

REQUEST FOR PROPOSALS
PENSION ACTUARIAL SERVICES

I. PURPOSE

The Atlanta Regional Commission (hereinafter referred to as "ARC"), an instrumentality of the State of Georgia with its office located at **229 Peachtree Street, NE, Suite 100, Atlanta, Georgia 30303** is issuing this Request for Proposals for furnishing the pension actuarial services described herein. The purpose of this Request for Proposals is to establish a contract for the professional services of a Supervising Actuary (the "actuary") for actuarial consulting services for the agency defined benefit pension plan. The vendor(s) will provide all equipment, personnel, expertise, facilities, financial resources, and management for this service. Professional services would be provided to ARC for fiscal year 2019, with an option to renew for up to three additional terms. Contract award and renewal(s) are subject to annual review and the annual availability of an appropriation for services by ARC. Selected vendors should be prepared to sign a standard ARC contract for services which contains required federal and state clauses. A copy of this boilerplate language is attached.

II. ANTICIPATED TIMELINE

The timetable for this RFP is presented below:

| <u>Activity</u> | <u>Target Date (All times are EST)</u> |
|----------------------------------|--|
| Issue Request for Proposal | September 17, 2018 |
| Technical Questions | October 1, 2018 (Noon) |
| Responses to Technical Questions | October 8, 2018 Responses will be posted to the ARC website. |
| Proposals Due | October 17, 2018 (5 PM) |
| Interviews (If Necessary) | Week of October 31, 2018 |
| Selection Recommendation(s) | November 8, 2018 |
| Services to begin | January 1, 2019 |

Additional information should not be required to respond to this RFP. However, any inquiries for technical information should be directed to: **Sheila Benefield, Talent Management Manager at sbenefield@atlantaregional.org** no later than Noon on October 1, 2018. All questions received, and responses to those questions, will be posted on ARC's website no later than October 8, 2018.

Completed proposals **must be received** at the address shown above by **5PM EST on Wednesday, October 17, 2018**. Late proposals will be disqualified. In order to be considered for selection, Actuaries must submit a complete response to the RFP. Incomplete proposals may not be considered if the omissions are determined to be significant. Proposals must be submitted in three parts:

- (A) **Five (5) quality copies** of the Proposal;
- (B) **One (1) electronic copy** of the Proposal on CD, USB or via email (in PDF Format).

Proposal evaluation will focus initially on the written proposals. Should it be determined that

interviews are required, a “short-list” of firms will be selected from the proposals received. ARC reserves the right to award this contract based on initial proposals received without formal interviews. ARC also reserves the right to negotiate the final scope and budget with the selected firm. ARC reserves the right to reject any or all proposals, to request additional information from all proposers, and to waive any informalities during the RFP process. ARC may make such investigations as deemed necessary to ensure that the companies have the requisite experience, skills, and resources to serve the needs of the agency throughout the term of the contract. In all cases, the needs and requirements of ARC will be considered first. Any contract awarded will be awarded to the Actuary, who, based upon evaluation of all proposals, is determined to have submitted the best proposal, considering both technical factors and cost.

III. PROPOSAL PREPARATION AND SUBMISSION REQUIREMENTS

Proposals must include the following information to be considered responsive:

- The proposer's company name, company address, address of the office providing the services under the contract, telephone number and fax number.
- General description of the proposer's company, including size, number of employees, primary business (consulting, pension planning, insurance, etc.), other business or services, legal status (franchise, corporation, partnership etc.) and other descriptive material.
- Resumes and summary information regarding the professional expertise and experience qualifications of the supervisory actuary and other personnel who will provide services to ARC. The supervising actuary must meet or exceed the standards for Supervisory Actuary.
- Statement of the availability and location of staff (including actuaries) and other required resources for performing all services and providing deliverables within indicated time frames. State whether or not the services outlined in these specifications can be performed using only your present staff.
- A description of your proposed services as they relate to the Scope of Work.
- A brief description of similar consulting experience with specific qualifications and experience of key personnel. Specifically, please relate past experience and qualifications to the services itemized under the Scope of Work.
- The completed proposed pricing in the budget format included herein.
- A list of public sector and governmental clients for which the firm currently provides actuarial consulting services similar to those being requested by ARC. Include client name, contact person, telephone number, approximate number of participants and number of years of service to each client.
- Include the firm's most recent audit. If the firm is not required to have an audit, please provide the most recent financial statements.
- Include a generic example of an actuarial report you might provide us.
- Include a generic example of an individual benefits statement you might provide us.

Ownership of all data, materials and documentation prepared for and submitted to ARC in response to the RFP shall belong exclusively to ARC and will be considered a record prepared and maintained or received in the course of operations of a public office or agency and subject to public inspection in accordance with the Georgia Open Records Act, Official Code of Georgia Annotated, Section 50-18-70, et. seq., unless otherwise provided by law. Any confidential information in the proposal must be marked as such to be withheld from open records.

ARC encourages participation of Minority Owned Business Enterprises (MBE), Women's Business Enterprises (WBE), Small Business Enterprises (SBE) and Disadvantaged Business Enterprises

(DBE) businesses in its procurement opportunities. Our procurement policy and outreach efforts ensure that these businesses have equal opportunity to compete for and do business with the agency. We continuously seek to identify qualified MBEs, WBEs, SBEs and DBEs. If you qualify as one of those types of business, please identify yourself as such in the proposal.

IV. EVALUATION AND AWARD CRITERIA

The evaluation factors are set forth below:

- Experience of the proposer and individual staff members in accomplishing similar services. (25%)
- Total cost. (25%)
- The quality, availability, and adaptability of the proposer's services. (15%)
- Ability, capacity, and skill of the proposer to perform the services on a timely basis. (15%)
- Responses of the client references. (10%)
- The sufficiency of financial resources and ability of the proposer to perform the contract. (10%)

ATTACHMENT A
SCOPE OF SERVICES

I. BACKGROUND INFORMATION

ARC is the regional planning and intergovernmental coordination agency serving the local governments in the Atlanta Region pursuant to legislation passed by the Georgia General Assembly. It is supported by local, state, and federal funds. It is exempt from ERISA, is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code and does not participate in Social Security.

ARC has approximately 333 participants including active, deferred vested, and retired participants. The combined plan assets as of 1/1/18 are approximately \$ 74 Million. A five-member Pension Board of Trustees oversees the management of the assets. This Board consists of two ARC Board members, the ARC Executive Director, one person appointed by these three members, and one ARC employee. The ARC Benefits Committee, which is composed solely of ARC employees, is responsible for administering the plan. A copy of ARC's pension plan document is available upon request by contacting Sheila Benefield, Human Resources Manager, at sbenefield@atlantaregional.org.

II. STATEMENT OF NEEDS

1. Provide actuarial consultation and advisory services on any technical, policy, legal or administrative problem arising during the course of operations by meetings and routine telephone calls and written correspondence. The professional actuarial services for the Plan shall be performed by or under the direct supervision of a member of the proposer's firm who meets and exceeds the standards for supervising actuary. ARC reserves the right to reject the proposer's choice of supervising actuary and may terminate the contract if a supervising actuary, acceptable to ARC, is not made available by the proposer. All actuarial information and/or data on pricing, final reports, presentations of assumptions and similar technical documentation from the proposer must be approved and signed by the supervising actuary.
2. Provide personalized, comprehensive annual benefit statements for each ARC employee.
3. Prepare calculation of pension plan benefit for individual ARC employees upon request from ARC.
4. Prepare all required government filings for the Plan, including reports or information requests from ARC Actuaries.
5. Make recommendations to the Benefits Committee from time to time relative to possible improvements in the financing and benefit structure of the Plan and give updates regarding new developments in the retirement industry. Keep the Benefits Committee apprised of current trends and progress within the actuarial profession.
6. Give consultation on and perform certain work in pricing proposed plan changes.
7. Assist in the preparation of proposed changes to the Plan.
8. Give consultation and advisory services in the policy and administrative problems of implementing plan design changes.
9. Develop and provide various tables and factors needed by the Plan. These include, but are not limited to, mortality tables, present value factors and survivor benefit factors.

10. Appear at selected meetings and hearings for discussion of actuarial standards and/or the principles used in the determination of the funding requirements and in the pricing of plan changes.
11. Keep ARC advised of developments in federal legislation and/or regulations regarding financing, benefits, vesting fiduciary responsibility, disclosure, etc.
12. The supervisor and/or support actuary shall be readily accessible to ARC by telephone or in person and will be available for meetings as required.
13. The supervising and/or support actuary shall be available for periodic educational discussions with the Benefits Committee, the Pension Board of Trustees, and/or ARC staff members.
14. Actuarial valuations shall be performed for the Plan each year as of December 31, commencing with the Plan year beginning on January 1, 2019. This will include all of the disclosures of pension information required by the Governmental Accounting Standards Board including, but not limited to, disclosures about plan provisions, actuarially determined contribution requirements, contributions actually made, significant actuarial assumptions, the computation and disclosure of a standardized measure of pension obligation and ten year trend information including comparisons of (1) net assets available for benefits to the pension benefit obligation, (2) unfunded pension benefit obligation to annual covered payroll, and (3) revenues by source to expenses by type. Such disclosure information shall be prepared in the format specified by the Governmental Accounting Standards Board and shall be submitted to ARC no later than September 15 of the next calendar year.
15. Valuation reports shall contain a glossary of terms and sufficient definitions to permit a reasonable understanding of the actuarial assumptions, cost methods and conclusions by competent actuaries and by persons knowledgeable in the public pension field. This shall include, but not be limited to, a summary of the plan, description of actuarial assumptions and cost methods, display of age groups and service matrices for active members, and types of benefits.
16. The proposer shall provide a means by which any change in its staff may be affected with a minimum of disruption of the services provided to the plan.
17. The proposer agrees to treat all information related to these services as confidential.

ATTACHMENT C:
TERMS AND AGREEMENT

I. **TERMS AND CONDITIONS**

A form of Agreement for Actuarial Services to be executed between the Actuary and ARC is included herein. Sections I contains general and special terms and Conditions which will be incorporated into the Agreement by reference.

1. ETHICS IN PUBLIC CONTRACTING

By submitting proposals, all Actuaries certify that their proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other Actuary, supplier, manufacturer or subcontractor in connection with their proposals, and that they have not conferred on any government entity employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged. Actuaries specifically certify by submitting their proposal that they are not in violation of the Official Code of Georgia Annotated, Sections 16-10-2 and 16-10-22, for acts of bribery and/or conspiracy in restraint of free and open competition in transactions with state or political subdivisions. Actuaries contracting with the State of Georgia (as defined in the Official Code of Georgia Annotated, Section 45-10-20)) further certify that Official Code of Georgia Annotated, Title 45, Chapter 10, Article 2, which prohibits certain public officials and employees of the State of Georgia from transacting business with certain state agencies, has not been and will not be violated in any respect by execution of this proposal and any contract resulting therefrom.

2. QUALIFICATIONS OF ACTUARY

ARC may make such reasonable investigations as deemed proper and necessary to determine the ability of the Actuary to perform the work and the Actuary shall furnish to ARC all such information and data for this purpose as may be requested. ARC further reserves the right to reject any bid if the evidence submitted by, or investigations of, such Actuary fails to satisfy ARC that such Actuary is properly qualified to carry out the obligations of the contract and to complete the work/furnish the item(s) contemplated therein. Standards for a Supervising Actuary include:

- Fellow or Associate of the Society of Actuaries and/or Fellow of the Conference of Actuaries in Public Practice and/or Member of the American Academy of Actuaries.
- Experience as a supervising actuary including consulting services and valuation assignments for major retirement systems with specific reference to involvement with public retirement systems.
- Ability to discuss in laymen's terms: actuarial theory; basis for assumptions; and other actuarial matters.

3. CONTRACT LIMITATIONS

During the contract period, the Actuary agrees not to submit proposals on or perform any accounting, consulting, compilation and review, or any other services outside the scope of this contract for ARC without the prior written approval of ARC.

4. PROPRIETARY INFORMATION

ARC will not accept responses to Requests for Proposals in cases where the Actuary declares the entire response to the RFP to be proprietary information. The Actuary must designate in the smallest increments possible, that part of the proposal which is deemed to be proprietary.

5. HIGHER LEVEL SERVICES

If the Actuary becomes aware that ARC is subject to requirements that may not be encompassed in the terms of the contract, he or she shall communicate this situation immediately to ARC's Talent Management Manager, that in accordance with the established contract certain relevant legal, regulatory, or contractual requirements may not be met.

6. CHANGES IN STANDARDS/FEDERAL REQUIREMENTS

As professional standards or Federal requirements may change, the Actuary shall adjust his/her techniques and reporting formats and criteria so that the new standards and requirements are met.

7. RATES FOR ADDITIONAL PROFESSIONAL SERVICES

If it should become necessary for ARC to request the Actuary to render any additional services to either supplement the services requested in this request for proposals or to perform additional work as a result of the specific recommendations included in any report issued on this engagement, then such additional work shall be performed only if set forth in an addendum to the contract between ARC and the firm.

II. **SAMPLE BOILERPLATE**

CONTRACT FOR PROFESSIONAL SERVICES

THIS AGREEMENT, entered into as of this ____ day of _____, 20__, by and between _____ of Atlanta, Georgia (hereinafter referred to as the "Consultant") and the ATLANTA REGIONAL COMMISSION (hereinafter referred to as "ARC").

WITNESSETH THAT:

WHEREAS, ARC desires to engage the Consultant to render certain services hereinafter described in connection with an undertaking or project (hereinafter referred to as the "Project");

WHEREAS, the Consultant desires to render such services in connection with the project;

NOW THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter contained, the parties hereto agree as follows:

1. Engagement of the Consultant. ARC hereby agrees to engage the Consultant and the Consultant hereby agrees to perform the services hereinafter set forth in accordance with the terms and conditions herein.
2. Scope of Services. The Consultant shall do, perform and carry out in a satisfactory and proper manner, as determined by ARC, the work and services described in Attachment "A" which is attached hereto and made a part hereof.
3. Time of Performance. The services of the Consultant are to commence immediately upon execution of this agreement. Work and services shall be undertaken and pursued in such sequence as to assure their expeditious completion and as may be required in Attachment "A." All work and services required hereunder shall be completed on or before _____.
4. Compensation. The Consultant shall be compensated for the work and services to be performed under this agreement as set forth in Attachment "B" which is attached hereto and made part hereof. Compensation for work and services in the performance of this contract shall not exceed _____.
5. Approval of Subcontracts. None of the work or services to be performed under this agreement by the Consultant shall be subcontracted without the prior written approval of ARC's Executive Director or his authorized agent. If such approval is requested, all subcontract documents shall be submitted to ARC's Executive Director or his authorized agent, for his review and approval prior to the execution of such subcontract. Further, if requested by ARC's Executive Director or his authorized agent, the Consultant shall provide ARC with such documentation as ARC's Executive Director shall require, regarding the method the Consultant used in selecting its subcontractor. The Consultant acknowledges that if work or services to be performed under this agreement is financed solely or partially with federal funds, the selection of subcontractors is governed by regulations requiring competition between potential subcontractors or adequate justification for sole source selection. The Consultant agrees to abide by such regulations in its selection procedure.
6. Prompt Payment and Retainage. The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from ARC. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of ARC.

Any contractor found not to be in compliance with this clause will be considered in breach of contract and any further payments will be withheld until corrective action is taken. If contractor does not take corrective action, contractor may be subject to contract termination.
7. Assignability. The Consultant shall not assign, sublet or transfer all or any portion of its interest in this agreement without the prior written approval of ARC.
8. Amendments. ARC may require changes in this agreement. Except for termination for cause or convenience, such changes, including any increase or decrease in the amount of the Consultant's compensation shall be incorporated in written amendments to this agreement. Amendments to this agreement may be executed on behalf of ARC only by ARC's Executive Director and Chairman.

9. Insurance. The Consultant will have and maintain insurance coverage that complies with the laws of the state of Georgia, as well as reasonable and prudent business practices. Such insurance shall at least include Worker's Compensation, Public Liability, and Property Damage coverage.
10. Indemnification. The Consultant shall hold harmless and indemnify ARC, its officers, directors, and employees from and against losses, reasonable attorney's fees and costs, that may be based on any injury to persons or property caused by the negligent performance of services under this agreement by the consultant or any person employed by the consultant.
11. Formal Communication. Formal communications regarding this agreement shall include, but not necessarily be limited to correspondence, progress reports and fiscal reports.

All formal communication regarding this agreement shall be in writing between the person executing this agreement on behalf of the Consultant (executor) and ARC's Executive Director. However, the Consultant executor and ARC's Executive Director shall each have the right to designate in writing to the other an agent to act in his or her behalf regarding this agreement. Any restrictions to such designation must be clearly defined in the written designation.

In this regard, ARC's Executive Director hereby designates the _____ as his agent for purposes of this contract only, except for Amendments and Terminations.

12. Reports. The Consultant shall furnish ARC with narrative progress reports, in such form and frequency as may be specified by ARC's Executive Director or his authorized agent, outlining the work accomplished by the Consultant during the period, including the current status of the Project, and the percentage of work which has been completed.
13. Financial Reports. In addition to other records required by this contract, the Consultant agrees to provide to ARC such additional financial reports in such form and frequency as ARC may require in order to meet ARC's requirements for reporting to the Concerned Funding Agencies.
14. Program Fraud and False or Fraudulent Statements or Related Acts. The Consultant acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq. apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Consultant certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying project for which this contract work is being performed. In addition to other penalties that may be applicable, the Consultant further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Consultant to the extent the Federal Government deems appropriate.
15. Review and Coordination. To ensure adequate assessment of the Consultant's project and proper coordination among interested parties, ARC shall be kept fully informed concerning the progress of the work and services to be performed hereunder. The Consultant may be required to meet with designated representatives of ARC and the Concerned Funding Agencies from time to time to review the work and services performed. The Consultant shall be given reasonable written notice of such meetings.
16. Inspections. Authorized representatives of ARC and the Concerned Funding Agencies may at all reasonable times review and inspect the Project activities and data collected pursuant to this agreement. Except where specifically prohibited by law, all reports, studies, records, and

computations prepared by or for the Consultant under this agreement shall be made available to authorized representatives of ARC and the Concerned Funding Agencies for inspection and review at all reasonable times in the Consultant's office where data is normally accumulated. Approval and acceptance of such material shall not relieve the Consultant of its professional obligation to correct, at its expense, any errors found in the work unless such errors can be shown to be caused by inaccurate or incomplete information provided by ARC.

17. Maintenance of Cost Records. The Consultant shall maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred on the Project and shall make such material available at all reasonable times during the period of the agreement, and for three years from the date of final payment under the agreement, for inspection by ARC, the Concerned Funding Agencies, and if the work and services to be performed under this agreement is wholly or partially funded with federal funds, the Comptroller General of the United States, or any of their duly authorized representatives. The Consultant shall include the provisions of this paragraph in any subcontract executed in connection with this Project.
18. No Obligation by the Federal Government. ARC and the Consultant acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to ARC, the Consultant, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
19. Status as Independent Consultants. Nothing contained in this agreement shall be construed to constitute the Consultant or any of its employees, servants, agents or subcontractors as a partner, employee, servant, or agent of ARC, nor shall either party to this agreement have any authority to bind the other in any respect, it being intended that each shall remain an independent Consultant.
20. Consultant's Personnel. The Consultant represents that it has, or will secure at its own expense, all personnel required to perform the services under this agreement. Such personnel shall not be employees of ARC, nor shall such personnel have been employees of ARC during any time within the twelve-month period immediately prior to the date of this agreement, except with the express prior written consent of ARC. Further, the Consultant agrees that no such former ARC employees shall be involved in any way with the performance of this agreement, without the express prior written approval of ARC.
21. Employees' Rate of Compensation. The rate of compensation for work performed under this project by a staff member or employee of the Consultant shall not exceed the compensation of such person that is applicable to his or her other work activities for the Consultant. Charges for salaries and wages of individuals shall be supported by time and attendance and payroll distribution records.
22. Interest of Consultant. The Consultant covenants that neither the Consultant, nor anyone controlled by the Consultant, controlling the Consultant, or under common control with the Consultant, nor its agents, employees or Consultants, presently has an interest, nor shall acquire an interest, direct or indirect, which would conflict in any manner or degree with the performance of its service hereunder, or which would prevent, or tend to prevent, the satisfactory performance of the Consultant's service hereunder in an impartial and unbiased manner. The Consultant further covenants that in the performance of this agreement no person having any such interest shall be employed by the Consultant as an agent, Consultant or otherwise. If the Consultant contemplates taking some action which may constitute a violation of this paragraph, the Consultant shall request in writing the advice of ARC, and if ARC notifies the Consultant in writing that the Consultant's contemplated action will

not constitute a violation hereof, then the Consultant shall be authorized to take such action without being in violation of this paragraph.

23. Interest of Members of ARC and Others. No officer, member or employee of ARC, and no public official of any local government which is affected in any way by the project, who exercises any function or responsibilities in the review or approval of the project or any component part thereof, shall participate in any decision relating to this agreement which affects his or her personal interests or the interest of any corporation, partnership or association in which he or she is directly, or indirectly, interested; nor shall any such officer, member or employee of ARC, or public official of any local government affected by the project, have an interest, direct or indirect, in this agreement or the proceeds arising therefrom.
24. Officials Not to Benefit. No member of or delegate to the Congress of the United States of America, resident commissioner or employee of the United States Government, shall be admitted to any share or part of this agreement or to any benefits to arise herefrom.
25. Compliance with Requirements of the Concerned Funding Agencies. The Consultant shall be bound by the applicable terms and conditions of the Grant Contract between ARC and the Concerned Funding Agencies which said Grant Contract is on file in the offices of ARC and is hereby made a part of this agreement as fully as if the same were attached hereto. ARC will notify the Consultant in writing of any applicable changes within a reasonable time after ARC has received appropriate notice of such changes from the Concerned Funding Agencies.
26. Rights in Documents, Materials and Data Produced. For purposes of this agreement, "data" includes, but is not limited to, writings, sound recordings, photographs, films, videotapes, computer programming or code, or other graphic representations and works of a similar nature. ARC and the Concerned Funding Agencies shall have the right to use same without restriction or limitation and without compensation to the Consultant other than as provided in this agreement. The Consultant acknowledges that matters regarding rights to inventions and materials generated by or arising out of this agreement may be subject to certain regulations issued by the Concerned Funding Agencies.
27. Data and Software Licensing. During performance of the work covered by this Agreement ARC may provide certain data or software products, such as aerial photography or commercially available planning data and software, to the Consultant that have been obtained from various sources under specific licensing agreements. The Consultant acknowledges that any data or software that ARC may provide hereunder is provided as a non-exclusive, non-transferable, limited license for the Consultant or its Sub-consultants to use the data or software for the work covered by this Agreement only. The Consultant shall not redistribute, republish or otherwise make this data or software available to any party not covered by this Agreement. The Consultant or any Sub-consultants shall not use this data or software for any work not covered by this Agreement. The Consultant further acknowledges that upon completion of the project covered by this Agreement all data and software provided by ARC will be returned to ARC and all copies of the data or software residing on the Consultant's or Sub-consultant's computer systems will be removed.
28. Publicity. Articles, papers, bulletins, reports or other material reporting the plans, progress, analysis or results and findings of the work conducted under this agreement shall not be presented or published without first submitting the same to ARC for review and comment. No such presentation shall be made until comments have been received from ARC regarding such review; provided, however, if such comments have not been received by the Consultant within thirty calendar days after such submission, it shall be presumed that ARC has no objection thereto. ARC's comments, objections, reservations or disagreements regarding such material shall be accommodated as ARC shall specify.

29. Assurances. The Consultant hereby assures and certifies that it will comply with the appropriate regulations, policies, guidelines and requirements (as applicable), including, but not limited to, 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 48 CFR 31, "Contract Cost Principles and Procedures," Executive Order 12372, "Intergovernmental review of Federal programs," U.S. Office of Management and Budget Circular Nos. A 21, "Cost Principles for Educational Institutions," and A 133, "Audits of States, Local Governments and Non-Profit Organizations," or other requirements imposed by ARC or the Concerned Funding Agencies concerning requirements of law or project matters as expressly made applicable by ARC herein, as they relate to the application, acceptance, use and audit of federal funds for this federally assisted project. For audits of fiscal years beginning on or after December 26, 2014, the provisions of 2 CFR 200.501 supersede OMB circular A133. A nonfederal entity that expends \$750,000 or more in federal awards during its fiscal year must have a single or program-specific audit conducted for that year. Also, the Consultant gives assurance and certifies with respect to this agreement that:

a. For all agreements:

- i. It possesses legal authority to apply for this agreement, and, if appropriate, to finance and construct any proposed facilities; and, any required resolution, motion or similar action has been duly adopted or passed as an official act of the Consultant's governing body; that proper authorization exists for the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the Consultant to act in connection with the application and to provide such additional information as may be required, and, upon ARC approval of its application, that the person identified as the official representative of the Consultant is authorized to execute an agreement incorporating the terms of its application.
- ii. It understands that the phrase "federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect federal assistance.
- iii. It will comply with Title VI of the Civil Right Act of 1964 (P.L. 88-352 and 42 USC 2000d) and in accordance with Title VI of that Act, no person in the United States shall, on the ground of age, handicap, religion, creed or belief, political affiliation, sex, race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any project or activity for which the applicant receives federal financial assistance and will immediately take any measures necessary to effectuate this assurance. The Consultant shall take affirmative action to ensure that qualified applicants are employed, and qualified subcontractors are selected, and that qualified employees are treated during employment, without regard to their age, handicap, religion, creed or belief, political affiliation, race, color, sex or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotions, or transfers; recruitment or recruitment advertising; layoffs or terminations; rates of pay or other forms of compensation; selection for training including apprenticeship, and participation in recreational and educational activities.

The Consultant shall in all solicitations or advertisements for subcontractors or employees placed by or on behalf of the Consultant, state that all qualified applicants will receive consideration for employment without regard to age, handicap, religion, creed or belief, political affiliation, race, color, sex or national origin. The Consultant shall not discriminate against any qualified client or recipient of services provided through this agreement on the basis of age, handicap, religion, creed or belief, political affiliation, race, color, sex or national

origin. The Consultant shall cause foregoing provisions to be included in all subcontracts for any work covered by this agreement so that such provisions will be binding upon each subcontractor.

The Consultant shall keep such records and submit such reports concerning the racial and ethnic origin of applicants for employment and employees as ARC or the Concerned Funding Agencies may require.

The Consultant agrees to comply with such rules, regulations or guidelines as ARC or the Concerned Funding Agencies may issue to implement the requirements of this paragraph.

- iv. It will comply with applicable requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (P.L. 91-646) which provides for fair and equitable treatment of persons displaced as a result of federal and federally assisted projects.
- v. It will comply with the applicable provisions of the Hatch Act which limits the political activity of employees.
- vi. It will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.
- vii. It will cooperate with ARC in assisting the Concerned Funding Agencies in this compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), Executive Order 11593, and the Archeological and Historic Preservation Act of 1966 (16 U.S.C. 469a-1 et seq.) by (a) consulting, through ARC, with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR Part 800.8) by the activity, and notifying, through ARC, the Concerned Funding Agencies of the existence of any such properties, and by (b) complying with all requirements established by ARC or the Concerned Funding Agencies to avoid or mitigate adverse effects upon such properties.
- viii. For agreements not involving federal financial assistance for construction, it will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the Project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the Concerned Funding Agencies, through ARC, of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by EPA.
- ix. It will comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in U.S. Department of Labor regulations (41 CFR Part 60).
- x. The Consultant agrees that throughout the performance of this contract it will remain in full compliance with all federal and state immigration laws, including but not limited to provisions 8 USC 1324a and O.C.G.A. § 13-10-91 regarding the unlawful employment of unauthorized aliens and verification of lawful presence in the United States. Thereunder, Consultant will ensure that only persons who are citizens or nationals of the United States or non-citizens

authorized under federal immigration laws are employed to perform services under this contract or any subcontract hereunder.

- xi. The Consultant agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

The Consultant further agrees to include the provisions contained in the forgoing paragraph in each subcontract for services hereunder.

The Consultant shall not retaliate or take any adverse action against any employee or any subcontractor for reporting or attempting to report a violation(s) regarding applicable immigration laws.

- b. For agreements involving either full or partial federal financial assistance for construction projects(s):
 - i. It will comply with the provisions of Executive Order 11296, relating to evaluation of flood hazards, and Executive Order 11288, relating to the prevention, control, and abatement of water pollution.
 - ii. It will require the facility to be designed to comply with the "American Standard Specifications for Making Buildings and Facilities Accessible to and Usable by, the Physically Handicapped," Number A117 1-1961, as modified (41 CFR 101 - 17.703). The Consultant will be responsible for conducting inspections to ensure compliance by the Consultant with these specifications.
- c. For agreements exceeding \$ 100,000.00 in federal financial assistance:
 - i. It will comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857 (h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15).

30. Certifications.

- a. Prohibition Against Use of Funds to Influence Legislation (Lobbying). No part of any funds under this agreement shall be used to pay the salary or expenses of any Consultant, or agent acting for the Consultant, to engage in any activity designed to influence legislation or appropriations pending before the Congress as stated in 49 CFR 20.
- b. Debarment and Suspension. The Consultant agrees to comply with the nonprocurement debarment and suspension rules in 49 CFR 29.
- c. Drug-Free Workplace. The Consultant agrees and certifies that it will comply with the requirements for a Drug-Free Workplace, as described in Section 50-24-3 of the Official Code of Georgia, including passing through this requirement to lower tier Consultants.
- d. The Consultant agrees and hereby certifies that it will comply with the Georgia Security and Immigration Compliance requirements of O.C.G.A. § 13-10-91.

31. Termination for Mutual Convenience. ARC or the Consultant may terminate this agreement in whole or in part when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall, through formal written amendment, agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated. The Consultant shall not incur new obligations for the terminated portion after the effective date and shall cancel as many outstanding obligations as possible. ARC shall evaluate each noncancelable obligation to determine its eligibility for inclusion in project costs. Settlement will be made in accordance with the terms and conditions of this agreement. ARC shall allow full credit to the Consultant for the ARC share of the non-cancelable obligations, properly incurred by the Consultant prior to termination.
32. Termination for Convenience. ARC may terminate this agreement, in whole or in part, at any time by giving written notice to the Consultant of such termination and specifying the effective date thereof, at least fifteen days before the effective date of such termination. In that event, all information and material produced or collected under this agreement and/or used in the performance of the scope of services shall, at the option of ARC, become its property. If this agreement is terminated by ARC as provided in this paragraph, the Consultant will be reimbursed for the otherwise allowable actual expenses incurred by the Consultant up to and including the effective date of such termination, as authorized in Attachment "B." The Consultant shall not incur new obligations for the terminated portion after the effective date and shall cancel as many outstanding obligations as possible. ARC shall evaluate each noncancelable obligation to determine its eligibility for inclusion in project costs.
33. Termination of the Agreement for Cause. If the Consultant, due to its action or failure to act, shall fail to fulfill in a timely and proper manner its obligations under this agreement, or if the Consultant has or shall violate any of the covenants, agreements, representations or stipulations of this agreement, ARC shall thereupon have the right to terminate this agreement by giving written notice to the Consultant of such termination and specifying the effective date thereof, at least five days before the effective date of such termination. In such event, all information and materials collected or produced under this agreement and/or used in the performance of the scope of services shall, at the option of ARC, become its property. The Consultant shall be entitled to receive just and equitable compensation for any satisfactory work completed under the Scope of Service up to and including the effective date of termination as authorized in Attachment "B." Notwithstanding the foregoing to the extent provided by law, the Consultant shall not be relieved of liability to ARC for damages sustained by ARC by virtue of any breach of this agreement by the Consultant and ARC may withhold any payments to the Consultant for the purpose of set-off for damages caused by the Consultant's breach, until such time as the exact amount of damages to ARC from the Consultant is determined.
34. Termination Due to Non-Availability of Funds. Notwithstanding any other provision of this agreement, in the event that any of the funds for carrying out the functions to which this agreement relates do not become available, then, upon written notice to the Consultant, this agreement may be immediately terminated without further obligation of ARC.
35. Suspension Due to Non-Availability of Funds. The Concerned Funding Agencies have the right to suspend financial assistance for this project. Consequently, ARC reserves the same right regarding this agreement. Such suspension would cause the withholding of further payments and/or prohibiting the Consultant from incurring additional obligations during the suspension period. However, unless notified in writing to the contrary, such suspension would not invalidate obligations otherwise properly incurred by the Consultant prior to the date of suspension to the extent that they are noncancelable.

36. Disputes and Appeals Any dispute concerning a question of fact arising either from a Consultant or subgrant selection decision, or under a Consultant or subgrant contract, once executed, shall be decided by the cognizant Center Director who, after advisory consultation with all appropriate ARC officials (e.g., Director of Business Services, General Counsel, etc.), shall promptly reduce such decision concerning the question of fact to writing and mail, or otherwise furnish a copy thereof, to the disputing party (i.e., as appropriate, either: the unsuccessful proposer; or the Consultant or subgrantee). The Center Director shall concurrently fully advise the disputing party, in writing, of the provisions outlined herein below concerning the disputing party's right to appeal the decision to the ARC Executive Director. A copy of all such documents shall also be furnished to the Director of Business Services.

The decision of the Center Director shall be final and conclusive unless, within ten (10) calendar days of receipt of such written decision, the disputing party mails or otherwise furnishes a written appeal concerning the question of fact to the ARC Executive Director, who shall arrange a formal hearing within twenty (20) calendar days after receipt of such appeal. Both the appealing party and the cognizant Center Director shall be notified no less than five (5) calendar days in advance of the hearing and shall have the right to present witnesses and give evidence concerning the question of fact at such time. Within twenty (20) calendar days after the hearing, the Executive Director shall make a decision concerning the question of fact in writing to the appealing party and to the cognizant Center Director. A copy of the decision shall also be furnished to the Director of Business Services.

The decision of the Executive Director concerning the question of fact shall be final and conclusive unless determined by the cognizant grantor agency or agencies, or the Comptroller General of the United States, or a court of competent jurisdiction to have been arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law.

Pending final decision of an appeal to the Executive Director under a Consultant or subgrant contract already executed, the Consultant or subgrantee shall proceed diligently with the performance of the contract and in accordance with the cognizant Center Director's decision.

Nothing in the foregoing shall be construed as making final the decisions of the cognizant Center Director or the Executive Director as such decision relate to question of law.

37. Applicable Law. This agreement shall be deemed to have been executed and performed in the State of Georgia. All questions of interpretation and construction shall be construed by the laws of Georgia.

IN WITNESS WHEREOF, the Consultant and ARC have executed this agreement as of the day first above written.

ATTEST

By: _____

Title: _____

ATTEST

ATLANTA REGIONAL COMMISSION

Assistant Secretary

Executive Director

Board Chairman