

## REQUEST FOR PROPOSALS

### ARC Executive Search Services

#### I. PURPOSE

The Atlanta Regional Commission (ARC), a public entity with its office located at **229 Peachtree Street, NE, Suite 100, Atlanta, Georgia 30303**, is seeking proposals from a firm or team of firms experienced in executive search services. The vendor(s) will provide all equipment, personnel, expertise, facilities, financial resources, and management for this service. All proposals shall be presented in the format provided in Exhibit B-1 and shall contain any other information requested herein. 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. Additionally, firms shall work with the ARC Board search committee and staff core support team.

#### II. ANTICIPATED TIMELINE

The timetable for this RFP is presented below:

<b><u>Activity</u></b>	<b><u>Target Date (All times are EST)</u></b>
Issue Request for Proposal	June 11, 2021
Technical Questions	June 25, 2021 (Noon)
Responses to Technical Questions	July 2, 2021 Responses will be posted to the ARC website.
Proposals Due	July 12, 2021 (5 PM)
Potential Interviews*	July 21-23, 2021
Services to begin*	August 1, 2021

The dates for potential interviews and services to begin are estimates only to be used for information purposes only. ARC retains the right to change these dates, not conduct interviews, or choose not to begin services.

Additional information should not be required to respond to this RFP. However, questions should be submitted in writing to Sheila Benefield, Talent Management Operations Director no later than Noon on June 25, 2021. Questions should be mailed to the address provided below or submitted by email to [EsearchRFP@atlantaregional.org](mailto:EsearchRFP@atlantaregional.org). All questions received, and responses to those questions, will be posted on ARC's website no later than July 2, 2021.

#### III. INSTRUCTIONS

ARC must receive three (3) hard copies and one (1) copy in digital format, either in Microsoft Word or PDF format, no later than 5 PM July 12, 2021. The digital format may be submitted by email to [EsearchRFP@atlantaregional.org](mailto:EsearchRFP@atlantaregional.org).

Proposals must be submitted to the following address:

Atlanta Regional Commission  
ATTN: Sheila Benefield, Talent Management Operations Director  
229 Peachtree Street NE, Suite 100  
Atlanta, Georgia 30303

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 including contacting all listed references. In all cases, the needs and requirements of ARC will be considered first.

Interested firms should submit a proposal that addresses the requirements listed below and the Scope of Services in Exhibit A. Firms should provide a detailed breakdown of the proposed pricing following the general formats provided in Exhibits B and B-1.

Proposals must include the following to be considered responsive:

1. Name of lead firm and any sub-contractors.
2. Point of contact and lead consultant (name, title, phone number, mailing address, and email address) at lead firm.
3. A summary demonstrating the firm’s understanding of ARC and its work.
4. Information showing experience, demonstrated competence, and qualifications of the firm.
5. Resume(s) of lead consultant or team of consultants
6. Information showing ability to complete this process in a virtual environment.
7. Description of experience with public entities including a list of at least three references within the past five years, with current contact information.
8. Proposed rates in the format of Exhibits B-1.
9. Proof of Insurance.
10. Evidence of financial good standing, and any ongoing or settled findings or financial concerns.
11. A review of any potential conflicts with proposals to resolve those conflicts included.

12. List of any litigation in the past five years against the firm, for which the firm is the primary defendant.
13. Any other pertinent information, including any other essential costs or materials required.

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.

#### CONFLICT OF INTEREST AND CONFIDENTIALITY

ARC is subject to the Georgia Open Records law. All proposals submitted will become public records to be provided upon request. Any information containing trade secrets or proprietary information, as defined by state law, must be marked as confidential to prevent disclosure. Confidential markings must be limited to the protected information. Entire proposals marked confidential will not be honored. Additionally, conflicts of interest are governed by the ARC Standards of Ethical Conduct available here: [Standards of Ethical Conduct](#). Respondents must disclose any potential conflicts of interest that may arise from the provision of services described herein. Such disclosure should include the name of the individual(s) with whom there is a conflict, any relevant facts to the potential conflict, and a description of the internal controls proposed to mitigate any such conflict. ARC's Staff Legal Counsel will determine whether such disclosure presents a potential organizational conflict of interest that should preclude award to the respondent.

#### IV. EVALUATION CRITERIA

The review of written proposals will be based on the following evaluation criteria, with the relative weights in parentheses:

1. Related experience, strength of qualifications of the lead consultant, versatility in subject matter expertise (40%)
2. Understanding of the Atlanta Regional Commission and its work (25%)
3. References of the firm or project team (15%)
4. Comparison of budget and fees. (10%)
5. Demonstrated sufficiency of financial resources and compliance and good legal standing. (10%)

EXHIBIT A  
SCOPE OF SERVICES

I. General:

The work to be accomplished by the firms or firms selected will be indirectly charged to ARC administrative funds, which includes Federal, State, and local taxpayer and grant funding.

II. Background and Objectives

The Atlanta Regional Commission is the statutorily created Regional Commission and Metropolitan Area Planning and Development Commission for the 10-county Atlanta region. Since 1947, ARC and its predecessor agencies have helped focus the region's leadership, attention and resources on critical issues. The agency serves as a regional convener, bringing diverse stakeholders to the table to address important issues facing metro Atlanta. ARC is designated as the Metropolitan Planning Organization (MPO), Area Agency on Aging (AAA), Atlanta Regional Workforce Development Board, Urban Area Security Initiative (UASI) administrator, and provides staffing to the Metropolitan North Georgia Water Planning District (MNGWPD). ARC's member governments are Cherokee, Clayton, Cobb, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry and Rockdale counties, and the city of Atlanta. By act of the General Assembly, Forsyth County will join ARC on July 1, 2021

ARC is led by a 39-member Board comprised of public officials from its member governments, and at-large members who are citizens elected to represent districts within the region. After the additional of Forsyth County, the Board will increase to 41 members. At the administrative level, ARC is managed by an Executive Director, who works with a leadership team comprised of Senior Directors from the four Centers that the agency is divided into. Those centers are the Center for Community Services, the Center for Livable Communities, the Center for Strategic Operations and Administration, and the Center for Strategic Relations. The consultant for this work shall be selected to provide executive search services for the role of the Executive Director. The Executive Director's duties are outlined in Article X of the ARC Bylaws, available here: [ARC Bylaws](#).

III. Scopes of Work

To complete the scope of work, the Consultant shall work with a Search Committee comprised of ARC Board Members. That Committee is being led by the ARC Board Chair, with supporting work from a staff Core Team, comprised of the Senior Executive Coordinator, Talent Management Operations Director, and Staff Legal Counsel.

The Consultant shall do, perform and carry out in a satisfactory and proper manner, as determined by ARC, the work and services described below:

1. Analyze the position and draft a Position Profile.
2. Recruit for the position on a regional and national basis.

3. Invite potential candidates to apply who meet the criteria established by the Search Committee.
4. Review and screen applications.
5. Conduct interviews and background checks of selected candidates.
6. Recommend a list of final candidates with writeups, suggested questions and forms.
7. Coordinate final interviews, conduct final background checks, negotiation and follow-up.

#### Position Analysis

The Consultant shall have extensive consultation with the Search Committee, other key staff and local leaders selected by them, as well as other individuals or groups to determine the ARC's vision, goals and objectives, the needs and issues, requirements of the job, and to obtain information about the environment within which the position functions. During this process, Consultant shall initiate individual interviews with citizen organizations, department heads and key staff, and others of your choice to identify expectations, perceptions, and concerns regarding the position. In addition, we will spend a considerable amount of time at the beginning of the process with the appropriate Atlanta Regional Commission personnel in order to determine the level of experience and training needed.

Consultant will prepare a draft position profile and review it with the Search Committee in order to arrive at a general agreement regarding the specifications for the position. The final position profile will include information about the community, major issues to be faced, the position, and the selection criteria established.

#### Recruitment Process

Consultant will conduct a nation-wide professional search for the best qualified candidates and invite them to apply for the position. Any recommendations from the Search Committee shall be included in this process.

Consultant should provide the Core Team with several advertising alternatives with varying degrees of cost and their associated benefits. Consultant will place ads in professional journals, online at appropriate websites for a director of a regional commission, and in various minority and women's publications to encourage applicants to apply.

#### Resume Review

Consultant shall review and analyze each applicant's background and experience against the position description criteria. Consultant should acknowledge all resumes received and keep candidates informed of their status.

### Candidate Screening

Screening of candidates will be based on data contained in the resumes and other data provided by the candidates. At this stage, each candidate must meet the minimum qualifications specified in the Recruitment Profile.

Consultant will be responsible for screening the applications received. Consultant should conduct interviews with references who may know the candidate's background and expertise. Where feasible, Consultant should also conduct personal interviews with top candidates.

Once the initial screening is completed, Consultant should select the prospective candidates who most closely match the criteria established by the Search Committee. The output of this step in the process should be a matrix display of the top candidates showing how each rates against the selection criteria established by the Search Committee. This matrix will be reviewed with the Search Committee in one-on-one meetings and guidance obtained prior to proceeding. If the Search Committee does not approve of any of the proposed candidates, the Consultant shall keep searching until the ARC's needs are clearly met.

After review by the Search Committee, Consultant will personally interview each using various interview techniques. This should closely examine their experience, qualifications and achievements in view of the selection criteria and the Consultant's professional expertise in evaluating the quality of such qualifications and achievements.

Consultant should also request that all candidates provide, in writing, substantial information about their accomplishments and their management style and philosophy. This information will be verified and, at the Search Committee's option, may be further tested by having the finalists' complete management and leadership style inventories. Consultant should interpret these instruments for the Search Committee as well.

### Background Investigation

Consultant shall make detailed and extensive reference checks. In conducting these, individuals who are now or have previously been in a position to evaluate the candidates' job performance should be consulted. Each candidate should be asked to provide several references. These references and evaluations should be combined to provide frank and objective appraisals of the top candidates. Consultant should also verify past employment difficulties, if any, including any legal action filed against former employers.

As part of our evaluation process, Consultant shall verify undergraduate and graduate college degrees. Consultant shall arrange for credit checks, criminal checks, and, as an additional option, can arrange for psychological ( or similar) testing of the candidates that may be desired. Consultant should recommend background investigation criteria to the Search Committee who will make the final decision on the specifics of the background check.

### Interview Process

Based on the preceding steps, a recommended list of finalists for the position of Executive Director will be compiled. Consultant should prepare a written summary on each finalist. The information will cover, but not be limited to, 1) present position, 2) total years' experience, 3) salary requirements, 4) education, 5) previous positions held, 6) notable projects, 7) management style, 8) skills and abilities, 9) interests, and 10) professional goals.

This information will be presented to the Search Committee in a detailed written format combined with the results of the background investigation and candidate screening. Consultant should make a recommendation on a group of five (5) to seven (7) finalists. The Search Committee shall make the final decision on which and how many candidates will be interviewed. Consultant should arrange schedules for top candidate interviews with the Search Committee and will coordinate the process, and complete the necessary disclosures required under Georgia Open Records law when the final three candidates are identified.

### Negotiation and Follow up

Consultant shall assist in the negotiation process relative to salary, benefits and other conditions of employment. If an agreement is not reached, Consultant shall work with the Search Committee on selecting an alternate candidate.

Consultant shall properly handle any and all media relations in coordination with the ARC Center for Strategic Relations. Consultant shall maintain confidentiality of candidate information, to the degree possible, under Georgia law. Consultant will notify by letter all unsuccessful candidates who were not recommended for interview with the Search Committee of the final decision reached.

Once the new Executive Director has been on board for 30 days or so, Consultant shall convene a session with the new Executive Director and the Board Chair (and other Governance Committee Members at the discretion of the Chair) in order to establish mutual performance criteria and goals for the position.

Consultant shall keep the Search Committee closely informed and involved in decisions concerning the search process at all times. Consultant will prepare and send to the Core Team bi-weekly e-mail updates and a formal progress report at the mid-point of the search. These reports will contain a progress report on the recruitment and specific steps to be taken to meet the Search Committee's deadlines and an itemization of expenses incurred-to-date and expected to be incurred during each succeeding project step.

EXHIBIT B  
COMPENSATION AND METHOD OF PAYMENT

Compensation- The Consultant shall be compensated for the work and services to be performed under this agreement as set forth Exhibit B-1. The budget should be completed and include detail as to what costs are included and any separate or additional fees.

Such fees shall include the Firm's overhead and profit and all direct costs incurred in connection with the provision of such services, but may include the following as additional direct costs if noted in the budget, for which the Firm shall be separately reimbursed at its actual costs:

- Out of city travel expenses.
- Extraordinary photocopying expenses.
- Reference check and background checks fees.
- Costs of any psychological assessments, should the Search Committee request. (These should not be undertaken without the express direction from the Search Committee by way of the Committee Chairman.
- Other extraordinary expenses approved in advance as provided below.

Provided all such reimbursable direct costs shall be approved in advance by ARC's Executive Director or his Authorized Agent.

Method of Payment - The Firm shall be paid monthly for the services performed to ARC's satisfaction hereunder. The Firm shall, within ten (10) days of the end of each month, submit to ARC an itemized statement of the services performed during such month and the compensation to be received therefor. ARC shall, subject to its audit and review of same, promptly pay the amount due for such services.

EXHIBIT B-1  
Proposed Project Budget

1.	Direct Labor	Total Est. Cost
	(List by position all professional personnel participating in project)	
	Total Direct Labor	\$ _____
2.	Overhead Cost	
	(Overhead percentage rate) X (Total Direct Labor)	
	Total Overhead	\$ _____
3.	Other Direct Costs	
	(List other items and basis for computing cost for each. Examples include computer services, equipment, etc.)	
	Total Other Direct Costs	\$ _____
4.	Subcontracts	
	(For each, list identity, purpose, and rate)	
	Total Subcontracts	\$ _____
5.	Travel	
	a. Travel by common carrier from/to the ARC offices. (List number of trips and Economy class airfare, plus taxi and shuttle fares, etc.)	
	b. Travel by private automobile within ARC area. (List # of days x rate)	
	Total Travel	\$ _____
6.	Profit (Percentage rate X basis)	
	Total Profit	\$ _____
	Total Estimated Cost and Profit	\$ _____

EXHIBIT B-2  
Proposed Project Budget – By Task

TASK	AMOUNT
<i>Task 1: Position Profile</i>	
<i>Task 2: Recruiting</i>	
<i>Task 3: Invitations to apply</i>	
<i>Task 4: Screen applications</i>	
<i>Task 5: Conduct interviews and background checks</i>	
<i>Task 6: Make Recommendations</i>	
<i>Task 7: Coordinate Interviews, Negotiations, and Follow-up</i>	
<b><i>Task 8: Other work not specified above</i></b>	
<b>TOTAL</b>	

EXHIBIT C  
SAMPLE FORM OF AGREEMENT

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 here from.
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 indicting 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

\_\_\_\_\_  
Assistant Secretary

ATLANTA REGIONAL COMMISSION

\_\_\_\_\_  
Executive Director

\_\_\_\_\_  
Board Chairman