REQUEST FOR PROPOSALS
PENSION EVALUATION AND ADMINISTRATION

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 to solicit a firm or team of firms for the Pension and Benefits related services detailed herein. The purpose of this Request for Proposals is to establish one or more contracts for the professional services of a

I. Consultant to provide recommendations to improve the sustainability and attractiveness of the current ARC retirement plans, such services referred to in this RFP as “Recommendation”, and

II. Third-Party Administrator to provide record keeping / plan administration services relating to the ARC defined benefit pension plan, and employee defined contribution plans including 457 and 403(b) plans, such services referred to in this RFP as “TPA”. Proposers with a full-service offering (in-house or sub-contracted) including actuarial, investment services, etc. should detail their full portfolio services as these additional services may be considered, but any proposal must include record keeping and plan administration.

Any selected vendor(s) will provide all equipment, personnel, expertise, facilities, financial resources, and management for this service. Recommendation services should be submitted on a project basis; TPA services should be submitted based on a three-year term. 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. Any changes to the attached contract must be consistent with the contract language, and in no event may a revision add exculpatory language or modify the indemnification provisions. This RFP may result in multiple awards with the right reserved to grant none, all or part of this project to one or more firms. If multiple firms are selected to provide specific services, those services will be contractually delegated to that firm. All qualified applicants will receive consideration without regard to race, color, religion, sex, sexual orientation, gender identity or national origin.

II. ANTICIPATED TIMELINE

The timetable for this RFP is presented below:

<table>
<thead>
<tr>
<th>Activity</th>
<th>Target Date (All times are EST)</th>
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<tbody>
<tr>
<td>Issue Request for Proposal</td>
<td>1/29/20</td>
</tr>
<tr>
<td>Voluntary Pre-Proposal Conference</td>
<td>2/6/20 at 3:00 PM</td>
</tr>
<tr>
<td>Technical Questions</td>
<td>2/6/20 at 5 PM</td>
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<tr>
<td>Responses to Technical Questions</td>
<td>2/12/20</td>
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<tr>
<td>Proposals Due</td>
<td>2/28/20</td>
</tr>
<tr>
<td>1st Interviews (if necessary)</td>
<td>3/10/20</td>
</tr>
<tr>
<td>2nd Final Interviews</td>
<td>3/12/20</td>
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</table>
Additional information should not be required to respond to this RFP. However, any inquiries for technical information should be directed to: Kevin C. Crump (BusinessServicesRFP@atlantaregional.org no later than 5 PM on 2/6/20. A Voluntary Pre-Proposal Conference will be held on 2/6/20 at 3:00pm – 4:00pm in the I. Emerson Bryan Room of the ARC Offices at 229 Peachtree Street, NE, Atlanta, GA 30303. This is an in-person conference, with no call-in number. However, all questions received, including those collected at the Pre-Proposal Conference, and responses to those questions, will be posted on ARC’s website no later than 2/12/20.

From the date of the issuance of this RFP until the selection of a Firm is completed and announced, Firms that intend to submit a Proposal should not contact any ARC Staff or Board Trustee other than to submit written questions to the “Contact Person.” Communicating directly or indirectly with any other ARC Staff or Board Trustee regarding this RFP during this RFP process may result in immediate disqualification.

Completed proposals must be received at the address shown above by 5PM EST on 2/28/20. Late proposals will be disqualified. In order to be considered for selection, firms 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) physical 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 service provider, who, based upon evaluation of all proposals, is determined to have submitted the best proposal, considering all selection criteria including both technical factors and cost.

III. PROPOSAL PREPARATION AND SUBMISSION REQUIREMENTS
For all services, 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.
- The service(s) being bid on (I. Recommendation, II. TPA (including or not including additional services), or both)
- Statement of the availability and location of staff 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.
- Rates and fees applicable to proposed services. The suggested format in Attachment B may be used unless rates are better presented otherwise.
- A list of public sector and governmental clients for which the firm currently provides 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.
- Respondents must disclose any potential conflicts of interest that may arise from the provision of services described herein as defined by the ARC Standards of Ethical Conduct. 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.

For Recommendation services, proposals must include the following additional information to be considered responsive:
- Timeline for completion
- Method of approach
- Tools to be utilized
- Employee engagement process

For TPA Services, proposals must include the following additional information to be considered responsive (including, where applicable, proposals relating to additional services):
- Provision of actuary services, including a Supervisory Actuary
- Provision of investment services
  - All respondents should certify if:
    - The retirement investment consultant has at least $1 billion dollars in client assets under advisement
    - The retirement investment consultant has no affiliation with a broker-dealer or money manager
    - The retirement investment consultant accepts only hard dollar fees
- The provision of plan record keeping services (including the defined benefit plan, the 403(b) plan and the 457 plan)
- Information on any other required certifications for the services.
- A breakdown of the fiduciary duties if a change will be necessary from the duties as allocated in the ARC plan document (link below)
- A description of technology accessibility, system standards, and cybersecurity measures
- An accounting of any recent significant legal actions incurred against represented plans or the firm
• Include the firm’s most recent audit, and the most recent plan 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, and the method for providing such reports.
• Include a generic example of an individual benefits statement, and the method for providing such reports.
• Include a generic example of a quarterly investment report, and the method for providing such reports.

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. Specific confidential information in the proposal must be marked as such to be withheld from open records. Marking your full proposal as confidential cannot be honored.

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 for each service are set forth below:

I. Recommendation
• Total cost (25%)
• Experience of the proposer and individual staff members in accomplishing similar services, including other public plans of a similar asset and participant base. (20%)
• Proprietary/relevant tools and frameworks for evaluation and implementation (15%)
• Thorough and pragmatic approach (15%)
• Speed of committed delivery (15%)
• Availability of key relationship management for strategic/administrative support (10%)

II. Third Party Administrator
• Total cost (25%)
• Experience of the proposer and individual staff members in accomplishing similar services, including other public plans of a similar asset and participant base. (15%)
• Performance history (15%)
• Ability to directly support and educate plan participants (15%)
• Technology, including innovative platforms, accessibility, system functionality, and cybersecurity (10%)
• Availability of key relationship management for strategic/administrative support (10%)
• Audit Findings and legal concerns (5%)
• Responses of the client references. (5%)

ARC may, at its discretion, require one or more proposers to appear before an evaluation committee for an interview or to make a presentation. During such interview, the Proposer may be required to orally and otherwise present its proposal and to respond to questions posed. Additional meetings may be held to clarify issues or to address comments, as deemed appropriate. Proposers will be notified in advance of the time and format of such meetings. ARC may choose to award a contract in advance of discussions or negotiations, therefore, the Proposer should submit the best offer for performing the services prescribed herein in the proposal submitted.

Commencement of such discussions does not signify an obligation or commitment by ARC to execute a contract or continue discussions. ARC may terminate discussions at any time for any reason. **ARC reserves the right to select a record keeper/plan administrator-only service provider or a full-service provider (with record keeper/plan administrator and additional services capabilities) as feasible, award the work in full, or make no award of services.**

Incomplete proposals may be rejected. ARC may reject any or all proposals and may waive any immaterial deviation in a proposal.
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. ARC is exempt from federal income tax as a local government and under section 501(c)(3) of the Internal Revenue Code and does not participate in Social Security. The defined benefit pension plan is intended to be a tax qualified plan under Internal Revenue Code (Code) Section 401(a). The defined benefit pension plan also is intended to be a “governmental” plan exempt from: (1) certain provisions otherwise applicable to qualified plans under the Code, e.g., minimum funding requirements; and (2) the Employee Retirement Income Security Act (ERISA), including the Federal insurance program for underfunded plans, the Pension Benefit Guaranty Corporation (PBGC). A portion of the pension plan contributions have been credited to retiree medical accounts maintained under the plan per Code section 401(h). ARC’s fiscal year begins January 1 and ends December 31.

ARC has approximately 333 participants including active, deferred vested, and retired participants in the Pension Plan. Participation in the 403(b) and 457 plans is voluntary and participation fluctuates. The combined plan assets as of 12/31/19 are approximately $82 Million. Currently, 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. A copy of ARC’s pension plan document is available at https://atlantaregional.org/procurement/. This plan is currently undergoing a review, and a team of staff at ARC, as well as current contractors in the areas of legal, investment consulting, and actuarial services have worked with the ARC Pension Board of Trustees to review parameters for change. At this time, the current objectives are:

- Make the agency costs sustainable while maintaining an attractive plan for current and new employees
- Keep current employees ‘whole’ with retirement benefits, subject to sustainability of the plan – current expected returns or retirement outcomes are preserved with minimal/no changes

The parameters that have been discussed to date include:

- Continuing to opt out of Social Security
- Definitively making a change to the plans, which may include reductions of future benefits or accruals in the pension plan and/or a change in employee or employer contributions
- Maintaining the Fringe expenses (all employee benefits) at 59% +/- 3%
The 403(b) and 457 plans include investment options from Fidelity Investments, Lincoln Financial Group, and the Vanguard Group. The DC plans are partially held custodial and partially annuity across the three providers, part of the scope of this work will be to streamline the provision of defined contribution plans. ARC contributes 50 cents for every dollar an employee contributes up to 3% of the employee salary (maximum ARC contribution is 1.5% of salary) in the defined contribution plans. The Pension funds are currently held in Trust at U.S. Bank with administration handled in house by Finance and Talent Management staff. In the Pension plan, the mandatory employee contribution is 5%. Employee contributions are withheld from the individual's compensation and forwarded to U.S. Bank quarterly. The employer's required
monthly contribution amount is sent monthly. Pension disbursements are administered through U.S. Bank. The plan currently has a 6% return assumption and a 75% replacement ratio, with a 15-year amortization period and liabilities approximately 80% funded.

II. STATEMENT OF NEEDS

1. Recommendation Services
ARC is soliciting the services of an independent consulting firm with experience in the Pension industry, preferably public sector experience, to perform the following: (1) assess the current ARC Pension plan with respect to its ability to meet long term business needs and associated customer service processes (leveraging already conducted due diligence pension analysis), (2) present options for ARC consideration which should include options related to the 403(b) and 457 plans, and (3) recommend and assist in implementation planning and execution of the best option for ARC to pursue. The selected firm will work with ARC staff, current contractors, and potentially the selected TPA to complete these actions.

Plan Assessment
The firm will be expected to review the plan documents, review the actuarial assumptions for the year, and review the meeting minutes and scenarios that have been managed by the team to date. As part of the assessment, the firm should benchmark the ARC plan to local government plans and identify trends within ARC employment histories. In addition to analyzing data, ARC would like the selected firm to conduct employee engagement throughout the process. As part of the plan assessment, ARC would like employee focus groups conducted to assess the value of retirement benefits in retaining current and new employees.

Plan Options
The selected firm should outline options for ARC consideration which should include guiding principles for plan changes, a decision matrix to analyze options, a complete review of the impact of various options, provide long-term projections, evaluate the impact on employees and retirees, and delivering a report on the various options. These options should consider both investment quality and plan design alongside employee adoption and attractiveness.

Recommendations and Implementation
The firm should be prepared to make a definitive recommendation to the ARC Board of Trustees for retirement plans and consider total fringe expense where prudent. Once the Board has adopted a recommendation, the firm should outline the next steps for implementation including communications to gain buy-in and awareness, and employee engagement to encourage adoption. At this point, the selected Pension Recommendation firm will likely need to work with the selected Third-Party Administrator firm to complete plan updates and implementation of the new plan documents. ARC is expecting to make retirement plan benefits changes effective on January 1, 2021.

2. TPA Services
ARC is soliciting the services of a firm or team of firms with experience in the Pension industry, preferably public sector experience, to provide Third Party Administration Services. The services outlined below are currently provided to ARC through either contractors or in-house services in the provision of plan administration. A full service TPA should provide some or all of these services, but must provide record keeping services. Respondents should be specific about which of the following services will be provided.

**Record Keeping**
- Assure the accuracy and compliance of plan and participant records
- Process employee enrollment
- Manage and track employee investments
- Log and track contribution types
- Offer robust websites so employees can manage their accounts
- Provide access to account statements and information
- Provide excellent customer support
- Designing retirement plan documents
- Preparing employer and employee benefit statements
- Ensuring the plan is in compliance with the IRS non-discrimination requirements
- Preparing annual returns and reports required by IRS, DOL or other government agencies
- Plans operations review to ensure they are following the legal Plan Document.
- Audit support
- Calculate vesting service for vested benefits
- Reconciling each participant account and resolution of any other errors associated with participant accounts
- Independent review and reconciliation of client census
- Independent analysis of client vs. vendor data
- Assure the accuracy and compliance of plan and participant records

**Actuarial**
- Provide actuarial consultation and advisory services on any technical, policy, legal or administrative problem arising during the course of operations by meetings, 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.
- Provide personalized, comprehensive annual benefit statements for each ARC employee.
- Prepare calculation of pension plan benefit for individual ARC employees.
• Prepare all required government filings for the Plan, including reports or information requests from ARC Actuaries.

• Make recommendations 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 ARC apprised of current trends and progress within the actuarial profession.

• Give consultation and advisory services in the policy and administrative problems of implementing plan design changes.

• 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.

• 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.

• Keep ARC advised of developments in federal legislation and/or regulations regarding financing, benefits, vesting fiduciary responsibility, disclosure, etc.

• 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.

• The supervising and/or support actuary shall be available for periodic educational discussions.

• Actuarial valuations shall be performed for the Plan each year as of December 31. 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.

• 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.

• 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.

• The proposer agrees to treat all information related to these services as confidential.

**Investment**

• Investment Policy/ Guidelines Development
• Investment Policy/Guidelines Review
• Measurement by Objective/Performance Analysis with quarterly written reports and oral presentations at a Pension Board meeting on a quarterly basis.
• Monitor and report on investment manager’s compliance with the plan documents and investment policy on a quarterly basis.
• Perform manager/fund search if necessary, as may be requested
• Special Projects (as agreed by the parties)
• Quarterly performance report for all asset classes
• Asset allocation consulting/modeling
• Meetings with the Pension Board as may be requested
• Transactional costs analysis
• Recapture program implementation and review
• Oversight of the existing ARC Defined Benefit Retirement Plan(s)

Accounting
• Prepare disclosure information for each plan as required by authoritative standards established by GASB, including statements 67/68 and 74/75, or any successor accounting and financial reporting standards. Such information shall include, but not be limited to, calculations, note disclosures and schedules as requested. The GASB reports should be provided at the same time as the valuation report for each plan unless otherwise agreed to by ARC.
# ATTACHMENT B: Sample Budget Format
## Part 1 Recommendations Budget

<table>
<thead>
<tr>
<th>Direct Labor (List by Consultant's professional personnel participating in project)</th>
<th>Estimated Hours (List for Each)</th>
<th>Rate/Hour (List for Each)</th>
<th>Total Estimated Cost</th>
</tr>
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<tr>
<td>TOTAL DIRECT LABOR</td>
<td>$___________</td>
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</tbody>
</table>

**Overhead Cost**
(Overhead percentage rate) x (total direct labor)

TOTAL OVERHEAD COST  
$___________

**Other Direct Costs**
(List other items and basis for computing cost for each. Examples include computer services, equipment, etc.)

| | | |
| | | |
| | | |
| TOTAL OTHER DIRECT COSTS  | $___________ |

TOTAL ESTIMATED COST  
$___________
Part 2 Third Party Administration Budget

Please provide your fee structure and all services included in these fees (for both implementation and on-going rates.)
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 form 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 or subcontracted 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 indicting that a facility to be used in the project is under consideration for listing by EPA.


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 foregoing 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 Useable 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. 

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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 noncancelable 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

________________________________

Executive Director

________________________________

Board Chairman