(B) contributions made by the Participant under all Defined Contribution Plans of the Employer or Affiliate [excluding rollover contributions as defined in Code Sections 402(a)(5), 403(a)(4), 403(b)(8), 408(d)(3) and 414(h) and contributions of previously distributed benefits which result in such a Plan's restoration of previously forfeited benefits pursuant to Treasury Regulations §1.415(c)-1(b)(2)(ii)]; and

(C) forfeitures allocated to the Participant under all Defined Contribution Plans of the Employer or an Affiliate.

(2) Defined Contribution Plan. The term 'Defined Contribution Plan' means any qualified retirement plan maintained by an Affiliate which provides for an individual account for each Participant and for benefits based solely on the amount contributed to the Participant's account and any income, expenses, gains, losses and forfeitures of accounts of other Participants, which may be allocated to such Participant's account.

(d) Compliance with Code § 415. The limitations in this Section are intended to comply with the provisions of Code §415 so that the maximum benefits permitted under plans of the Affiliates shall be exactly equal to the maximum amounts allowed under Code §415 and the final regulations promulgated thereunder. If there is any discrepancy between the provisions of this Section and the provisions of Code §415 and the regulations promulgated thereunder, such discrepancy shall be resolved in such a way as to give full effect to the provisions of the Code."

3. By deleting Section 5.4 of the Plan in its entirety and substituting therefor the following:

"5.4. ACP or Actual Contribution Percentage.

In accordance with Treasury Regulations Section 1.401(m)-1(b)(2), the Plan automatically satisfies the requirements of Code §401(m)."

4. By deleting Section 6.13 of the Plan in its entirety and substituting therefor the following:

"6.13 Certain Rollover Distributions.

Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this section, a distributee may elect, at the time and in the manner prescribed by the Employer, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the distributee in a direct rollover. For purposes of this section, the following definitions shall apply.

(a) Distributee. A distributee includes a Participant or a Participant's surviving spouse. Effective for distributions made on and after September 1, 2008, a non-spouse Beneficiary of a deceased Participant who is either an individual or an irrevocable trust where the beneficiaries of such trust are identifiable and the trustee provides the Administrative Committee with a final list of trust beneficiaries or a copy of the trust document by October 31 of the year following the Participant's death, shall be a Distributee with regard to the interest of the deceased Participant, but only if the Eligible Rollover Distribution is transferred in a direct trustee-to-trustee transfer to an Eligible

Retirement Plan which is an individual retirement account described in Code §408(a) or an individual retirement account described in Code §408(b) (other than an endowment contract).

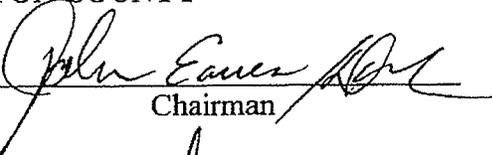
(b) Direct Rollover. A direct rollover is a payment by the Plan to the Eligible Retirement Plan specified by the distributee.”

5. By deleting the last sentence of Section 7.4(a).

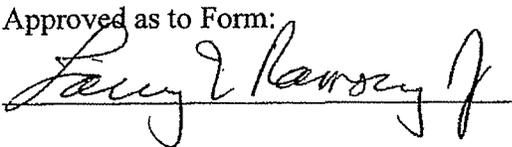
Except as specifically amended hereby, the Plan shall remain in full force and effect prior to this First Amendment.

IN WITNESS WHEREOF, the County has caused this First Amendment to be executed as of the day and year first above written, in its name, by and through the Board of Commissioners.

FULTON COUNTY

By: 
Chairman

Attest: 
Clerk, Fulton County
Board of Commissioners

Approved as to Form:


ITEM # 08-0859 RM 11/5/08
REGULAR MEETING
5159267_2.DOC

**SECOND AMENDMENT TO THE
FULTON COUNTY DEFINED CONTRIBUTION PLAN**

This AMENDMENT is made as of this 7th day of November, 2012, by the Fulton County Board of Commissioners (the "Board of Commissioners").

WITNESSETH:

WHEREAS, Fulton County (the "County") maintains the Fulton County Defined Contribution Plan (the "Plan"); and

WHEREAS, the County now wishes to amend the Plan to allow members of the Board of Commissioners to be eligible employees under the Plan and to update the Plan for the Heroes Earnings Assistance and Relief Tax Act of 2008;

NOW, THEREFORE, the County does hereby amend the Plan, effective as of January 1, 2013, except as otherwise provided herein, as follows:

1. By adding the following new sentence to the end of the first sentence of Section 2.13 of the Plan:

"In addition, members of the Fulton County Board of Commissioners shall be considered Eligible Employees."

2. By deleting Section 2.13(e) of the Plan in its entirety and substituting therefor the following:

"(e) Personnel such as attorneys in the Fulton County Legal Department who are not required by law or the terms of their employment to work on a full time basis for the Employer and who were initially employed, appointed or elected after August 1, 1988."

3. By adding the following new paragraph to the end of Section 5.3(a) of the Plan:

"Effective January 1, 2009, in accordance with Code Section 414(u)(12), Compensation shall include any differential wage payment (within the meaning of Code Section 3401(h)(2)) made by an Employer to an individual who does not currently perform services for the Employer by reason of qualified military service (within the meaning of Code Section 414(u)(5)) to the extent those payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer."

4. By adding the following new Section 7.6 to the Plan:

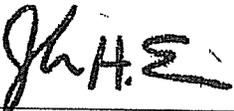
“7.6 Death Benefits under USERRA.

“Effective January 1, 2007, in the case of a Participant who dies while performing ‘qualified military service’ (as defined in Code Section 414(u)(5)), the survivors of the Participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan, if any, had the Participant resumed and then terminated employment on account of death.”

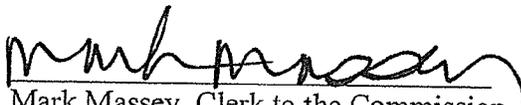
Except as specifically amended hereby, the Plan shall remain in full force and effect prior to this Amendment.

IN WITNESS WHEREOF, the County has caused this Amendment to be executed as of the day and year first above written, in its name, by and through the Board of Commissioners.

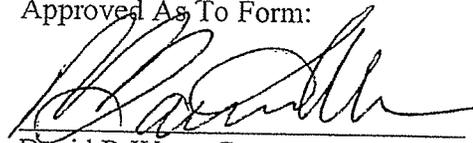
FULTON COUNTY

By: 
John Eaves, Chairman, Board of Commissioners

Attest:


Mark Massey, Clerk to the Commission

Approved As To Form:


David R. Ware, County Attorney

6178652

REGULAR MEETINGS
12-0978 on 11/7/12

**FULTON COUNTY DEFINED CONTRIBUTION PLAN
INVESTMENT POLICY STATEMENT**

FULTON COUNTY
DEFINED CONTRIBUTION PLAN
Investment Policy Statement

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Fulton County Defined Contribution Plan Investment Policy Statement

I. Overview and Purpose

A. Overview of Investment Policy

The Fulton County Defined Contribution Plan (“Plan”) is a retirement plan established by the Fulton County Board of Commissioners (“Plan Sponsor”) for the benefit of the participating employees and their beneficiaries. The Plan is a qualified plan under Section 401(a) of the Internal Revenue Code (“IRC”). The Plan is also a governmental plan within the meaning of IRC Section 414(d) that requires mandatory employee contributions, which are “picked up” by the Plan Sponsor and treated as employer contributions under IRC Section 414(h)(2).

The Plan permits participants to direct the investment of their accounts.

The provisions of the Plan document govern the investment structure of the Plan, the identification of the Plan fiduciaries, and the authority and responsibilities of those fiduciaries. The federal and state law governing the operation of the Plan requires that fiduciaries follow the terms of the Plan (unless the Plan’s provisions conflict with such laws). Accordingly, the provisions of the Plan document govern the selection of Plan fiduciaries and the allocation and delegation of duties among the fiduciaries. If this Investment Policy Statement conflicts with the Plan Document, the provisions of the Plan Document will prevail.

The ultimate authority to establish the investment structure, to prepare and amend this Investment Policy Statement, and to select and review the investment alternatives resides with the Plan Sponsor through the Fulton County Defined Contribution Plan Retirement Committee (“Plan Committee”). The Plan Committee is designated as the Investment Fiduciary for the Plan and shall have the responsibilities and authority provided in this Investment Policy Statement.

B. Purpose of Investment Policy

The purpose of this Investment Policy Statement (“IPS”) is to establish investment principles and framework for selecting, monitoring and evaluating investment options under the Plan. These guidelines do not constitute a contract or a statement of mandatory requirements, but are instead an explanation of the general principles established for the selection and retention of the investment alternatives. The Investment Fiduciary will determine the weighting to be given to each of these principles and may consider factors in addition to those described in these guidelines.

This IPS explains how the Investment Fiduciary will discharge its obligations to:

- prudently select investment alternatives;
- periodically monitor and evaluate those alternatives; and
- based on such periodic evaluations, determine whether or not the alternatives will continue to be made available to the participants.

These guidelines will be reviewed informally at appropriate intervals and will be reviewed on a formal basis as circumstances warrant. The alternatives, along with their benchmarks, descriptions and performance evaluation measures, may be changed from time to time; so this information, and other decisions which may be periodically reviewed and changed, are attached as exhibits, which can be amended without modifying the principles of the IPS.

While this Plan is not subject to the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), this IPS is intended to be consistent with the criteria for an "ERISA Section 404(c) Plan" as described in Section 404(c) of ERISA and the regulations thereunder. To comply with ERISA Section 404(c), the Plan must satisfy the conditions in the regulations under ERISA Section 404(c), including the designation of a broad range of investment alternatives that permit participants to make independent choices regarding the manner in which the assets in their individual accounts are invested, and which afford the participants the opportunity to materially affect the potential returns on their accounts and the degree of risk involved.

II. Investment Structure

A. Overview of Structure

The investment structure of the Plan will allow participants to create investment portfolios by allocating their accounts among a group of prudently selected and monitored investment alternatives that together constitute a broad range of asset classes and investment styles. From time to time the Plan's investment structure will be reviewed by the Investment Fiduciary. The Plan's designated investment alternatives shall primarily be look-through investment vehicles, as that term is defined in the regulations under ERISA Section 404(c) (the "Funds"), although other types of investment alternatives may also be offered.

In addition, the structure will include asset allocation funds, which will enable participants to direct the investment of their accounts into a single, diversified vehicle designed to be consistent with their time horizons and risk tolerances.

B. Designated Funds for Broad Range

In order to offer a broad range of investment alternatives so that each participant and beneficiary has a reasonable opportunity to:

- materially affect both the potential return and degree of risk relating to his or her accounts,
- choose from diversified investment alternatives, and
- diversify his or her investment to minimize the risk of large losses,

the Plan will offer a selection of open-ended registered investment companies (*i.e.*, mutual funds) or similar investment vehicles, each of which consists of internally diversified portfolios within their asset classes.

In the process of selecting the funds to be used as the Plan's investment alternatives, the Investment Fiduciary will first select the asset classes and investment styles ("asset classes") intended to satisfy the broad range requirement. At a minimum, the Plan's investment alternatives should provide participants the opportunity to invest in vehicles designed to maintain a stable principal value (*i.e.*, cash equivalents), vehicles designed to primarily target domestic bonds, vehicles designed to primarily target domestic equities, and vehicles designed to primarily target international equities.

Once the asset classes are determined, the Investment Fiduciary will, utilizing the procedures described in section III of this IPS, identify one or more funds to represent each of those asset classes.

The asset classes and the funds selected as the Designated Funds, along with their benchmarks, are identified on Exhibit A.

C. Additional Designated Funds

The Investment Fiduciary may also decide to offer funds in addition to those selections for the broad range requirements. These funds are also known as Designated Funds, and they may include, but are not limited to, those that target a specific sector or sectors, country or region, whose managers take greater than normal risk, or whose managers tactically reallocate asset classes within their portfolio. These funds may be added to provide additional investment alternatives and accommodate participant interest.

In selecting these additional Designated Funds, the Investment Fiduciary will consider factors such as: the nature of the participant workforce; investment education, communication and advice programs; the needs and preferences of the participating employees and/or of certain groups of employees.

The additional Designated Funds are also listed on Exhibit A.

D. Investment Education and Models for Participant Direction

The Plan will provide participants with general financial and investment information, including asset allocation models to educate and assist them in making their allocation decisions. Participants will be provided with a questionnaire that measures their individual risk tolerance and investment time horizon and may select a model portfolio based on the results of that questionnaire. Participants may then select from among the funds offered by the Plan to build their own asset allocation portfolio consistent with their individual risk tolerance and investment time horizon or may select a diversified target-date portfolio consistent with their own investment time horizon.

The asset allocation models are described in Exhibit B.

In addition to the questionnaire, education programs and seminars focusing on such subjects as what is a qualified plan, how to invest, preparing for retirement, and a variety of other topics will be provided to the Plan participants.

Moreover, representatives of the Plan Sponsor will meet individually and in groups with Plan participants to provide this education and will conduct one-on-one meetings with Plan participants to analyze individual portfolios, to provide assistance in the participant's asset allocation decisions and to increase participant comfort levels with their investment strategy.

E. Asset Allocation Models

To enable participants to benefit from the asset allocation expertise of investment professionals, the Plan will provide participants with five asset allocation models. Those models, and the purpose of each, are:

- Short-Term: This allocation model seeks to generate income but protection of capital is the primary goal.
- Conservative: This allocation model seeks to limit exposure to risk but recognizes the important role that equity investments traditionally play in outpacing inflation.
- Moderate: This allocation model seeks to maximize total investment return through growth of capital and income. This model is appropriate for an investor who wants to accumulate enough money to beat inflation but with moderate exposure to risk.
- Aggressive: This allocation model seeks to maximize total investment return primarily through growth of capital, but also through income. This model is appropriate for an investor with a long holding period and a high tolerance for risk.
- Ultra Aggressive: This allocation model seeks to maximize total investment return through growth of capital. This model is appropriate for an investor with a long holding period and a very high risk tolerance.

The purpose of the asset allocation funds is to provide participants with investment options professionally designed to take into account risk tolerances and investment time horizons. Additionally, the asset allocation funds will automatically be re-balanced periodically to maintain the strategic asset allocation.

The asset allocation funds are described on Exhibit B.

In addition to the asset allocation models, the Plan also offers five target-date funds. Target-date portfolios provide diversified exposure to stocks, bonds, and cash for those investors who have a specific date in mind for retirement or another goal. These portfolios aim to provide investors with an optimal level of return and risk, based solely on the target date. These portfolios are designed to incorporate a broad range of asset classes to provide diversification of returns and risks consistent with a stated time horizon. These portfolios get more conservative as the goal date approaches by investing more in bonds and cash. Investment managers structure these portfolios differently; two funds with the same goal year may have different allocations to equities and therefore different levels of return and risk.

III. Standards for Selection of Investment Alternatives

A. Overview of Selection Standards

The Investment Fiduciary will engage in a process to prudently analyze and select investment options that will be made available to Plan participants. The investment options will be selected from among a universe of investment alternatives such that there is reasonable assurance that an adequate number of funds have been reviewed and, therefore, that the Designated Funds are representative of superior investment alternatives available to the Plan.

The Investment Options will be monitored on a quarterly basis and the following are the guidelines for the selection of the various Investment Options.

B. Selection of Investment Offerings

1. Selection of Designated Funds

For the selection of Designated Funds (other than cash equivalents, index funds, and target date funds), the Investment Fiduciary will evaluate a reasonable universe of mutual funds using the guidelines set forth in this section of the IPS.

- a. **Evaluation Guidelines.** The Investment Fiduciary will initially create a peer group of funds for each targeted asset class consisting of mutual funds or other diversified investments (“funds”) with similar investment styles, then screen the universe of funds based on the following evaluation guidelines:
 - i. **Operating Expenses.** The expense ratio of the funds will be evaluated to consider the reasonableness and effect of the costs, with preference being given to low-cost funds, unless the additional cost can be justified by other factors.
 - ii. **R-Squared.** The measurement of the consistency in style which is represented by the percentage of a fund's movements that are explained by movements in its benchmark index.
 - iii. **Tracking Error.** The volatility of the investment’s excess returns relative to its benchmark.
 - iv. **Information Ratio.** The incremental return per unit of risk taken and the consistency of risk-adjusted investment performance of the funds, relative to their benchmarks
 - v. **Batting Average.** A measure of a manager’s ability to consistently beat its benchmark over a specified period of time.
 - vi. **1, 3, and 5-year performance returns.** The performance of the fund relative to the peer group performance.

b. Fund Warning Signs. As a secondary screening process in selecting the fund, the Investment Fiduciary will also evaluate certain factors, called “warning signs.” Warning signs could be an indication of a fund’s inability to consistently outperform its peers in the future and will be carefully considered by the Investment Fiduciary. When selecting between two funds that have similar results under the evaluation guidelines (listed above), preference will normally be given to the fund with fewer warning signs. The Investment Fiduciary will evaluate warning signs such as the following:

- i. High operating expenses
- ii. High individual holding concentration
- iii. High economic sector concentration
- iv. High performance volatility
- v. High portfolio turnover
- vi. Low style purity
- vii. High duration bet
- viii. Low credit quality average
- ix. Low manager tenure
- x. Low asset base

The specific warning signs applied to each fund are listed on Exhibit C.

c. Fund selection. For each peer group, the Investment Fiduciary will review a minimum of 2 funds which best satisfy the evaluation guidelines, with the Investment Fiduciary determining the relative weighting of any warning signs or other relevant considerations. The Investment Fiduciary will then select, from those finalists, one or more Designated Funds that the Investment Fiduciary determines to be most suitable for the Plan and the participants to provide a broad range of investment alternatives to the participants.

2. Selection of Stable Value Investments

The quantitative factors reviewed in the selection process of stable value investments are:

- i. Credit Quality – The average credit quality must be maintained at a rating of AA-, as rated by Standard & Poor’s Corp, or Aa3, as rated by Moody’s Investors Service, Inc., at the end of each reporting period.
- ii. Risk – The standard deviation of each stable value investment measured must have a standard deviation percentage lower than that of its primary fixed-income benchmark over the previous five-year period as of the end of each reporting period.

- iii. Performance – The performance for each stable value investment’s return is measured against both the three-month Treasury bill and the investment’s primary fixed-income benchmark over five- and 10-year (or since inception) periods.

3. Selection of Index Funds

The quantitative factors reviewed in the selection process of index investments are:

- i. R-squared – The measurement of the consistency in style.
- ii. Tracking Error – The measurement of the volatility of the investment’s returns relative to its benchmark.

4. Selection of Target Date Funds

The quantitative factors reviewed in the selection process of lifecycle or target date funds are:

- i. Risk Progression – Must represent all investments within the series showing an inward risk progression by which the level of risk declines as a participant moves closer to retirement.
- ii. R-Squared – The measurement of the consistency in style.
- iii. One, Three, and Five-Year Risk/Return Measures

C. Investment of Accounts without Participant Direction

If a participant fails to provide the Plan with an investment direction, the Investment Fiduciary will direct the investment of the participant’s account, until such time as the participant provides his or her first affirmative direction. In consideration of the risk tolerances, time horizons and investment needs of the average participant, and of the common investment allocations by fiduciaries of large retirement plans, accounts for participants who do not affirmatively select their investment alternatives will be invested in the target date fund option which most closely matches the participants targeted retirement date based on their date of birth and an assumed retirement goal of age 65.

This directive will remain in effect until and unless the Investment Fiduciary decides to change this decision for all participants who have not provided investment directions or until the Investment Fiduciary determines that a different investment selection is appropriate for a participant. In making these decisions, the Investment Fiduciary is not responsible for inquiring into the specific goals or needs of a participant.

IV. Monitoring of Investment Alternatives

A. Objective of Monitoring Process

The objective of the monitoring process is to ensure that the Plan is offering quality investment options to Plan participants. The method employed encompasses a comprehensive and systematic process that enables the Plan Committee to prudently evaluate the funds using generally accepted investment principles and modern portfolio theories widely accepted in the academic world. The fund evaluation and monitoring methodology assists the Plan Committee members in meeting their fiduciary obligation to make investment decisions solely in the best interests of Plan participants and their beneficiaries.

B. Monitoring of Designated Funds

The Plan Committee will obtain quarterly reports for all Designated Funds which include a full and comprehensive review and evaluation of each Designated Fund. The Plan Committee will meet quarterly to review the investment alternatives offered by the Plan, as well as any other information that the Investment Fiduciary finds valuable in fulfilling its fiduciary responsibilities.

Each fund is evaluated on the basis of both Quantitative and Qualitative measures. The qualitative factors focus on the firm, investment management team and process consistency. The quantitative factors focus on the past performance of a management strategy against its peers and/or benchmark using standard investment metrics. These combinations of factors help the Plan to not only better understand the rationale for manager performance, but may also help to more effectively identify problems before they translate into future performance issues.

C. Watch List Process

The watch list is defined a group of funds that are under probationary watch by the Plan Committee. The following factors will be reviewed and used for determination as to whether a fund will be put on a watch list.

- Investment performance should be competitive with an appropriate style-specific benchmark and the median return for an appropriate, style specific peer group;
- Specific risk and risk adjusted return measures should be reviewed by the Company and be within a reasonable range relative to appropriate, style specific benchmark and peer group;
- It should demonstrate adherence to the stated investment objective, without excess style drift over trailing performance periods;
- Fees should be competitive compared with similar investments;
- Attractive qualitative characteristics, including, but not limited to, acceptable

- manager tenure; and
- The investment manager should be able to provide performance, holdings, and other relevant information in a timely fashion with specific frequency.

Once a fund has been placed on the watch list, a probationary period begins. On a quarterly basis a thorough review of the fund will be conducted in order to determine if progress has been made in resolving the issue(s) which caused the fund to be placed on the watch list. Following the review, the Plan Committee will then recommend that the fund be:

1. replaced by another investment option
2. continue on the watch list
3. removed from the watch list and be placed in good standing

This decision will be solely at the discretion of the Plan Committee.

V. De-selection and Fund Replacement Process

A. Overview of De-Selection Process

An integral part of the due diligence process is the ongoing monitoring of the investment managers and investment option performance. This process includes the possible determination that a manager or option may need to be replaced due to prolonged underperformance or failure to meet sufficient qualitative measures. Once a fund fails to meet expectations, the Plan Fiduciary will terminate the investment option upon losing confidence in the investment option for any reason that the Plan Fiduciary deems appropriate, including but not limited to:

- Potential to achieve performance and risk objectives;
- Failure to maintain a consistent investment style;
- Changes in key personnel or management;
- Significant change or loss of assets under management

There are no hard and fast rules for investment option termination. However, if the investment consistently fails to adhere to one or more of the above conditions, it is reasonable to presume a lack of adherence going forward. Failure to remedy the circumstances of unsatisfactory performance, within a reasonable time frame as determined by the Plan Fiduciary, shall be grounds for termination.

B. Timeframe Guidelines for Removal of Funds

For guideline purposes, if a Fund is on watch for one or two quarters, that normally will not be cause for the removal of the Fund. If a Fund is on watch for three (3) or more quarters out of the past four (4) quarters, it will normally, but not necessarily, be removed by the Investment Fiduciary. If a fund is removed, the Investment Fiduciary will normally replace the Fund with another similar fund, using the procedures in this IPS for the selection of a fund. However, the Investment Fiduciary may, in its discretion, determine that a removed Fund will not be replaced.

Any recommendation to terminate an investment option will be treated on an individual basis, and will not be made solely based on quantitative data. In addition to those above, other factors may include investment option manager turnover, or material change to investment processes. Considerable judgment will be exercised in the termination decision process.

C. Procedures for Fund Replacement

Upon approval of the Investment Fiduciary to remove a fund option, the following procedures will generally occur:

- a. The monies will ordinarily be transferred to the replacement Designated Fund, if one is selected by the Investment Fiduciary. Alternatively, the Investment Fiduciary may inform the participants of its intention to remove the Fund and permit the participants to direct the transfer of their monies from the Fund being removed. In that case, any monies remaining in that Fund at the time of its removal will be transferred by the Investment Fiduciary to the replacement Fund, if one is selected. Otherwise, the monies will be transferred to the most appropriate investment alternative, as determined by the Investment Fiduciary.
- b. The Investment Fiduciary may implement reasonable procedures, including blackout periods, to accomplish these changes.
- c. The Investment Fiduciary may decide to preclude the investment of additional participant money in a Fund, but not remove the Fund as an investment alternative in the Plan to the extent participants are already invested in that Fund (that is, investment in that Fund may be “frozen”). For example, the Investment Fiduciary may determine that, while another Fund better serves the needs of the Plan and its participants, the frozen Fund remains a prudent and suitable alternative for the participants who are invested in it, and therefore restrict additional investments in that Fund for the administrative purposes of the Plan.

Replacement of a terminated option would follow the criteria outlined in the Standard for Selection of Investment Alternatives section of this IPS.

V. Other Provisions

A. Proxy Voting

The Plan Administrator will determine the proper voting of proxy proposals related to the Funds. Because the Funds are prudently selected and monitored, and underperforming Funds are removed, the Plan Administrator will usually vote in support of the management proposals in the proxies. However, the Plan Administrator will review the proxy statements for proposals which could be detrimental to the interests of the Plan and its participants and will vote the Plan's shares against those proposals. For example, the Plan Administrator will generally vote against proposals which:

1. Increase the expenses of the Funds.
2. Increase the risk of the investments in the Funds.
3. For Designated Funds, would result in a change to an investment style inconsistent with the objective and targeted asset class for which the Fund was chosen.

While the Plan Administrator is responsible for deciding on how to vote the Fund shares, it may delegate the ministerial tasks of implementing its voting directions and submitting the votes.

B. Investment Fiduciary Discretion

The Investment Fiduciary has the sole and absolute discretion to interpret, implement and amend this IPS, including any decisions to select, remove and replace investment alternatives for participant direction.

Exhibit A: Designated Funds and Benchmarks

As of the effective date of this Investment Policy Statement (IPS), the Designated Funds and their respective benchmarks are:

Asset Class	Fund Name	Market Index	Peer Group	
Cash	Diversified Bond SAGIC			
Bonds	MassMutual SelecStrategic Bond	Lehman Bros Aggregate Bond Index	Morningstar Intermediate-Term Bond	
	PIMCO L-T US Govt' Fund	Lehman Bros. Long-Term Government Index	Morningstar Long Government	
	MassMutual Premier Strategic Income Fund (OFI)	Lehman Bros. US Aggregate Bond Index	Morningstar Multi-Sector Bond	
Large-Cap Stocks	Balanced Funds	American Beacon Balanced Fund	Lipper Balanced	Morningstar Moderate Allocation
	Growth Fund	American Funds Growth Fund of America	Russell 1000 Growth	Morningstar Large Growth Funds
	Core Fund	MassMutual Select Indexed Eqty Fd (Northrn Tr)	S&P 500	Morningstar Large Blend
		Henssler Equity Fund	S&P 500	Morningstar Large Blend
Value Fund	MassMutual Premier Enh Index Value Fd (Babson)	Russell 1000 Value or S&P 500	Morningstar Large Value	
Mid-Cap Stocks	Value	MassMutual Prm Discovery Value Fund (OFI Inst)	Russell Midcap Value	Morningstar Mid Value
	Growth	First American Mid Cap Growth Opportunities Fund	Russell MidCap Growth	Morningstar Mid Growth
Small-Cap Stocks	Growth	First American Small Cap Select	Russell 2000 Growth	Morningstar Small Growth
	Value	MassMutualSel Sm Cap Value Equity Fund (SSGA)	Russell 2000 Value	Morningstar Small Value
International/Global Equity	Large Core	American Funds EuroPacific Growth	MSCI EAFE Index	Morningstar Foreign Large Blend
	Small/Mid Cap	Oppenheimer Global Opportunities	MSCI World Index	Morningstar World Stock

Exhibit B: Asset Allocation Tools

Asset allocation models will be offered to participants as part of the Plan’s investment education program. The asset allocation models will assist participants in allocating the investment of their accounts at the appropriate point on the risk/reward spectrum, as determined by each participant. A risk tolerance questionnaire designed for use with the models has been adopted by the Investment Fiduciary. Based upon an analysis of the completed risk tolerance questionnaire and other relevant criteria, the participant will be responsible for selecting an appropriate asset allocation model. The asset allocation models are as follows:

Strategic Asset Class	Short-Term	Conservative	Moderate	Aggressive	Ultra-Aggressive
Cash	95% +/-	21% +/-	6% +/-	2% +/-	
U.S. Bonds	5% +/-	49% +/-	34% +/-	14% +/-	
U.S. Large-Cap Stocks		18% +/-	33% +/-	46% +/-	58% +/-
U.S. Mid-Cap Stocks		2% +/-	8% +/-	10% +/-	9% +/-
U.S. Small-Cap Stocks		5% +/-	8% +/-	11% +/-	13% +/-
International Stocks		5% +/-	11% +/-	17% +/-	20% +/-

The asset allocation models are designed to assist participants in making strategic asset allocation decisions, based on the participant’s investment time horizon and risk tolerance.

In addition to asset allocation models in the investment education program, the Plan offers target-date funds to the participants. Similar to the asset allocation models, the target-date funds have been strategically designed to afford participants with the opportunity to select an investment that matches their risk-and-reward profile, based on a questionnaire completed by the participant. However, this alternative enables the participant to select an investment option (that is, the target-date fund), rather than selecting individual funds to implement the asset allocation model approach. Further, the target-date funds are periodically automatically rebalanced. The asset allocation model funds can also be automatically rebalanced at the option of the Plan participant.

Exhibit C: Fund Warning Signs

The following fund screening criteria (fund warning signs) are evaluated in order to highlight exposure to potential risks that could possibly make the fund an unsuitable investment alternative. These criteria are evaluated and monitored to reveal potential risks and provide relevant information to assist the Investment Fiduciary in making prudent investment decisions.

- **High operating expenses** (equity, bond, hybrid):
Rank each fund within its peer group based on recent operating expense data. Flag funds that have an operating expense ratio *above the peer group average*.
- **High individual holding concentration** (equity, hybrid):
Flag equity and hybrid funds with more than 10% of assets in any one stock, OR more than 50% of assets in the top ten holdings (excluding real estate funds), OR less than 40 holdings (excluding real estate funds).
- **High economic sector concentration** (equity, hybrid):
Flag equity and hybrid funds with *more than the greater of 25% of assets or 1.5 times the peer group average sector weight* in any one economic sector. The economic sector concentration flag applies only to the equity portion of a hybrid fund. Flag *economic sector* funds with *less than 75% of assets* invested in the *targeted economic sector*.
- **High performance volatility** (equity, bond, hybrid):
Rank each fund within its peer group by 3-year average annualized standard deviation of monthly returns. Flag the funds in each peer group with a *standard deviation of returns in the highest 10% of their peer group*.
- **High portfolio turnover** (equity):
Rank each equity fund within its peer group by portfolio turnover. Flag the funds in each equity peer group with *portfolio turnover in the highest 10% of their peer group*.
- **Low style purity** (equity):
Rank each equity fund within its peer group by correlation with the market benchmark assigned to the fund's S&P style classification. Regress each equity fund's monthly returns against the monthly returns of its corresponding market benchmark using a single 36-month trailing period computation. Flag equity funds within the *lowest 10% of R-squared* for each peer group. The market benchmarks assigned to each peer group are identified in Exhibit A.
- **High duration bet** (bond, hybrid):
Flag bond and hybrid funds with a *3-year average duration 1.5 or more years above or below the 3-year average duration of the peer group*. The high duration bet flag applies only to the bond portion of a hybrid fund.
- **Low credit quality average** (bond, hybrid):
Flag bond and hybrid funds with a *current average credit rating below single A* (S&P ratings).
- **Low manager tenure** (equity, bond, hybrid):
Flag funds whose portfolio managers have *less than one year* of tenure managing the fund.
- **Low asset base** (equity, bond, hybrid):
Flag funds with less than \$50 million in assets.