

**THE GWINNETT COUNTY  
DEFINED BENEFIT PLAN**

Effective January 1, 2007



## **GWINNETT COUNTY DEFINED BENEFIT PLAN**

Gwinnett County (“County”) previously participated in the Association County Commissioners of Georgia Benefit Plan and the Association County Commissioner of Georgia Defined Benefit Plan Master Trust Agreement sponsored by the Association County Commissioners of Georgia. Having determined that it is in the best interests of the participants and beneficiaries, the County hereby establishes the Gwinnett County Defined Benefit Plan (“Plan”) for the benefit of its employees and other eligible individuals as provided herein. Assets held in the Association County Commissioner of Georgia Defined Benefit Plan Master Trust for the benefit of Gwinnett County Employees shall be transferred to the Plan, and in no event will a Participant’s Account after the transfer of assets be less than his account prior to the transfer of assets. No employees whose initial hire date with Gwinnett County is on or after January 1, 2007 may become eligible to participate in the Plan. Employees terminating employment on or after January 1, 2007 may not return to the Plan.

The Plan is intended to conform to state and federal provisions applicable to government qualified plans and to qualify under the provisions of the Internal Revenue Code of 1986, as amended.

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## **ARTICLE I: DEFINITIONS**

### **1.01 ACCG Plan**

“ACCG Plan” shall mean the pension plan adopted by the County effective January 1, 1971 that was sponsored by the Association County Commissioners of Georgia. The County terminated its participation in the ACCG Plan effective December 31, 2006.

### **1.02 Accrued Benefit**

“Accrued Benefit” means, subject to Plan termination provisions in Article XVI, a Participant’s Normal Retirement Pension under Section 5.02, as determined by the County. The Accrued Benefit shall include the value of the Participant Contribution Account, if any.

### **1.03 Accumulated Employee Contributions**

“Accumulated Employee Contributions” means Participant contributions made pursuant to Article IV.

### **1.04 Actuarial Equivalence or Actuarial Equivalent**

“Actuarial Equivalence” or “Actuarial Equivalent” means a benefit of equivalent value to a straight life annuity for the life of the Participant, whether in the form of an annuity, a lump sum or otherwise, based on the 1983 Group Annuity Mortality Table using a blend of fifty percent (50%) male and fifty percent (50%) female rates and an interest rate of seven percent (7.0%). Notwithstanding the foregoing, for purposes of determining the Actuarial Equivalent for a plan to plan transfer elected by a Participant from the Plan to the County’s Defined Contribution Plan and for the purchase of up to five years of additional Credited Service, the Plan will use an interest rate of eight percent (8.0%).

### **1.05 Actuary**

“Actuary” means an enrolled actuary selected by the Trustees to provide actuarial services for the Plan.

### **1.06 Annuity Starting Date**

“Annuity Starting Date” means the first day of the first period for which an amount is paid as an annuity or any other form of benefit; provided, however, such date shall be a date falling within sixty (60) days after a Participant has met all the requirements of a Normal or Late Retirement Pension, Early Retirement Pension, or a Disability Pension.

### **1.07 Average Monthly Compensation**

“Average Monthly Compensation” means the arithmetic average of Monthly Compensation paid to a Participant by the Employer for the highest sixty (60) consecutive months of Credited Service, ignoring any Breaks in Service, out of the

Employees last 120 months of Credited Service earned immediately prior to their Termination of Employment.

For purposes of this Plan, Monthly Compensation shall be calculated as follows:

(1) For calendar years in which the Participant worked twelve (12) months, Monthly Compensation shall be determined by total Compensation paid by the County for worked performed in the year, divided by 12.

(2) For calendar years in which the Participant worked less than twelve (12) months, Monthly Compensation shall be calculated by dividing the total compensation for the calendar year by the number of payroll periods for which the Participant was paid, multiplying this number by the number of pay periods scheduled for the year and dividing the total by 12.

If a Participant has a Leave of Absence under the provisions of the Family and Medical Leave Act (“FMLA”) or the Uniformed Services Employment and Reemployment Rights Act (“USERRA”), the consecutive months of Credited Service prior to such Leave of Absence combined with the consecutive months of Credited Service after such Leave of Absence shall be considered consecutive for purposes of this Section.

#### **1.08 Beneficiary**

“Beneficiary” means a person designated by a Participant who is or may become entitled to a benefit under the Plan. Participants shall designate their Beneficiaries in accordance with Section 14.01 of the Plan. A Beneficiary who becomes entitled to a benefit under the Plan shall remain a Beneficiary under the Plan until the Trustee has fully distributed his benefit to him, at which time he will cease to be a Beneficiary.

#### **1.09 Benefit Commencement Date**

“Benefit Commencement Date” means, with respect to a Participant, joint annuitant, or Beneficiary, the date as of which benefit amounts are determined as specified in Section 9.04 of the Plan.

#### **1.10 Benefit Payment Date**

“Benefit Payment Date” means, with respect to a Participant, joint annuitant, or Beneficiary, the date elected on a form submitted to the Plan Administrator on which benefit payments shall commence. Except as provided in Section 9.04 of the Plan or in the case of an involuntary lump sum payment under Section 5.03(c) or 6.03(c), a Participant shall elect his Benefit Payment Date on a form provided by the Plan Administrator.

#### **1.11 Break in Service**

(a) “Break in Service” means, with respect to an Employee who terminated prior to January 1, 2007, a Period of Severance of twelve (12) consecutive months.

- (b) For a Leave of Absence, including Military Leave under USERRA, and FMLA Leave under the Family and Medical Leave Act of 1993, a Break in Service shall not be deemed to have occurred if the Employee returns to Service of the County following the Leave of Absence within the time required by federal or state law.
- (c) For purposes of determining when a Break in Service begins for a Participant on Maternity or Paternity Leave, the Severance from Service Date of an Employee who is absent from employment beyond the first anniversary of his first date of absence is the second anniversary of the first date of absence. The period between the first and second anniversaries is not a Period of Service. The period between the first and second anniversaries is not a Period of Severance unless the Participant fails to return from Leave. No Service shall be credited due to Maternity or Paternity Leave as described in this Section unless the Employee furnishes proof satisfactory to the County that the need for leave was due to Maternity or Paternity Leave.
- (d) The County shall prescribe procedures to make uniform and nondiscriminatory determinations required by this Section.

**1.12 Code**

“Code” means the Internal Revenue Code of 1986, as amended.

**1.13 Compensation**

“Compensation” means the total amount of all payments, direct or indirect, made by the County to an Employee for services rendered to the County, for a calendar year which ends within a Plan Year, as defined in Code Section 3401(a) for purposes of tax withholding at the source (as reported to the Employee on Form W-2 for such year). Compensation shall include before-tax or salary deferral contributions made to this Plan or any other plan of the County, under a Code Section 132(f)(4) qualified transportation plan or under Code Sections 125, 402(g)(3), 457 or 414(h), on behalf of a Participant for such Plan Year.

Notwithstanding the foregoing and except as provided in Section 16, in no event shall the Compensation of a Participant taken into account under the Plan for any Plan Year exceed (i) \$200,000 for Plan Years beginning on or after January 1, 1989, (ii) \$150,000 for Plan Years on or after the later of (a) January 1, 1996 or (b) the 90th day after the opening of the first legislative session that begins on or after January 1, 1996, or (iii) for Plan Years beginning on or after January 1, 2002, the limitations of Code Section 401(a)(17) in effect as of the beginning of the Plan Year (i.e., \$200,000 for 2002). The limitations set forth in the preceding sentence shall be subject to adjustment annually as provided in Code Section 401(a)(17)(B) and Code Section 415(d); provided, however, that the dollar increase in effect on January 1 of any calendar year, if any, is effective for the Plan Year. The monthly limitation on Compensation for any Participant shall equal the average of the yearly maximum compensation limitations in effect under the Plan on the first day of each 12 month period in the sixty (60) month period, the first such period ending the last month of such sixty (60) month period being used to calculate

Compensation hereunder, divided by 12. For purposes of determining the maximum Compensation limitations, prior 12 month periods shall be determined in a similar manner, with each 12 month period ending in the month preceding the beginning of the subsequent 12 month period. However, the Code Section 401(a)(17) limits in this Section 1.13 shall not apply to Transition Rule Employees to the extent the application of the limitation would reduce the amount of Compensation that is allowed to be taken into account under the Plan below the amount that was allowed to be taken into account under the Plan as in effect on July 1, 1993, as adjusted from time to time.

Compensation shall not include, with respect to a State Court Judge or a Juvenile Court Judge, that portion of his salary as defined in O.C.G.A. § 47-23-100 which is used for purposes of mandatory participation in a State or federal retirement pension plan pursuant to O.C.G.A. § 47-23-101.

**1.14 County**

“County” means Gwinnett County.

**1.15 Credited Service**

“Credited Service” means the measurement of a Participant’s Service as an Employee after the Original Effective Date of the Plan that is used to determine the Participant’s Accrued Benefit. Credited Service shall include only full-time service and shall be determined by the Elapsed Time Method. Participants who have uniformed service under USERRA shall be entitled to Credited Service for the time spent in uniformed service provided they comply with the reinstatement provisions of USERRA and pay the Participant contributions for the time spent on leave as provided in Section 4.05.

Credited Service shall include Service prior to the Effective Date of the Plan, sick leave, and retirement reserve leave. Furthermore, the County, as part of an employment contract with Appointed Officials, may agree to provide additional Credited Service. In no event, however, shall the additional Credited Service exceed five (5) years. A record of each such granting of Credited Service by employment contract shall be included in Appendix A.

**1.16 Defined Contribution Plan**

“Defined Contribution Plan” means the qualified defined contribution retirement plan entitled “Gwinnett County Board of Commissioners Defined Contribution Pension Plan”, approved by Gwinnett County by resolution of the Gwinnett County Board of Commissioners on July 18, 2000, effective as of August 1, 2000.

**1.17 Disability or Disabled**

A Participant is “Disabled” if he is entitled to disability benefits under the federal Social Security Act.

**1.18 Disability Pension**

“Disability Pension” means, with respect to a Participant, the benefit described in Article VII of the Plan.

**1.19 Early Retirement Pension**

“Early Retirement Pension” means an Unreduced Early Retirement Pension or a Reduced Early Retirement Pension.

**1.20 Early Retirement Date**

“Early Retirement Date” means the following dates when a Participant becomes eligible for an Early Retirement Pension:

- (a) Schedule A. A Participant accruing benefits under Schedule A shall be entitled to an Unreduced Early Retirement Pension when he completes thirty (30) years of Vesting Service. A Participant accruing benefits under Schedule A will be entitled to a Reduced Early Retirement Pension on the later of the date he attains sixty (60) years of age and completes ten (10) years of service.
- (b) Schedule B or Schedule C. A Participant accruing benefits under Schedule B or Schedule C shall be entitled to an Unreduced Early Retirement Pension on the earlier of the following dates: (i) the Participant completes thirty (30) years of Vesting Service; or (ii) later of the date (A) he attains fifty (50) years of age and (B) his age, combined with his years of Vesting Service, equals or exceeds seventy-five (75). A Participant accruing benefits under Schedule B or Schedule C will be entitled to a Reduced Early Retirement Pension on the later of the date he attains sixty (60) years of age and completes ten (10) years of service.

**1.21 Effective Date**

“Effective Date” of the Plan means January 1, 2007.

**1.22 Elapsed Time Method**

“Elapsed Time Method” shall mean the method of computing Service by reference to the total time (years and months) that elapses between the Employee’s Employment Commencement Date and the Employee’s Severance from Service Date. The total time need not be consecutive.

For the purpose of calculating Eligibility Service, Vesting Service and Credited Service, a Participant shall accrue one month for each month in which he is credited with one Hour of Service as a Full-time Employee of the County, and shall accrue one year for each 12 month period. The elapsed time service method calculates years and months by rounding up any days to a whole month. The calculations for Eligibility Service, Credited Service and Vesting Service shall be subject to the Break in Service provisions

**1.23 Eligibility Service**

“Eligibility Service” means the measurement of an Employee’s Full Time Service for purposes of determining whether the Employee is eligible for the Plan and is measured from the Employee’s Employment Commencement Date and each anniversary thereof to

the date an Employee first becomes a Plan Participant. Eligibility Service shall be determined by the Elapsed Time Method.

**1.24 Employee**

“Employee” means any individual employed by the County, but shall exclude:

- (a) any individual classified by the County as an independent contractor;
- (b) any leased employee as defined in Section 414(n) of the Code; and
- (c) any other individual employed by the County who is not designated as any of the following:
  - (i) A full-time Employee as defined by County policy, defined as any Employee eligible under the Employer’s personnel policies to receive all supplemental benefits including pension benefits;
  - (ii) County Commissioners, except as specifically excluded in subsection (d)(3) below;
  - (iii) The following elected officials of the County with no other publicly funded retirement or pension plan:
    - A. Sheriff;
    - B. Tax Commissioner;
    - C. Clerk of Superior Court;
    - D. State Court Judge;
    - E. Probate Court Judge;
    - F. Juvenile Court Judge; and
    - G. Magistrate Court Judge.
  - (iv) Superior Court Judges and the District Attorney who are elected officials receiving supplemental compensation from the County.
- (d) Notwithstanding the foregoing, the following employees are specifically excluded from participation:
  - (i) Employees with an Employment or Reemployment Commencement Date on or after January 1, 2007;
  - (ii) Employees who participate in the County’s Defined Contribution Plan and who did not elect to participate in 2004 in the Defined Benefit Plan or who do not have a prior deferred vested benefit in the Defined Benefit Plan
  - (iii) (1) County Commissioners and Elected Officials with an Employment or Reemployment Commencement Date prior to August 1, 2000 who elected

to participate in the Employer's defined contribution pension plan; (2) Appointed Officials with an Employment or Reemployment Commencement Date on or after August 1, 2000; and (3) County Commissioners with an Employment Commencement Date on or after August 1, 2000 who have elected to participate in the Defined Contribution Plan; and

(iv) Extension Agents in TRS.

For purposes of this section, "Appointed Official" means a Full-time Employee who is not part of the classified service and who serves at the pleasure of the Board of Commissioners, the County Administrator, the Deputy County Administrator, or other Elected Officials.

Excluded employees under (b) and (c) above shall be considered "Ineligible Employees".

#### **1.25 Employer**

"Employer" means Gwinnett County, Georgia.

#### **1.26 Employment Commencement Date**

"Employment Commencement Date" means the date on which the Employee first performs an Hour of Service for the County.

#### **1.27 Full-time Employee**

"Full-time Employee" means any Employee who is eligible under the County's personnel policies to receive all supplemental benefits, including pension benefits.

#### **1.28 Hour of Service**

"Hour of Service" means the increments of time described in sections (a), (b), and (c) hereof (as applicable) subject to any limitations set forth herein:

- (a) Each hour for which the County, either directly or indirectly, pays an Employee, or for which the Employee is entitled to payment, for the performance of duties during the Plan Year. The County shall credit Hours of Service under this paragraph (a) to the Employees for the Plan Year in which the Employee performs the duties, irrespective of when paid;
- (b) Each hour for back pay, irrespective of mitigation of damages, to which the County has agreed or for which the Employee has received an award. The County shall credit Hours of Service under this paragraph (b) to the Employee for the Plan Year(s) to which the award or the agreement pertains rather than for the Plan Year in which the award, agreement or payment is made;

- (c) Each hour for which the County, either directly or indirectly, pays an Employee, or for which the Employee is entitled to payment (irrespective of whether the employment relationship is terminated), for reasons other than for the performance of duties during a Plan Year, such as Leave of Absence, vacation, holiday, sick leave, illness, incapacity (including Disability), layoff, jury duty, or military duty, provided:
  - (i) The County shall not credit more than five hundred and one (501) Hours of Service under this paragraph (c) to an Employee on account of any single continuous period during which the Employee does not perform any duties as an Employee (whether or not such period occurs during a single Plan Year). The County shall credit Hours of Service under this paragraph (c) in accordance with the rules of paragraphs (b) and (c) of Department of Labor Regulation Section 2530.200b-2, which the Plan, by this reference, specifically incorporates in full within this paragraph (c);
  - (ii) An hour for which an Employee is directly or indirectly paid, or entitled to payment, on account of a period during which he performs no duties as an Employee shall not be credited as an Hour of Service if such payment is made or due under a plan maintained solely to comply with applicable workers' compensation, unemployment compensation, or disability insurance laws; and
  - (iii) Hours of Service shall not be credited to an Employee for a payment that solely reimburses such Employee for medical or medically related expenses incurred by him.
- (d) Each hour for which the Employee is required to be granted leave under USERRA.
- (e) The County shall not credit an Hour of Service under more than one (1) of the above paragraphs (a), (b), (c) or (d). If the Service counted under this Section 1.27 can be counted under more than one of these paragraphs, the rule crediting the greatest number of Hours of Service shall apply. The County shall resolve any ambiguity with respect to the crediting of an Hour of Service in favor of the Employee.
- (f) The County shall credit Hours of Service under this Section 1.27 in accordance with Department of Labor Regulation Section 2530.200b-2(b) and (c), 29 CFR Part 2530, as amended, which the Plan, by this reference, specifically incorporates in full, or such other federal regulations as may from time to time be applicable.

### **1.29 Inactive Participant**

“Inactive Participant” means a Participant who is no longer receiving Credited Service under the Plan but has not yet received his or her entire Non-forfeitable Accrued Benefit due (if any) under the Plan.



**1.30 Late Retirement Date**

“Late Retirement Date” means the date the Participant actually Retires from employment with the County after his Normal Retirement Date.

**1.31 Leave of Absence**

“Leave of Absence” means a paid or unpaid excused leave of absence granted to an Employee in accordance with applicable federal or state law or the County’s personnel policy. Leave of Absence shall include the following:

(a) Military Leave.

Employees who leave the service of the County, voluntarily or involuntarily, to enter the Armed Forces of the United States, provided: (i) the Employee is legally entitled to reemployment under USERRA, and (ii) the Employee applies for and reenters service with the County within the time, in the manner, and under the conditions prescribed by USERRA or any other similar and applicable law.

(b) FMLA Leave.

Employees who leave the service of the County under the provisions of the Family and Medical Leave Act of 1993 (“FMLA”) provided that the Employee returns to active employment within the time required under the FMLA.

(c) Other Leave.

Employees who leave the service of the Employee under such other circumstances as the County shall determine are fair, reasonable and equitable as applied uniformly among Employees under similar circumstances.

**1.32 Limitation Year**

“Limitation Year” means the calendar year.

**1.33 Maternity or Paternity Leave**

“Maternity or Paternity Leave” means any period during which an Employee is absent from work with the County: (a) due to the pregnancy of such Employee, (b) due to the birth of a child of such Employee, (c) due to the placement of a child with such Employee in connection with the adoption of a child by such Employee, or (d) for purposes of such Employee caring for such child immediately after such birth or placement.

**1.34 Non-forfeitable**

“Non-forfeitable” means a Participant’s or Beneficiary’s unconditional claim, legally enforceable against the Plan, to the Participant’s Accrued Benefit. If a Participant is one hundred percent (100%) vested in any benefit under the Plan, such benefit is considered Non-forfeitable.

**1.35 Nontransferable Annuity**

“Nontransferable Annuity” means an annuity, which by its terms provides that it may not be sold, assigned, discounted, or pledged as collateral for a loan or security for the performance of an obligation or for any purpose to any person other than the annuity provider. If the Trustee distributes an annuity contract, such contract must be a Nontransferable Annuity.

**1.36 Normal Retirement Date**

“Normal Retirement Date” means the date the Participant becomes eligible for a Normal Retirement Pension. A Participant will become eligible for a Normal Retirement Pension on the later of the date the Participant attains age 65 and completes 5 years of Vesting Service or, if an Employee has an Employment or Reemployment Commencement Date prior to November 1, 2004, the later of the date the Participant attains age sixty-five (65) and completes three (3) years of Vesting Service. Unused sick and/or retirement reserve leave shall be included to reduce the age and/or vesting service required to meet the age and/or vesting requirements if the Participant chooses.

**1.37 Normal Retirement Pension**

A “Normal Retirement Pension” under Schedule A means:

two and one-quarter percent (2.25%) of a Participant’s Average Monthly Compensation multiplied by years of full time Credited Service.

A “Normal Retirement Pension” under Schedule B means:

two and one-quarter percent (2.25%) of a Participant’s Average Monthly Compensation multiplied by years of full-time Credited Service.

A “Normal Retirement Pension” under Schedule C means:

two and one-half percent (2.5%) of a Participant’s Average Monthly Compensation multiplied by years of full-time Credited Service.

**1.38 Participant**

“Participant” means a Full-time Employee who is eligible to be and is actively participating in the Plan in accordance with the provisions of Article II of the Plan. An Employee who becomes a Participant shall remain an active or Inactive Participant under the Plan until the Trustee has fully distributed his Non-forfeitable Accrued Benefit to him.

**1.39 Participation Commencement Date**

“Participation Commencement Date” means the date a Participant first commences participation under the Plan.

**1.40 Participant Contribution Account**

“Participant Contribution Account” means the account and sub-accounts established by the Plan Administrator to reflect Accumulated Employee Contributions by the Participant to the Trust, if any, plus interest credited thereon as required under the Plan. In addition to any other accounts the Plan Administrator shall establish, the Plan Administrator shall establish a separate book account (which shall be adjusted to reflect contributions, interest and other credits or charges attributable thereto) for each Participant to be designated the “County Pick-Up Contribution Account,” which shall reflect a Participant’s interest in the County pick-up contributions made under Section 4.01 of the Plan.

**1.41 Period of Service**

“Period of Service” means the Employee’s period of employment with the County commencing with the Employment Commencement Date or the Reemployment Commencement Date, whichever is applicable, and ending on the Employee’s Severance from Service Date.

**1.42 Period of Severance**

“Period of Severance” means, a continuous period of time during which the Employee is not employed by the County, commencing on the Employee’s Severance from Service Date and ending on the Employee’s Reemployment Commencement Date.

**1.43 Plan**

“Plan” means the Gwinnett County Defined Benefit Plan, as set forth herein.

**1.44 Plan Administrator**

“Plan Administrator” means the County or, if applicable, the “Plan Administrator” as defined in Code Section 414(g).

**1.45 Plan Entry Date**

“Plan Entry Date” means the date the Employee is hired.

**1.46 Plan Sponsor**

“Plan Sponsor” means Gwinnett County, Georgia

**1.47 Plan Year**

“Plan Year” means the calendar year.

**1.48 Reduced Early Retirement Pension**

“Reduced Early Retirement Pension” means a benefit provided in Article VI. A Participant eligible for benefits shall be entitled to a Reduced Early Retirement Pension on the later of the following dates:

- (a) The Participant attains sixty (60) years of age; and
- (b) The Participant completes ten (10) years of service.

**1.49 Reemployment Commencement Date**

“Reemployment Commencement Date” means, with respect to an Employee who terminated employment with the County prior to January 1, 2007, the first date on which the Employee performs an Hour of Service that is required to be taken into account for Eligibility, Vesting or Credited Service, following a Break in Service or Period of Severance.

**1.50 Retire or Retirement**

“Retire” or “Retirement” means Termination of Employment with the County on or after the Participant’s Early, Normal or Late Retirement Date.

**1.51 Schedule A**

“Schedule A” means the benefit established in 2004 for the noncontributory defined benefit plan previously adopted by Gwinnett County and known as the “Pre-Amended Pension Plan”.

**1.52 Schedule B**

“Schedule B” means the benefit established in 2004 for the contributory defined benefit plan previously adopted by Gwinnett County and known as the “1995 Amended Pension Plan” and subsequently amended and restated.

**1.53 Schedule C**

“Schedule C” means the benefit established in 2004 for the contributory defined benefit plan adopted by Gwinnett County as of November 1, 2004.

**1.54 Service**

“Service” means any period of time the Employee is in the employ of the County, including any period the Employee is on a Leave of Absence authorized by the County if

such Leave of Absence is required by law to be counted as Service. Notwithstanding any provision of this Plan to the contrary, contributions, benefits, Vesting, Eligibility, and Credited Service with respect to USERRA leave will be provided in accordance with Code Section 414(u) and with respect to FMLA Leave will be provided in accordance with the Family and Medical Leave Act of 1993.

**1.55 Severance from Service Date**

“Severance from Service Date” means the earlier of the date the Employee (a) Terminates Employment or (b) the first anniversary of the first day of absence for any other reason.

**1.56 Spouse or Surviving Spouse**

“Spouse” or “Surviving Spouse” means, with respect to a Participant, the person who is treated as married to such Participant under the laws of Georgia. The determination of a Participant’s Spouse or Surviving Spouse shall be made as of the earlier of the Participant’s Benefit Commencement Date or the date of such Participant’s death. Common law spouses shall be treated as a Spouse or Surviving Spouse to the extent recognized under Georgia law provided that sufficient documentation is provided to the County.

**1.57 Termination of Employment**

“Termination of Employment”, “Terminate Employment”, “Termination”, or “Terminated” means a severance of employment with the County, including Retirement, resignation, discharge, and death except as otherwise provided by the County as a Leave of Absence or any other leave of absence regulated by federal or state law.

**1.58 Transition Period**

“Transition Period” means the period of time an Employee is required to make Employer Pick-up Contributions at an increased rate under Schedule B or Schedule C in order to be vested in a benefit under such Schedules.

**1.59 Transition Rule Employees**

“Transition Rule Employee” refers to an individual who first became a Participant in the Plan prior to the first day of the first Plan Year beginning after the earlier of (a) the last day of the Plan Year in which a Plan amendment to reflect the amendments made by section 13212 of the Omnibus Budget Reconciliation Act of 1993 (OBRA ‘93) was both adopted and effective; or (b) December 31, 1995.

**1.60 Trust**

“Trust” means the Gwinnett County Defined Benefit Plan Trust Agreement.

**1.61 Trust Fund**

“Trust Fund” means all property of every kind held or acquired by the Trustee under the Trust.

**1.62 Trustee**

“Trustee”, “Trustees”, or “Board of Trustees” means the persons appointed as Trustees by the County.

**1.63 Unreduced Early Retirement Pension**

“Unreduced Early Retirement Pension” means a benefit provided in Article VI. A Participant eligible for benefits under Schedule A will be entitled to an Unreduced Early Retirement Pension on the date he completes thirty (30) years of Vesting Service. A Participant eligible for benefits under Schedules B and C will be entitled to an Unreduced Early Retirement Pension on the earlier of the following:

- (a) The date he completes thirty (30) years of Vesting Service; or
- (b) The date the sum total of the Participant’s Year of Service and age equal seventy five (75) with a minimum age of fifty (50).

**1.64 USERRA**

“USERRA” means the Uniform Services Employment and Reemployment Rights Act of 1994.

**1.65 Vesting Service**

“Vesting Service” means the measurement of a Participant’s full time Service that is used to determine a Participant’s Nonforfeitable Accrued Benefit and whether the Participant meets any Service requirements for an Early Retirement Pension. A year of Vesting Service shall be measured from the Participant’s Employment Commencement Date or Reemployment Commencement Date and each anniversary thereof. Vesting Service shall be determined by the Elapsed Time Method. Vesting Service shall include Service prior to the Effective Date of the Plan, sick leave, and retirement reserve leave.

The County, as part of an employment contract with Appointed Officials, may agree to provide additional Vesting Service. In no event, however, shall the additional Vesting Service exceed five (5) years. A record of each such granting of Vesting Service by employment contract shall be included in Appendix A.

## **ARTICLE II: EMPLOYEE PARTICIPATION**

### **2.01 Participation Eligibility**

Each Employee who was a Participant in the ACCG Plan on the day before the Effective Date of this Plan shall be a Participant in this Plan. Each Employee listed in Section 1.25(c) employed before January 1, 2007, is eligible to participate as of his Employment Commencement Date. No Employee hired on or after January 1, 2007 shall be eligible to participate in this Plan. An Employee who has a termination date prior to December 31, 2006 with a Reemployment Commencement Date on or before December 31, 2007 shall be eligible to resume participation in the Plan provided he has not incurred a one-year Break in Service and follows the applicable situation in Section 2.02. Notwithstanding the foregoing, effective January 1, 2008, only Employees who are Participants in the Plan on December 31, 2007 shall be eligible to participate in the Plan.

### **2.02 Participation Upon Reemployment**

If an Employee was a participant in the ACCG Plan on his Severance from Service Date occurring prior to January 1, 2007, is reemployed on or before December 31, 2007 and has not incurred a one-year Break in Service, the applicable situation will apply:

- (a) If the terminated Employee left his Employee Contributions in the ACCG Plan, the Employee will be required to reenter the plan under the Schedule he was participating in upon termination.
- (b) If the terminated Employee withdrew his Employee Contributions from the ACCG Plan and did not have full-time service credit prior to April 1, 1995, he shall not be eligible to participate in the Plan and shall be eligible to participate in the Defined Contribution Plan. If his Accrued Benefit is less than or equal to \$5,000 and the Employee had full-time service credit under the ACCG Plan prior to April 1, 1995, the present value of the Employee's Accrued Benefit from the date of hire to March 31, 1995 will be transitioned to the Defined Contribution Plan within a reasonable amount of time determined by the County.
- (c) If the terminated Employee withdrew his Employee Contributions from the ACCG Plan and had full-time service credit prior to April 1, 1995, he shall be eligible to accrue additional Credited Service in the Plan as of his Reemployment Commencement Date provided he repays his Employee Contributions in accordance with the provisions of Section 4.04.
- (d) A Participant who terminates employment on or after January 1, 2007 will not be eligible to reenter the Plan upon reemployment. Such Employee will be entitled to participate in the Defined Contribution Plan upon meeting such plan's eligibility conditions, and his benefit under the Plan will be determined using Compensation and Service to the date of his first termination of employment that occurs on or after January 1, 2007.

**2.03 Eligibility for Plans on and after November 1, 2004.**

- (a). All active Employees who were non-contributory Participants in the ACCG Plan before November 1, 2004, were eligible to elect to become Participants in Schedule A, Schedule B or Schedule C effective November 1, 2004. Each such Plan Participant made a one-time, irrevocable election at the time and in the manner determined by the County. If any such Participant failed to make the election, the Participant was deemed to have elected to participate in Schedule A (the “default election”).
- (b). All active Employees who were contributory Participants in either the ACCG Plan’s 1995 Amended Pension Plan or the Defined Contribution Plan before November 1, 2004, were eligible to elect to become Participants in either Schedule B or Schedule C effective November 1, 2004. Each such Plan Participant made a one-time, irrevocable election at the time and in the manner determined by the County. If any such Participant failed to make the election, Participants in the 1995 Amended Pension Plan were deemed to have elected to participate in Schedule B and Participants in the Defined Contribution Plan were deemed to have elected to continue participating in the Defined Contribution Plan (the “default election”).
- (c). All Employees who were otherwise eligible for pension benefits who have an Employment or Reemployment Commencement Date on or after November 1, 2004 and had experienced a Break in Service, were eligible to become Participants in either Schedule C or the Defined Contribution Plan. Each such Employee shall make a one-time, irrevocable election at the time and in the manner determined by the County. If the Participant elects to participate in Schedule C, the amount of his Credited Service shall be adjusted in Schedule C to an amount necessary to provide an Accrued Benefit on the Participant’s Reemployment Commencement Date under Schedule C that is equivalent (in dollar amount) to the Accrued Benefit under the Employer’s Plan in which the Employee was a Participant as of the date of the Participant’s most recent Termination of Employment prior to November 1, 2004.
- (d). All Employees who are otherwise eligible for pension benefits who have a Reemployment Commencement Date on or after November 1, 2004 but prior to January 1, 2007 without experiencing a Break in Service, shall be entitled to enter:
- (i) Schedule A if the Participant was previously in the Pre-Amended Pension Plan immediately preceding his most recent Termination of Employment; or
  - (ii) Schedule B if the Participant was previously in the 1995 Amended Pension Plan immediately preceding his most recent Termination of Employment; provided however, upon reemployment, the Employee shall



also be provided the opportunity to elect to become a Participant in the Defined Contribution Plan or Schedule C.

#### **2.04 Transition Rules**

- (a) The Transition Period for each Employee who, as of October 31, 2004, was a Participant in the Defined Contribution Plan and who elected to become a Participant in Schedule C of the ACCG Plan shall be three (3) years with an Employer Pick Up contribution rate of 7.25% of Compensation. At the option of the Participant, in lieu of any Transition Period, the Participant shall make a lump sum contribution to fund the benefits under Schedule C, equal to 3.75% of the Participant's Compensation (as defined under Schedule C) in calendar years 2001, 2002 and 2003. If such Employee was previously a Participant in the ACCG Plan and elected to transfer to the Defined Contribution Plan, the Participant shall also be required to remit an amount equal to:
  - (i) the lump sum benefit transferred from the ACCG Plan to the Defined Contribution Plan at the time of such transfer, and
  - (ii) the Employer Pick-Up contributions at an annual contribution rate of 3.50% made by the Participant during the period of his participation in the Defined Contribution Plan, and
  - (iii) the Employer contributions made to the Defined Contribution Plan on behalf of the Participant during the period of his participation in the Defined Contribution Plan, and
  - (iv) interest, at an annually compounded rate of 5%, on:
    - A. the previously transferred lump sum benefit specified in (i) above for the period beginning at the initial transfer date and ending on October 31, 2004, and
    - B. the Employer Pick-Up contributions specified in (ii) above and the Employer contributions specified in (iii) above for the period beginning with the initial date of participation in the Defined Contribution Plan and ending on October 31, 2004.
- (b) The Transition Period for each Employee who, as of October 31, 2004, was a Participant in the ACCG Plan under the Pre-amended Pension Plan formula and who elected to become a Participant in Schedule B shall be five (5) years with an Employer Pick-Up contribution rate equal to 7.50% of Compensation. At the option of the Participant, in lieu of any Transition Period, the Participant shall make a lump sum contribution, equal to 3.50% of the Participant's Compensation in calendar years 1999, 2000, 2001, 2002 and 2003.
- (c) The Transition Period for each Employee who, as of October 31, 2004, was a Participant in the ACCG Plan's Pre-amended Pension Plan and who elects to

become a Participant in Schedule C shall be five (5) years with an Employer Pick-Up contribution rate equal to 10.75% of Compensation. At the option of the Participant, in lieu of any Transition Period, the Participant shall make:

- (i) a lump sum contribution equal to 3.50% of the Participant's Compensation in calendar years 1999, 2000, 2001, 2002 and 2003, and
  - (ii) a lump sum contribution, equal to 3.75% of the Participant's Compensation in calendar years 2001, 2002, and 2003.
- (d) The Transition Period for each Employee who, as of October 31, 2004, was a Participant in the ACCG Plan's 1995 Amended Pension Plan formula and who elects to become a Participant in Plan C shall be three (3) years with an Employer Pick-Up contribution rate equal to 7.25% of Compensation. At the option of the Participant, in lieu of any Transition Period, the Participant shall make a lump sum contribution to Plan C, equal to 3.75% of the Participant's Compensation (as defined under Plan C) in calendar years 2001, 2002 and 2003.
- (e) If a Participant Terminates Employment prior to completing the applicable Transition Period as specified in paragraphs (a) through (d) above, the Participant shall have forty-five (45) days from his Termination of Employment to make the applicable lump sum contribution specified in paragraphs (a) through (d) above reduced pro-rata for each completed month the Participant has made the required Employer Pick-Up contributions during the applicable Transition Period (the "adjusted lump sum contribution").
- (f) If a Participant Terminates Employment prior to completing the applicable Transition Period as specified in paragraphs (a) through (d) above and does not make the adjusted lump sum contribution as specified in paragraph (e) above, the Participant shall be deemed to have made the default election as specified in paragraphs (a) and (b) of Section II above. All Employer Pick-Up contributions made by the Employee to the ACCG Plan and this Plan during the Transition Period in excess of the required Employer Pick-Up contributions for the default election Plan shall be refunded to the Participant pursuant to Article IV of the Plan.
- (g) All lump sum benefits repaid as specified in paragraph (a), lump sum contributions made in lieu of completing the Transition Period and interest on such benefits and contributions shall not be considered Accumulated Employee Contributions and are not subject to the refund provisions for Participant Contribution Accounts under Article IV of the Plan.
- (h) Notwithstanding anything to the contrary contained herein, no Employee hired on or after January 1, 2007 may become a Participant in the Plan.

## **ARTICLE III: COUNTY CONTRIBUTIONS**

### **3.01 Amount**

The County shall make the contributions required to fund the cost of the benefits provided to Participants under this Plan. The County will make such contributions as are necessary to fund the Plan in accordance with the policies of the Trustees, the minimum funding standards of the Code and all applicable minimum funding standards under Georgia law. Each contribution is contingent upon the maintenance of qualified status by the Plan for the year with respect to which such contribution is made.

### **3.02 Determination of Contribution**

The County shall determine the amount of any contribution to be made by it to the Trust under the terms of the Plan. In this regard, the County may place full reliance upon all reports, opinions, tables, valuations, and certificates the Trustees and Plan Administrator furnish to the County.

## **ARTICLE IV: PARTICIPANT CONTRIBUTIONS**

### **4.01 County Pick-Up Contributions**

The County shall contribute to the Plan, as of each payroll period on behalf of and to the credit of each Participant, the amount of the required Participant contribution determined as follows:

- (a) There are no Pick-up Contributions under the provisions of Schedule A.
- (b) Employer Pick-up Contributions are required under the provisions of Schedule B in the amount of four percent (4%) of Compensation. The County may amend the Plan not more than once annually to change the Contribution Requirement, but in no event shall the Contribution Requirement exceed six and one-half percent (6.5%).
- (c) Employer Pick-up Contributions are required under the Provisions of Schedule C in the amount of seven and one-quarter percent (7.25%) of Compensation. The County may amend the Plan not more than once annually to change the Contribution Requirement, but in no event shall the Contribution Requirement exceed nine percent (9%).

The contributions are mandatory and no Participant shall be entitled under any circumstances to receive such contributions in cash in lieu of having them contributed to the Trust by the County in accordance with the preceding sentence. Such contributions shall be made pursuant to Section 414(h) of the Code and shall be treated as County contributions in determining their federal income tax treatment under the Code. Contributions made by the County on behalf of Plan Participants shall be included in the Compensation of such individuals when determining their Accrued Benefits and except as otherwise provided above, such contributions shall be treated as Participant contributions credited to his Participant Contribution Account and 100% vested for all purposes under the Plan.

### **4.02 Earnings on Accumulated Employee Contributions**

The Accumulated Employee Contributions will be credited with interest at the rate of five percent (5%) compounded annually. Interest begins on the first day of the first month of the Plan Year immediately following the Plan Year for which such contributions are credited and ends on the last day of the month immediately preceding the month in which the Participant withdraws his Participant Contribution Account from the Plan or the Participant Contribution Account is otherwise distributed.

### **4.03 Refund of Participant Contribution Account**

A Participant or Beneficiary shall receive a refund or withdrawal of his Participant Contribution Account if:

- (a) the Participant Terminates Employment and, at the time of such Termination, does not have sufficient Vesting Service to qualify for a Non-forfeitable Accrued Benefit in accordance with the Vesting Schedule specified in Section 5.05(b);
- (b) the Participant or Beneficiary is receiving benefits under the Plan and dies before receiving Pension benefit payments in an amount equal to or greater than the Participant Contribution Account, and no additional Pension benefits are due. In this case, the Beneficiary (or estate, if no Beneficiary) shall receive the amount remaining in the Participant Contribution Account, plus interest;
- (c) the Participant Terminates Employment and, at the time of such Termination, requests the refund of his Participant Contribution Account in lieu of retaining an Accrued Benefit if such Participant was hired after 4-01-1995 and participated in the contributory ACCG Plan;
- (d) the Participant dies before receiving any benefits under the Plan and the present value of the accrued death benefits as of the Participant's date of death, which are payable to the Beneficiary, are equal to or less than the Participant Contribution Account. In his case, the Beneficiary (or estate, if no Beneficiary) shall receive the amount remaining in the Participant Contribution Account plus interest, and no additional death benefits will be paid; or
- (e) the Participant's Non-forfeitable Accrued Benefit is subject to distribution under Section 5.03(c) or 6.03(c) of the Plan.

Distribution of the Participant Contribution Account shall be made only in a lump sum and for no less than 100% of the Participant Contribution Account. Upon distribution of the Participant Contribution Account, the Participant or Beneficiary shall have no Accrued Benefit under the Plan, except as otherwise provided in Section 4.04 of the Plan.

#### **4.04 Repayment of Participant Contribution Account**

- (a) Participants who terminated employment with the County between January 1, 2006 and December 31, 2006 and are rehired in calendar year 2007 without a break in service may have their Credited Service and any previous Accrued Benefit restored by repaying the Trustee the entire amount of such refund plus interest at a rate of five percent (5%) compounded annually. Interest shall begin on the first day of the month following the month of the previously refunded Participant Contribution Account and shall end on the last day of the month preceding such repayment. The Plan may accept any such repayment directly from the Participant or through a plan-to-plan transfer from any other qualified retirement plan, a Section 401(k) plan, a Section 457 plan or a Section 403(b) tax sheltered annuity. The minimum payment amount shall be 100% plus interest, and such repayment must be made within ninety (90) days of the Participant's Reemployment Commencement Date.
- (b) Employees who terminate employment on or after January 1, 2007 shall not be eligible to reenter the Plan.

- (c) A Participant who is reemployed with the County after December 31, 2006 after receiving a refund of his Participant Contribution Account shall not be eligible to reenter the Plan, restore his benefit in the Plan or pay back any refunds of contributions. .

**4.05 USERRA Contributions**

A Participant who returns from uniformed service under USERRA shall be entitled to Credited Service during the period of leave provided he pays the Participant contribution he would have paid had he worked during the period of uniformed service. The repayment shall be made during the period beginning with his Reemployment Commencement Date and ending on a date which is no later than three (3) times the duration of his uniformed service, but in no event later than five (5) years.

## ARTICLE V: NORMAL AND LATE RETIREMENT PENSION

### 5.01 Normal or Late Retirement Pension

A Participant who satisfies the eligibility criteria for a Normal Retirement Pension specified in Section 1.37 and who retires on his Normal Retirement Date shall receive a Normal Retirement Pension. A Participant who remains an Employee after his Normal Retirement Date and who subsequently Retires shall receive a Late Retirement Pension.

### 5.02 Amount of Normal or Late Retirement Pension

Subject to the Maximum Permissible Dollar Limitations in Section 11.11 of the Plan and to the form of benefit, a Participant's Normal Retirement Pension shall equal his Non-forfeitable Accrued Benefit and a Participant's Late Retirement Pension shall equal the Actuarial Equivalent of his Non-forfeitable Accrued Benefit as of the date of his Termination of Employment. The accrued benefit is calculated based on service and Average Monthly Compensation at the Participant's Date of Termination.

### 5.03 Computation and Payment of Normal or Late Retirement Pension

#### (a) Computations

The Normal or Late Pension shall be computed by the Plan Administrator in the normal form of benefit under Section 9.01 and any eligible optional forms of benefit as provided in Section 9.02.

#### (b) Payments

Payments shall be in accordance with Section 9.04 of the Plan.

Payments shall begin no earlier than a Participant's Normal Retirement Date and begin no later than the date specified in Section 9.04 of the Plan. Between the dates a Participant is first eligible to receive his Normal or Late Retirement Pension and the Mandatory Commencement Date specified in Section 10.04, a Participant shall notify the Plan Administrator of his Benefit Payment Date and select the annuity option in a format provided by the Plan Administrator. If a Participant fails to designate a Benefit Payment Date and form of benefit, then the Trustee shall commence payment in accordance with Article IX of the Plan after the Participant's Normal Retirement Date and the pension benefit shall be paid in the normal form.

Payments from an annuity form of benefit shall continue until the last scheduled payment coincident with or immediately preceding the date of the Participant's death or, if applicable, the date of his Beneficiary's death.

#### (c) Involuntary Lump Sum Payment of Normal or Late Retirement Pension

Notwithstanding the provisions of paragraphs (a) and (b) a lump sum payment shall be made for a Normal or Late Retirement Pension to Participants, without

the Participant's consent, if the lump sum Actuarial Equivalent of the Participant's Non-forfeitable Accrued Benefit is less than \$10,000.

If such a lump sum payment is made, the Participant shall not be entitled to any other pension benefit under the Plan.

However, effective January 1, 2006, if the mandatory distribution is greater than \$1,000 and the Participant does not elect to have such distribution paid directly to an Eligible Retirement Plan specified by the Participant in a direct rollover or to receive the distribution directly, then the Plan Administrator will pay the distribution in a direct rollover to an individual retirement plan designated by the Plan Administrator.

#### **5.04 Late Retirement**

Except as provided in Sections 9.05 and 9.06, a Participant shall receive Credited Service for Service completed after his Normal Retirement Date, until his subsequent Termination of Employment.

#### **5.05 Vesting Schedule**

- (a) A Participant's Accrued Benefit derived from County contributions shall be one hundred percent (100%) Non-forfeitable:
  - (i) on and after his Normal Retirement Date (if employed on or after that date),
  - (ii) if his employment Terminates as a result of death or Disability, or,
  - (iii) if there is a complete or partial termination of the Plan, or a complete discontinuance of contributions, but in either situation only to the extent the benefits are funded.
- (b) Participants other than those to which paragraph (a) above applies shall receive a Non-forfeitable percentage of their Accrued Benefits derived from County contributions according to one of the following schedules:
  - (i) Participants accruing benefits under Schedule A or Schedule B: A Participant with less than three (3) years of Vesting Service shall be zero percent (0 %) vested in his accrued Benefit; a Participant with three (3) or more years of Vesting Service shall be 100% vested in his Accrued Benefit.
  - (ii) Participants accruing benefits under Schedule C:
    - (1) Participants having an Employment or Reemployment Commencement Date prior to November 1, 2004 with less than 3 years of Vesting Service shall be 0% vested in their Accrued Benefit; such Participants with 3 or more years of Vesting Service shall be 100% vested in their Accrued Benefit.



- (2) Participants having an Employment or Reemployment Commencement Date on or after November 1, 2004 with less than 5 years of Vesting Service shall be 0% vested in their Accrued Benefit; such Participants with 5 or more years of Vesting Service shall be 100% vested in their Accrued Benefit.

## ARTICLE VI: EARLY RETIREMENT PENSION

### 6.01 Eligibility for Early Retirement Pension

A Participant who meets the eligibility criteria for an Unreduced Early Retirement Pension or a Reduced Early Retirement Pension and who vests and eligible for a benefit on or after his Early Retirement Date but before his Normal Retirement Date shall receive an Early Retirement Pension.

### 6.02 Amount of Early Retirement Pension

Subject to the Maximum Permissible Dollar Limitations of Section 11.11 of the Plan, an Unreduced Early Retirement Pension shall equal the Participant's Non-forfeitable Accrued Benefit as of the date of his Termination of Employment; a Reduced Early Retirement Pension shall equal the Actuarial Equivalent of a Participant's Non-forfeitable Accrued Benefit as of the date of his Termination of Employment.

### 6.03 Computation and Payment of Early Retirement Pension

#### (a) Computations

The Early Retirement Pension shall be computed by the Plan Administrator in the normal form of benefit under Section 9.01 and any optional forms of benefits under Section 9.02.

#### (b) Payments

Payments shall be in accordance with Section 9.04 of the Plan.

Payments shall begin no earlier than his Early Retirement Date and begin no later than the date specified in Section 9.04 of the Plan. Between the dates a Participant is first eligible to receive his Early Retirement Pension and the Mandatory Commencement Date specified in Section 9.04(a)(i) of the Plan, a Participant shall designate his Benefit Commencement Date and select an annuity option. If a Participant fails to designate a Benefit Commencement Date, then the Trustee shall commence payment in accordance with Section 9.04 of the Plan after the Participant's Normal Retirement Date.

Payments for an annuity form of benefit shall continue until the last scheduled payment coincident with or immediately preceding the date of the Participant's death or, if applicable, the date of his Beneficiary's death.

#### (c) Involuntary Lump Sum Payment of an Early Retirement Pension

Notwithstanding the provisions of paragraphs (a) and (b) a lump sum payment shall be made for an Unreduced Early Retirement Pension or a Reduced Early Retirement Pension to Participants, without the Participant's consent, if the lump sum Actuarial Equivalent of the Participant's Nonforfeitable Present Value of his Accrued Benefit is less than \$10,000. No involuntary lump sum payment shall be

allowed for Unreduced Early Retirement Pension if the Participant's Non-forfeitable Accrued Benefit is equal to or greater than \$10,000.

If such a lump sum payment is made, the Participant shall not be entitled to any other pension benefits under the Plan.

However, if the mandatory distribution is greater than \$1,000 and the Participant does not elect to have such distribution paid directly to an Eligible Retirement Plan specified by the Participant in a direct rollover or to receive the distribution directly, then the Plan Administrator will pay the distribution in a direct rollover to an individual retirement plan designated by the Plan Administrator.

**6.04 Limited Offering of Early Retirement Pension Under Alternative Eligibility Requirements**

The County may provide for different eligibility requirements for an Early Retirement Pension as part of a bona fide retirement incentive program.

Changes in eligibility requirements granted under this Section shall be evidenced in writing in an amendment to the Plan in accordance with the provisions of Article XV.

## **ARTICLE VII: DISABILITY PENSION**

### **7.01 Offering of Disability Pension**

A Participant who, prior to satisfying the requirements for a Normal, Early or Reduced Retirement Pension, shall be entitled to receive a Disability Pension if (a) the Participant has completed ten (10) years of full-time service and (b) is determined to be totally disabled by the Social Security Administration. The date the Participant is determined to be totally disabled by the Social Security Administration (“SSA”) must be prior to the Participant’s Termination of Employment.

### **7.02 Amount of Disability Pension**

Subject to the Maximum Permissible Dollar Limitations of Section 11.11 of the Plan, a Participant who is entitled to a Disability Pension shall be entitled to 100% of his Normal Retirement Pension adjusted to reflect the Participant’s Average Monthly Compensation and Credited Service as of the date of Disability.

### **7.03 Computation and Payment of Disability Pension**

#### **(a) Computations**

The Disability Pension shall be computed by the Plan Administrator in the normal form of benefit under Section 9.01 and any optional forms of benefits under Section 9.02.

#### **(b) Payments**

Payments shall be in accordance with Section 9.04 of the Plan.

Payments shall begin no earlier than the date the Participant begins receiving payments under Social Security.

Payments for an annuity form of benefit shall continue until earlier of:

- (i) the date the Participant is no longer Disabled,
- (ii) the Participant’s Normal Retirement Date, or
- (iii) the date of the Participant’s death.

If the payments continue until the Participant’s Normal Retirement Date, the Participant shall thereafter begin receiving a Normal Retirement Pension in accordance with the provisions of Article V without the necessity of notifying the Plan Administrator.

### **7.04 Recovery from Disability**

If a Participant recovers from Disability and is reemployed as an Employee under the Plan, the Participant’s Credited Service shall be restored up to the Benefit Commencement Date of his Disability Pension. Provided the Participant has not incurred

an one-year Break in Service and he returns on or before December 31, 2007, he shall be eligible to participate in the Plan and to accrue benefits under the Schedule in the Plan in which he was participating on his most recent Severance from Service Date. Notwithstanding the foregoing, a Participant returning from Disability who was participating in Schedule B may elect to participate in Schedule C, provided he complies with the Transition Rules of Section 2.05(d). Alternatively, a Participant who recovers from a Disability and is reemployed on or before December 31, 2007, could elect to participate in the Defined Contribution Plan, provided he meets all of the requirements applicable to participate in the plan. An Employee who recovers from Disability and is reemployed as an Employee after December 31, 2007 shall not be eligible to continue to accrue benefits under the Plan. Such Employee would be entitled to participate in the Defined Contribution Plan, and his benefits under this Plan shall be calculated based on service up to the time of Disability.

#### **7.05 Continuing Evidence of Total Disability**

The Plan Administrator may require a Participant to submit evidence of his continued eligibility for total disability benefits from SSA at any time he is receiving a Disability Pension. The Plan Administrator may not require furnishing of such evidence more frequently than once every six (6) months. In the event that a Disabled Participant refuses or fails to submit evidence of his continued disability from SSA when requested by the Plan Administrator, the Trustee, upon written notice from the Plan Administrator, shall discontinue the Disabled Participant's Disability Pension until the Participant does submit satisfactory evidence of his continued total Disability from SSA.

#### **7.06 Ceasing Eligibility for Social Security Disability**

A Participant who ceases to be eligible for Social Security disability benefits must notify the Plan Administrator of this fact within thirty (30) days of the date he is notified that he is no longer entitled to Social Security benefits. Disability Pension payments will cease the first of the month following the month in which the Social Security Disability benefits end. A Participant who fails to notify the Plan Administrator that he is no longer entitled to Social Security disability benefits must repay all Disability Pension payments he received after his failure to notify before he will be entitled to receive any further benefits under the Plan. The Plan Administrator may use all reasonable means to recover payments of Disability Pension benefits made to a Participant after the Participant's failure to notify.

## **ARTICLE VIII: DEATH BENEFITS**

### **8.01 Pre-Retirement Death Benefit**

If a Participant dies while an Employee of the County, the Plan provides a lifetime pre-retirement survivor annuity which provides a monthly benefit equal to 50% of the Participant's Non-forfeitable Accrued Benefit determined as of the date of the Participant's death, payable over the lifetime of the spouse. If the Participant is not married at the time of death, the Participant's dependent children (if any) will receive the same benefit in total, payable to their legal guardian, until the children reach age 18 at which time the benefit shall cease.

If the computation of Participant's Pension benefit exceeds the Maximum Permissible Dollar Limitation, as defined in Section 11.11 of the Plan, and the Participant dies, the designated Beneficiary shall be entitled to receive a benefit equal to 100% of the Participant's Accrued Benefit as of the date of his death, paid over the Beneficiary's life or over a period no greater than the Beneficiary's life expectancy.

### **8.02 Post Retirement Death Benefit**

If a Participant dies after he Retires or while receiving a Early, Reduced, Normal or Late Retirement Pension, his Beneficiary may receive a Post-Retirement death benefit which shall be payable in a lump sum as follows:

- (a) If the monthly benefit was less than \$100, the Post Retirement Death Benefit is equal to \$5,000.
- (b) If the monthly benefit was \$100 or greater but less than \$300, the Post Retirement Death Benefit is equal to \$10,000.
- (c) If the monthly benefit was \$300 or more, the Post Retirement Death Benefit is equal to \$15,000.

### **8.03 Disability Death Benefit**

If a Participant dies while receiving a Disability Pension and prior to reaching Normal Retirement Age, his Beneficiary shall receive fifty percent (50%) of his monthly benefit at the time of death payable for 120 months.

### **8.04 Deferred Vested Pension Death Benefit**

If a terminated Participant has at least ten (10) years of Service and dies prior to his Benefit Commencement Date, his spouse shall receive fifty percent (50%) of his Nonforfeitable Accrued Benefit as of the date of his termination of employment payable over a period of one hundred twenty (120) months not to exceed the limits under Section 8.05. If he is not married at the time of death, the benefit will be payable to his

dependent children under the age of 18. If there is no spouse or dependent children, the estate or Beneficiary will receive a refund of the Participant's contributions plus interest, if applicable.

#### **8.05 Incidental Death Benefit**

Notwithstanding anything in the Plan to the contrary, death benefits may not be paid in excess of one hundred percent (100%) of the present value of the Participant's Projected Accrued Benefit. For purposes of this section the Participant's "Projected Accrued Benefit" means the monthly benefit that would be payable to the Participant commencing at Normal Retirement Age, assuming the Participant's Average Monthly Compensation equals his Average Monthly Compensation as of the end of the calendar year preceding the calculation date and assuming the Participant remains continuously employed by the Employer until his Normal Retirement Date.

## **ARTICLE IX: PAYMENT OF ACCRUED BENEFIT - OPTIONAL FORMS OF PAYMENT**

### **9.01 Normal Form of Benefit**

The normal form at benefit distribution shall be a straight life annuity continuing for the life of the Participant, with no benefit payable following the Participant's date of death. Subject to the limitations of Section 11.11 of the Plan, if the Participant selects another form of benefit, the Participant shall receive the Actuarial Equivalent of his Non-forfeitable Accrued Benefit payable at Normal Retirement Date, determined as of the Benefit Commencement Date.

### **9.02 Optional Forms of Benefit**

The following optional forms of benefit distributions may be elected in lieu of the normal form of benefit distribution described in Section 9.01 of the Plan. The Participant may select in writing one of the permitted optional forms of benefit prior to his Benefit Commencement Date. A Participant may revoke a previous selection and make a new selection at any time prior to his Benefit Commencement Date. A Participant may not revoke the form of benefit after his Benefit Commencement Date. Furthermore, a Participant may not change his Beneficiary after his Benefit Commencement Date unless his form of benefit is a 10 Years Certain and Life Annuity.

The optional forms of benefit permitted under the Plan are:

- (a) A 10 Years Certain and Life Annuity, (payable for the life of the Participant, guaranteed for at least ten (10) years);
- (b) A Full Contingent (100% Joint and Survivor) Annuity, (payable for the life of the Participant, and the same monthly amount payable for the life of the Beneficiary following the death of the Participant);
- (c) A Three-quarters Contingent (75% Joint and Survivor) Annuity, (payable for the life of the Participant and three-quarters the monthly amount payable for the life of the Beneficiary following the death of the Participant);
- (d) A Two-thirds Contingent (66 2/3% Joint and Survivor) Annuity, (payable for the life of the Participant, and two-thirds the monthly amount payable for the life of the Beneficiary following the death of the Participant);
- (e) A One-half Contingent (50% Joint and Survivor) Annuity, (payable for the life of the Participant, and one-half the monthly amount payable for the life of the Beneficiary following the death of the Participant);
- (f) A Pop Up Contingent Annuity, (if the Participant selects either a Full Contingent, Three-quarters Contingent, Two-thirds Contingent or One-half Contingent option form of the distribution as provided in this Section above, and the Beneficiary



predeceases the Participant, the Participant's monthly benefit will be increased to his Accrued Benefit under the Normal Form of Distribution (including any adjustments after his Benefit Commencement Date) for the remainder of this lifetime); or

- (g) A Lump Sum Distribution, (payable in a lump sum if, at the time of the distribution, the present value of the Participant's Non-forfeitable Accrued Benefit is less than or equal to ten thousand (\$10,000) dollars).

Notwithstanding anything in the Plan to the contrary, death benefits may not be paid in excess of one hundred percent (100%) of the present value of the Participant's Projected Accrued Benefit. For purposes of this section the Participant's "Projected Accrued Benefit" means the monthly benefit that would be payable to the Participant commencing at Normal Retirement Age including any adjustments made after the Participant's Benefit Commencement Date, assuming the Participant's Average Monthly Compensation equals his Average Monthly Compensation as of the end of the calendar year preceding the calculation date and assuming the Participant remains continuously employed by the County until his Normal Retirement Date.

### **9.03 Cost of Living Adjustment**

Participants who Retire will receive a cost of living increase as follows:

- (a) Schedule A: There is no cost of living adjustment for benefits provided under Schedule A.
- (b) Schedule B or C: A Participant receiving retirement, disability pension, survivor or deferred vested benefits under the provisions of any of the Employee Contributory Plans (Amended, Schedule B or C) shall be entitled to a cost of living adjustment of his benefit in the amount of one percent (1%) per year. This fixed rate shall be applied to benefits at the beginning of each Plan Year.

### **9.04 Commencement of Benefits/Payment Schedules**

- (a) Benefit Commencement Date for Normal Retirement Pension

A Participant's Benefit Commencement Date for his Normal Retirement Pension shall be the first day of April in the calendar year following the later of:

- (i) the calendar year in which the Participant attains age 70-1/2, or
- (ii) the calendar year in which the Participant Terminates Employment.

Notwithstanding the foregoing, no payments of a Participant's Normal Retirement Pension under Section 10.04(a)(ii) shall begin until the Participant submits a distribution request on a form provided by the Plan Administrator specifying his Benefit Payment Date. If a Participant Retires but does not submit a distribution request form prior to the Benefit Commencement Date specified in Section 10.04(a)(ii), payments will begin within sixty (60) days of the date he submits

such request, and the Plan will pay the Participant a lump sum equal to the sum of the payments the Participant would have received had he received payments from his Benefit Commencement Date to his Benefit Payment Date. No earnings or interest shall accrue on the lump sum distribution.

(b) Benefit Commencement Date for Early Retirement Pension Benefits

The Benefit Commencement Date for Early Retirement Pension Benefits shall be no later than sixty (60) days after the close of the Plan Year in which the Participant attains his Early Retirement Date.

Notwithstanding the foregoing, no payments of a Participant's Early Retirement Pension under this Section 10.04(b) shall begin until the Participant submits a distribution request on a form provided by the Plan Administrator specifying his Benefit Payment Date. If a Participant Retires but does not submit a distribution request form prior to the Benefit Commencement Date specified in Section 10.04(b), payments will begin within sixty (60) days of the date he submits such request, and the Plan will pay the Participant a lump sum equal to the sum of the payments the Participant would have received had he received payments from his Benefit Commencement Date to his Benefit Payment Date. No earnings or interest shall accrue on the lump sum distribution.

(c) Benefit Commencement Date for Disability Pension Benefits

The Trustee shall commence payment of the Participant's Disability Pension no earlier than the date the Participant starts receiving payments under Social Security unless an earlier date is required under Code Section 401(a)(9). A Participant must submit such information as the Plan Administrator may require for the Plan Administrator to determine his Benefit Commencement Date.

(d) Benefit Payments to Beneficiaries After Participant's Death

(i) If Pension benefit payments begin prior to the Participant's death, the remaining Non-forfeitable Accrued Benefit will be distributed to his Beneficiary in the form elected by the Participant.

(ii) If the Participant dies after application to the Plan Administrator for the commencement of benefits but prior to the Benefit Commencement Date, the Participant's Beneficiary shall receive the Participant's remaining Non-forfeitable Accrued Benefit in the form elected by the Participant. In the event a Participant chooses a straight life annuity, the Plan shall remit Employee Contributions plus earnings as soon as administratively feasible following the Participant's death.

(iii) If the Participant dies before his Benefit Commencement Date the following rules apply:

A. If the Participant's Spouse is his sole Beneficiary, distribution must begin by December 31 of the calendar year immediately following the calendar year in which the Participant dies or by December 31

of the calendar year in which the Participant would have attained age 70½, if later.

- B. If the Participant's Spouse is not the sole Beneficiary, then distribution must begin by December 31 of the calendar year immediately following the calendar year in which the Participant dies.
- C. If there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest must be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(iv) The Beneficiary shall submit a distribution request on a form provided by the Plan Administrator.

(e) Conformance to Section 401(a)(9).

All distributions will be made in accordance with Code Section 401(a)(9), the regulations promulgated under Code Section 401(a)(9) and any other provisions reflecting the requirements of Code Section 401(a)(9) and prescribed by the Internal Revenue Service; and the terms of the Plan reflecting the requirements of Code Section 401(a)(9) override the distribution options (if any) in the Plan which are inconsistent with those requirements.

(f) Mandatory Commencement of Benefits After Participant Election.

All benefit payments will begin within sixty (60) days of the date elected by the Participant, if such date is earlier than any of the aforementioned dates in this Section 9.04.

## **9.05 Continued Employment After Normal Retirement**

A Participant who continues employment or is re-employed prior to 12-31-2006 as an Employee after reaching his Normal Retirement Date may not receive his Accrued Benefit in any form available under the Plan while employed by the County. A Participant who is re-employed after 12-31-2006 may receive his benefit as a retiree and upon his reemployment continue to receive his benefit, and upon meeting the eligibility to the Defined Contribution Plan participate in the Defined Contribution Plan.

Notwithstanding the foregoing, if a Participant (i) attained age 70-1/2 before January 1, 1999, (ii) is an active Employee, and (iii) is receiving payments under the Plan, the Participant may continue to receive Plan payments or may elect to defer the receipt of Plan payments until the Participant Retires from service with the County.

## **9.06 Repayment of Lump Sum Pension**

The provisions of this Section 9.06 apply only to Employees who terminated employment with the County prior to January 1, 2007 under the provisions of the ACCG Plan.

- (a) A Participant who is reemployed prior to 1/1/2007 with the County after receiving a lump sum payment of his Deferred Vested, Early, Normal or Late Pension shall have his Eligibility and Vesting Service restored in accordance with Section 10.02 of the Plan, but shall not have his Credited Service restored unless the Participant repays the previous lump sum payment as specified in paragraph (b) of this Section.
- (b) A Participant who is reemployed with the County after receiving a lump sum Pension payment shall have his Credited Service and his Non-forfeitable Accrued Benefits restored by repaying the Trustee the entire amount of the lump sum payment plus interest at a rate of five percent (5%) compounded annually within ninety (90) days of the Participant's Reemployment Commencement Date. Interest shall begin on the first day of the month following the month of the lump sum cash-out payment and shall end on the last day of the month preceding the repayment of the lump sum cash out and interest.
- (c) The Plan may accept any such repayment directly from the Participant or through a plan-to-plan transfer from any other qualified retirement plan, Section 401(k) plan, Section 457 plan or Section 403(b) tax sheltered annuity.

**9.07**

**Reemployment of Retired Participant**

- (a) A former Participant who has Retired and commenced receiving his Accrued Benefit and thereafter returns to employment after 1/1/2007 as an Employee shall be entitled to
  - (i) Continue to receive his pension benefit while working for the County;
  - (ii). Participate in the Defined Contribution Plan.
- (b) A former Participant who has Retired, commenced receiving his Accrued Benefit and thereafter returns to employment as an Employee on or before December 31, 2006 shall be eligible to reenter the Plan under the Schedule from which he retired. Notwithstanding the foregoing, such Participants who retired under the Schedule B prior to November 1, 2004, may reenter the Plan under either Schedule B or Schedule C. Should such Participant reenter the Plan under Schedule C, his benefit will be subject to three (3) year cliff vesting or, in lieu of vesting, he may pay a three year transition amount in accordance with Section 2.04.
- (c) Any Participant who retires on or after January 1, 2007, shall not be entitled to reenter the Plan upon subsequent reemployment.

## 9.07 Rollovers

### (a) General Rule

Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Participant's election under this Section, a Participant may elect, at the time and in the manner prescribed by the Trustees or Plan Administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Participant, in a direct rollover.

### (b) Definitions

#### (i) Eligible Rollover Distribution

An Eligible Rollover Distribution is any distribution of all or any portion of the balance to the credit of the Participant, except that an Eligible Rollover Distribution does not include (A) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Participant or the joint lives (or joint life expectancies) of the Participant and the Participant's designated Beneficiary, or for a specified period of ten (10) years or more; (B) any distribution to the extent such distribution is required under Code Section 401(a)(9); and (C) the portion of any distribution that is a hardship distribution under Code Section 401(k). A Participant may not elect a direct rollover with respect to an Eligible Rollover Distribution during the Plan Year that is less than \$200. If the Participant elects to have only a portion of an Eligible Rollover Distribution paid to an Eligible Retirement Plan, that portion must be equal to at least \$500. A portion of a distribution shall not fail to be an Eligible Rollover Distribution merely because the portion consists of after-tax employee contributions, which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Code Section 408(a) or (b) or to a qualified defined contribution plan described in Code Section 401(a) or 403(a) that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution that is includible in gross income and the portion that is not.

#### (ii) Eligible Retirement Plan

An Eligible Retirement Plan is an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), an annuity plan described in Code Section 403(a), a qualified trust described in Code Section 401(a), an annuity contract described in Code Section 403(b) that accepts the Participant's Eligible Rollover Distribution and an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision, or agency or

instrumentality of a state and which agrees to separately account for amounts transferred to such plan from this Plan.

(iii) Participant

A Participant includes an active or Inactive Participant.

(iv) Direct Rollover

A Direct Rollover is a payment by the Plan to the Eligible Retirement Plan specified by the Participant.

**ARTICLE X: MISCELLANEOUS PROVISIONS AFFECTING  
THE CREDITING OF SERVICE**

**10.01 No Disregard of Service**

For purposes of computing Vesting Service under Section 5.05 of the Plan, the Plan shall not disregard Service with respect to which a Participant has received a distribution of his Accrued Benefit.

**10.02 Service Upon Reemployment**

- (a) A Participant who terminated employment with the County prior to January 1, 2007 and is reemployed by the County without a consecutive one year Break in Service, shall have all prior Credited Service, Eligibility Service, and Vesting Service restored.
- (b) If, however, a Participant who terminated employment with the County prior to January 1, 2007 has previously received a lump sum cash out of his Participant Contribution Account, Credited Service shall not be restored in accordance with paragraph (a) unless the previously received lump sum cash out has been repaid in accordance with Sections 4.04 and 9.06.

**10.03 Transferred Service Credit from Certain Other Prior Employers**

- (a) Participants who have been previously employed with any other employer are allowed to purchase up to five (5) years of Additional Credited Service in minimum increments of one (1) year. The purchase of up to five years will not change the Participant's Eligibility and Vesting Service.
  - (i) The cost of one (1) year of Additional Credited Service shall be equal to the Actuarial Equivalent of the Participant's Nonforfeitable Accrued Benefit as of the date of his Termination of Employment for one (1) year of Credited Service. Such Actuarial Equivalence shall also take into consideration the increased value of the Credited Service resulting from and Cost of Living Adjustment. For purposes of this paragraph, there is no Cost of Living Adjustment applied to purchases of Additional Credited Service under Schedule A. For purchases of Additional Credited Service under Schedules B and C prior to January 1, 2005, there was applied a Cost of Living Adjustment at an annualized fixed rate of one percent (1%). For purchases of Additional Credited Service under Schedules B and C occurring on or after January 1, 2005, there will be applied a Cost of Living Adjustment at an annualized rate of five percent (5%).
  - (ii) The Participant shall indicate his desire to purchase Additional Credited Service and the amount of such Additional Credited Service to be purchased in writing to the County at the same time the Participant

completes his Application for Retirement. Payment by the Participant for the cost of the Additional Credited Service shall be made prior to his Benefit Commencement Date.

- (iii) Payments made by Participants for Additional Credited Service shall not be considered Accumulated Employee Contributions and are not subject to the refund provisions for Participant Contribution Accounts under Article IV of the Plan.
- (iv) The County, as part of an employment contract with an Appointed Official, may agree to pay for all or a portion of the cost of such Additional Credited Service on behalf of such Appointed Official.

#### **10.04 Credited Service Under USERRA for Contributory Plans**

A Participant who returns as an Employee from Military Leave shall pay contributions for the period of Military Leave in order to receive Credited Service for such Military Leave. The amount and timing of contributions required shall be determined in accordance with USERRA.



**ARTICLE XI: MISCELLANEOUS PROVISIONS  
AFFECTING THE PAYMENT OF BENEFITS**

**11.01 General**

In general, the Trustee shall make benefit payments of any pension directly to the Participant entitled to the payment. However, the County may request the Trustee to purchase a Nontransferable Annuity contract to provide the benefits a Participant would receive under this Plan. If the Trustee purchases a Nontransferable Annuity contract for the benefit of a Participant, the Trustee may either assign the contract to the Participant or hold the contract for the benefit of the Participant. The Trustee also may purchase a Nontransferable Annuity contract for the benefit of a Beneficiary or a Surviving Spouse entitled to a distribution for all or a portion of the Participant's Nonforfeitable Accrued Benefit.

**11.02 Suspension of Benefits**

The Plan does not apply the suspension of benefits rules of Section 203(a)(3)(B) of the Employee Retirement Income Security Act of 1974, as amended.

**11.03 Merger of Plan**

Neither the County nor the Trustee shall consent to, or be a party to, any merger or consolidation of the Plan with another plan, or to a transfer of assets or liabilities to another plan, unless immediately after the merger, consolidation or transfer, the surviving Plan provides each Participant a benefit equal to or greater than the benefit each Participant would have received had the Plan terminated immediately before the merger or consolidation or transfer. However, the Trustee possesses the specific authority to enter into a merger agreement or a direct transfer of assets agreements with the trustees of other retirement plans described in Code Section 401(a) and to accept the direct transfer of plan assets, or to transfer plan assets, as a party to any such agreement.

The Trustee may accept a direct transfer of plan assets on behalf of an Employee. If the Trustee accepts such a direct transfer of plan assets, the Plan Administrator and Trustee shall treat the Employee as a Participant for all purposes of the Plan except the Employee may not make contributions to a Participant Contribution Account under Sections 4.01 or 4.02 of the Plan, nor shall the Employee accrue benefits, including any minimum Normal Retirement Pension, until he actually becomes a Participant in the Plan.

**11.04 Trustee-to-Trustee Transfer**

Upon request by the County, and in the sole discretion of the Trustee, the County may be permitted to amend the Plan to provide an election to Plan Participants to have all or a portion of a Participant's Nonforfeitable Accrued Benefit transferred directly to another qualified retirement plan sponsored by the County. Any transfer permitted under this Section shall be evidenced in writing in an amendment to the Plan in accordance with the provisions of Article XV.

### **11.05 Forfeiture of Benefits**

All County contributions under the Plan shall be forfeited in the manner and to the extent provided under O.C.G.A. Section 47-1-21 through Section 47-1-24, if the Participant is convicted of a public employment, drug related, or other covered crime.

### **11.06 Payments to Minors or Legally Incompetent Persons**

Whenever any benefit is to be paid to or for the benefit of any person who is a minor or determined to be incompetent by qualified medical advice, the Plan Administrator need not require the appointment of a guardian or custodian, but may cause the benefit to be paid to the person having custody of the minor or incompetent, or to the minor or incompetent without the intervention of a guardian or custodian, or to the legal guardian or custodian if one has been appointed, or may cause the benefit to be used for the benefit of the minor or incompetent.

### **11.07 Unclaimed Payments**

If the Plan Administrator cannot ascertain the whereabouts of any Participant to whom a payment is due, the Plan Administrator may direct that the payment and all remaining payments otherwise due to the Participant be cancelled on the records of the Plan and the amount thereof treated as a forfeiture and shall be used to reduce County contributions to the Plan. If the Participant later notifies the Plan Administrator of his whereabouts and requests the payments due to him, the County shall contribute to the Plan an amount equal to the payment to be paid to him as soon as administratively feasible.

### **11.08 Assignment or Alienation**

Neither a Participant nor a Beneficiary shall anticipate, assign or alienate (either at law or in equity) any benefit provided under the Plan, and the Trustee shall not recognize any such anticipation, assignment or alienation, including, but not limited to, any assignment pursuant to a domestic relations order, subject to the following exceptions (a) federal tax liens, (b) an assignment of Plan benefits for the provision of health care premiums, or (c) a trustee-to-trustee transfer of a Participant's accrued benefit in accordance with Section 11.05 of the Plan. Furthermore, a benefit under the Plan is not subject to attachment, garnishment, levy, execution or other legal or equitable process.

### **11.09 No Decrease in Benefits by Change in Social Security**

In the case of a Participant or Beneficiary who is receiving benefits under this Plan or a Participant who has Terminated Employment with the County and has a vested Accrued Benefit under this Plan, any increase in the taxable wage base or the benefit level payable under Title 11 of the Social Security Act shall not affect the way benefits are payable under this Plan to such Participant or Beneficiary. The Plan does not permit the recalculation of any benefits accrued before the Termination of Employment of a Participant on the basis of changes in Social Security benefit levels or the taxable wage base in effect after reemployment with the County.

### **11.10 Limitation on Benefit**

(a) Maximum Annual Benefit.

Notwithstanding any other provision of the Plan to the contrary and subject to exceptions below, the “annual benefit” payable under this Plan shall not exceed the lesser of: (1) \$90,000 multiplied by the Adjustment Factor or (2) for Limitation Years beginning prior to January 1, 1995, 100% of the Participant’s average Compensation for the period of three consecutive years during which the Employee has the greatest aggregate Compensation from the County.

(b) Annualized Benefit.

For purposes of this Section, “annual benefit” means the benefit under the Plan expressed on an annualized basis (exclusive of any benefit not required to be considered for purposes of applying the limitations of Section 415 of the Code to the Plan) payable in the form of a straight life annuity with no ancillary benefit. An ancillary benefit is any benefit which is not directly related to retirement income benefits, such as pre retirement disability benefits and death benefits. If a benefit is payable in any other form, the “annual benefit” limitation shall be applied by adjusting it to the equivalent of a straight life annuity in accordance with the regulations of the Secretary of the Treasury. For purposes of such adjustment, actuarial equivalence shall be determined in accordance with the provisions of Section 1.04 (Actuarial Equivalence) unless otherwise specifically provided herein or in the Regulations under Section 415 of the Code.

(c) Single Plan.

For purposes of the maximum limitation of this Section all defined benefit plans maintained by the County shall be viewed as a single plan.

(d) Prior to Age 62.

If the “annual benefit” commences before the Participant reaches age 62, the \$90,000 limit shall be adjusted so that it is the Actuarial Equivalent of an annual benefit of \$90,000 multiplied by the Adjustment Factor, beginning at age 62. The adjustment provided for in the preceding sentence shall be made in such manner as the Secretary of the Treasury may prescribe in regulations. The reduction under this paragraph shall not reduce the limitation below (i) \$75,000 if the benefit begins at or after age 55, or (ii) if the benefit begins before age 55, the equivalent of the \$75,000 limitation for age 55.

(e) After Age 65.

If the “annual benefit” of a Participant commences after the Participant reaches age 65, the \$90,000 limit shall be adjusted so that it is the actuarial equivalent of a benefit of \$90,000, multiplied by the Adjustment Factor, beginning at age 65, based upon an interest rate assumption of five percent (5%) per year.

(f) Fewer Than 10 Years.

If a Participant has completed fewer than ten years of Credited Service the Participant's accrued benefit shall not exceed the \$90,000 limit, multiplied by the Adjustment Factor, by multiplying such amount by a fraction, the numerator of which is the Participant's number of years (or part thereof) of participation in the Plan, and the denominator of which is ten. In no event, however, shall this paragraph reduce the limitations provided under Section 415(b)(1)(A) of the Code to an amount less than one-tenth of the applicable limitation as determined without regard to this paragraph (f). To the extent provided by the Secretary of Treasury, the paragraph shall be applied separately with respect to each change in the benefit structure of the Plan.

(g) Qualified Participant.

For Limitation Years beginning after December 31, 1996, if a Participant is a "qualified participant" as defined under Code Section 415(b)(2)(H), such Participant may retire before age sixty-two (62) without a reduction in the \$90,000 limit multiplied by the Adjustment Factor. For Limitation Years beginning before January 1, 1997, the adjustment under Section 11.11(d) shall not reduce the limitation to an amount less than \$50,000 for a "qualified participant."

(h) Prior to January 1, 1995.

For Limitation Years beginning prior to January 1, 1995, if a Participant has completed less than ten years of service, the Participant's, accrued benefit shall not exceed the Compensation limit of Section 11.11(a)(2) as adjusted by multiplying such amount by a fraction, the numerator of which is the Participant's number of years (or part thereof) of service in the Plan, and the denominator of which is ten. In no event, however, shall this paragraph reduce the limitations provided under Sections 415(b)(1)(B) or 415(b)(4) of the Code to an amount less than one-tenth of the applicable limitation as determined without regard to this paragraph (g). To the extent provided by the Secretary of Treasury, the paragraph shall be applied separately with respect to each change in the benefit structure of the Plan.

(i) Multiple Plan Reduction.

Prior to January 1, 2000, if an Employee is a Participant in one or more defined benefit plans and one or more defined contribution plans maintained by the County, the sum of the defined benefit plan fraction and the defined contribution plan fraction for any year may not exceed 1.0. The defined benefit plan fraction for any year is a fraction, the numerator of which is the projected "annual benefit" of the Participant under the plan (determined as of the close of the Plan Year) and the denominator of which is the lesser of: (1) the product of 1.25 multiplied by the maximum dollar limitation in effect under Section 415(b)(1)(A) of the Code for such year, or (2) the product of 1.4 multiplied by the amount which may be taken into account under Section 415(b)(1)(B) of the Code for such year. The defined contribution plan fraction for any year is a fraction, the numerator of which is the sum of the "annual additions" to the Participant's Account as of the close of the Plan Year and the denominator of which is the sum of the lesser of the following

amounts determined for such year and each prior year of service with the County: (1) the product of 1.25 multiplied by the dollar limitation in effect under Section 415(c)(1)(A) of the Code for such year (determined without regard to Section 415(c)(6) of the Code), or (2) the product of 1.4 multiplied by the amount which may be taken into account under Section 415(c)(1)(B) of the Code for such year.

For purposes of this paragraph, the term ‘Participant’s Account’ shall mean the account established and maintained by the Plan Administrator for each Participant with respect to his total interest in the defined contribution plan maintained by the County resulting from the County’s contribution.

(j) Excessive Benefit.

If the sum of the defined benefit plan fraction and the defined contribution plan fraction shall exceed 1.0 in any year for any Participant in this Plan, the Plan Administrator shall adjust the numerator of the defined benefit plan fraction so that the sum of both fractions shall not exceed 1.0 in any year for such Participant.

(k) Limitation Year.

For purposes of determining “Annual Benefits”, the Limitation Year shall be the Plan Year.

(l) Controlled Groups.

In the case of a group of employers which constitutes either a controlled group of corporations, trades or businesses under common control defined in Section 1563(a) or Section 414(b) as modified by Section 415(h) and Section 414(c), such employers shall be considered a single employer for purposes of applying the limitation of Section 415 of the Code.

(m) Compensation.

For purposes of this Section 11.10, “compensation” means a Participant’s wages as defined in Code Section 3401(a) (wages subject to income tax withholding at the source) but without regard to exceptions contained in Code Section 3401(a) for wages based on the nature or location of employment or the services performed. The intent of this definition is to comply with the alternative definition of compensation described in Treasury Regulations Section 1.415-2(d)(11)(ii).

(n) Annual Additions.

For purposes of this Section 11.10, “annual additions” means the sum of the following amounts credited to a Participants account for the limitation year:

- (i) County contributions;
- (ii) Forfeitures;
- (iii) Nondeductible Employee Contributions, provided, however that the annual addition for any limitation year beginning before January 1, 1987

shall not be recomputed to treat nondeductible employee contributions as an annual addition; and

- (iv) Amounts allocated to an individual medical account, as defined in Section 415(1)(2) of the Code, which is part of a pension or annuity plan maintained by the County. Also, amounts derived from contributions paid or accrued after December 31, 1985, in taxable years ending after such date, which are attributable to post-retirement medical benefits allocated to the separate account of a key employee, as defined in Section 419A(d)(3) of the Code, maintained by the County, are treated as Annual Additions.

Annual Additions shall not include any amounts credited to the Participant's Account resulting from Rollover Contributions.

- (o) Adjustment Factor.

For purposes of this Section, "Adjustment Factor" means the cost of living adjustment factor prescribed by the Secretary of Treasury under Section 415(d) of the Code applied to such items and in such manner as the Secretary shall prescribe.

## ARTICLE XII: COUNTY ADMINISTRATIVE PROVISIONS

### **12.01 Information to Plan Administrator**

The County shall supply current information to the Plan Administrator as to the name, date of birth, Employment Commencement Date, annual Compensation, Leaves of Absences, Vesting, Eligibility, and Credited Service and date of Termination of Employment of each Employee who is, or who will be eligible to become, a Participant under the Plan, together with any other information which the Plan Administrator considers necessary. The County's records as to the current information the County furnishes to the Plan Administrator shall be conclusive as to all persons.

### **12.02 Indemnity of Trustees**

To the extent permitted by federal, state, or local law, the County agrees to indemnify and save harmless the Trustees, and each of them, from and against any and all losses resulting from liability to which the Trustees may be subjected by reason of any act or conduct (except willful misconduct or gross negligence) in their official capacities in the administration of the Plan, including all expenses reasonably incurred in their defense, in case the County fails to provide such defense. Notwithstanding the foregoing, the indemnification provisions of this Section 12.03 shall not relieve the Trustees from any liability they may have for breach of a fiduciary duty.

### **12.03 Amendment to Vesting Schedule**

Although the County reserves the right to amend the vesting schedule at any time, the Plan Administrator shall not apply the amended vesting schedule to reduce the Non-forfeitable percentage of any Participant's Accrued Benefit derived from County contributions (determined as of the later of the date the County adopts the amendment, or the date the amendment becomes effective) to a percentage less than the Non-forfeitable percentage computed under the Plan without regard to the amendment.

If the County makes a permissible amendment to the vesting schedule, each Participant having at least three (3) years of Vesting Service with the County may elect to have the percentage of his Non-forfeitable Accrued Benefit computed under the Plan without regard to the amendment. The Participant must file his election with the Plan Administrator within sixty (60) days of the latest of (a) the County's adoption of the amendment; (b) the effective date of the amendment; or (c) his receipt of a copy of the amendment. The Plan Administrator, as soon as practicable, shall forward a true copy of any amendment to the vesting schedule to each affected Participant, together with an explanation of the effect of the amendment, the appropriate form upon which the Participant may make an election to remain under the vesting schedule provided under the Plan prior to the amendment and notice of the time within which the Participant must make an election to remain under the prior vesting schedule. For purposes of this Section, an amendment to the vesting schedule includes any Plan amendment which directly or indirectly affects the computation of the Non-forfeitable percentage of an Employee's rights to his County-derived Accrued Benefit.

## **ARTICLE XIII: PARTICIPANT ADMINISTRATIVE PROVISIONS**

### **13.01 Beneficiary Destination**

Any Participant may from time to time designate, in writing, any person or persons to whom the Trustee shall pay various death benefits provided under the Plan in the event of his death. The Plan Administrator shall prescribe the form for the written designations of Beneficiary which, upon the Participant's filing the form with the County or Plan Administrator, shall revoke all designations filed prior to that date by the same Participant. Beneficiary designations may be made and/or maintained electronically, if the County has established a method that is reasonably calculated to provide accurate results.

### **13.02 No Beneficiary Designation**

If a Participant fails to name a Beneficiary in accordance with Section 13.01 of the Plan, or if the Beneficiary named by a Participant predeceases him or dies before complete distribution of all benefits payable under the Plan, then the Trustee shall pay such benefits in accordance with Article IX of the Plan in the following order of priority:

- (a) To the Participant's Surviving Spouse; or
- (b) if no Spouse is alive, to the Participant's surviving children, including legally adopted children, in equal shares; or
- (c) if no children are alive, to the Participant's surviving parents, in equal shares; or
- (d) if no parent is alive, to the legal representative of the estate of the last to die of the Participant and his Beneficiary.

The Plan Administrator shall direct the Trustee as to the method and to whom the Trustee shall make payment under this Section 13.02. If no Beneficiary can be determined in accordance with (a) through (d) above, the Participant's benefits shall remain a part of the Plan's assets until his Beneficiary is found.

### **13.03 Personal Data to Plan Administrator**

Each Participant and each Beneficiary of a deceased Participant must furnish to the Plan Administrator such evidence, data or information as the Plan Administrator considers necessary or desirable for the purpose of administering the Plan. The provisions of this Plan are effective for the benefit of each Participant upon the condition precedent that each Participant will furnish promptly full, true and complete evidence, data and information when requested by the Plan Administrator, provided the Plan Administrator shall advise each Participant of the effect of his failure to comply with its request.



#### **13.04 Address for Notification**

Each Participant and each Beneficiary of a deceased Participant shall file with the Plan Administrator from time to time, in writing, his post office address and any change of post office address. Any communication, statement or notice addressed to a Participant or Beneficiary, at his last post office address filed with the Plan Administrator or shown on the records of the County, shall bind the Participant or Beneficiary for all purposes of this Plan.

#### **13.05 Notice of Change in Terms**

The Plan Administrator shall furnish all Participants and Beneficiaries a summary description of any material amendment to the Plan or notice of discontinuance of the Plan and all other information required herein to be furnished without charge.

#### **13.06 Litigation Against the Trust**

If any legal action filed against the Trustee or against any individual(s) acting as the Plan Administrator, by or on behalf of any Participant or Beneficiary, results adversely to the Participant or to the Beneficiary, the Trustee shall reimburse itself or the Plan Administrator all costs and fees expended by it or them by surcharging all costs and fees against the sums payable under the Plan to the Participant or to the Beneficiary, but only to the extent a court of competent jurisdiction specifically authorizes and directs such surcharges and only to the extent the Code does not prohibit any such surcharges.

#### **13.07 Information Available**

Any Participant in the Plan or any Beneficiary may examine copies of the Plan, the Plan description, latest annual report, any bargaining agreement, contract, or any other instrument under which the Plan was established or is operated. The Plan Administrator will maintain all of the items listed in this Section 13.07 in his office, or in such other place or places as he may designate from time to time in order to comply with all applicable regulations, for examination during reasonable business hours. Upon the written request of a Participant or Beneficiary the Plan Administrator shall furnish him with a copy of any item listed in this Section 13.07. The Plan Administrator may make a reasonable charge to the requesting person for the copy so furnished. The Plan Administrator may provide Participants with any information required under any applicable federal or State of Georgia law via electronic communication, provided the electronic communication is not prohibited under such laws and the method of electronic communication is reasonably calculated to provide accurate results. A Beneficiary's right to (and the {Plan Administrator's or a Trustee's duty to provide to the Beneficiary) information or data concerning the Plan, shall not arise until the Beneficiary first becomes entitled to receive a benefit under the Plan.

#### **13.08 Appeal Procedure for Denial of Benefits**

- (a) The Plan Administrator shall provide adequate notice in writing to any Participant or to any Beneficiary ("Claimant") whose claim for benefits under the Plan has been denied. The Plan Administrator's notice to the Claimant shall set forth:

- (i) The specific reason for the denial;
  - (ii) Specific references to pertinent Plan provisions providing the basis for denial;
  - (iii) A description of any additional material and information needed for the Claimant to perfect his claim and an explanation of why the material or information is needed;
  - (iv) A statement that any appeal the Claimant wishes to make of the adverse determination must be in writing to the Plan Administrator within seventy-five (75) days after receipt of the Plan Administrator's written notice of denial; and
  - (v) A statement that failure to provide the written appeal of the adverse determination to the Plan Administrator in writing within the seventy-five (75) day period will render the Plan Administrator's determination final, binding and conclusive.
- (b) After receiving written notice of the denial of a claim, a Claimant or his representative may:
- (i) request a review of the denial by written application of the Plan Administrator,
  - (ii) review pertinent documents; and
  - (iii) submit issues and comments in writing to the Plan Administrator.
- (c) No later than sixty (60) days following the receipt of the written application for review, the Plan Administrator shall submit its decision on the review in writing to the Claimant and to his representative, if any. However, a decision on the written application for review may be extended, if special circumstances require an extension of time, to a day no later than one hundred twenty (120) days after the date of receipt of the written application for review. The decision shall include specific reasons for the decision and specific references to the pertinent provisions of the Plan on which the decision is based.

## **ARTICLE XIV: CONTRIBUTIONS AND ADMINISTRATION OF FUNDS**

### **14.01 Use of Trust Fund**

The terms of the Trust shall govern the establishment of the Trust Fund from which the benefits provided by the Plan shall be paid. All contributions paid over to the Trustees shall be invested in accordance with the terms of the Plan and Trust.

### **14.02 Use of Group Annuity Contracts**

In the discretion of the Trustee, the Plan may use one or more group annuity contracts as a funding vehicle in lieu of or in addition to the Trust. In the event of any conflict between terms of the Plan and those of any such group annuity contract, the terms of the Plan shall control.

### **14.03 Amount of County Contributions**

The County shall contribute to the Trust Fund such amounts that are necessary to fund benefits under the Plan, and shall contribute such additional amounts as the Trustees (based on the recommendation of the Actuary and Plan Administrator) deem necessary or desirable to maintain the actuarial soundness of the Plan. The Trustees may establish a formal funding policy for this purpose.

### **14.04 Use of Forfeitures**

Forfeitures and investment income attributable to contributions shall be used to reduce County contributions.

### **14.05 Contingent Nature of County Contributions**

Contributions made by the County are hereby made expressly contingent on the maintenance of the qualified status by the Plan for the year with respect to which such contribution is made.

### **14.06 Form of County Contribution**

The County may pay its contributions to the Trustees or Trust Fund manager in cash or cash equivalent or, if acceptable to the Trustees or Trust Fund manager, marketable securities.

**14.07 Exclusive Benefit**

Except as provided under Article III, Article XI, Section 14.06, and Section 15.06, the County shall have no beneficial interest in any asset of the Trust or Trust Fund and no part of any asset in the Trust or Trust Fund shall ever revert to or be repaid to the County, either directly or indirectly; nor prior to the satisfaction of all liabilities with respect to the Participants and their Beneficiaries under the Plan, shall any part of the corpus or income of the Trust Fund, or any asset of the Trust, be (at any time) used for or diverted to purposes other than the exclusive benefit of the Participants or their Beneficiaries.

**14.08 Condition for Refund of Contributions**

Notwithstanding Section 14.07 of the Plan, if and to the extent permitted by the Code and other applicable laws and regulations thereunder, upon the County's request, a contribution which is made by a mistake in fact shall be returned to the County within one (1) year after the mistaken payment of the contribution.

**14.09 Evidence**

Anyone required to give evidence under the terms of the Plan may do so by certificate, affidavit, document or other information which the person to act in reliance may consider pertinent, reliable and genuine, and to have been signed, made or presented by the proper party or parties. The Trustees shall be fully protected in acting and relying upon any evidence described under the immediately preceding sentence.

**14.10 No Responsibility for County Action**

The Trustees shall have no obligation or responsibility with respect to any action required by the Plan to be taken by the County, any Participant or eligible Employee.

**14.11 Waiver of Notice**

Any person entitled to notice under the Plan may waive the notice.

**14.12 Successors**

The Plan shall be binding upon all persons entitled to benefits under the Plan, their respective heirs and legal representatives, upon the County, its successors and assigns, and upon the Plan Administrator and its successors.

**14.13 Word Usage**

Words used in the masculine shall apply to the feminine where applicable, and wherever the context of the County's Plan dictates, the plural shall be read as the singular and the singular as the plural.

**14.14 State Law**

The laws of the State of Georgia shall determine all questions arising with respect to the provisions of this Agreement except to the extent Federal statute supersedes State law.

#### **14.15 Employment Not Guaranteed**

Nothing contained in this Plan, or any modification or amendment to the Plan, or in the creation of any account, or the payment of any benefit, shall give any Employee, Participant, or Beneficiary any right to continue employment, any legal or equitable right against the County or an Employee of the County, or against the Trustee or its agents or employees, or against the Plan Administrator, except as expressly provided by the Plan or by a separate agreement.

## **ARTICLE XV: AMENDMENT AND TERMINATION**

### **15.01 Amendment by the County**

The Plan may be amended at any time and from time to time, in the sole discretion of the County, by a written instrument executed by the County. Each amendment shall state the date to which it is either retroactively or prospectively effective. Any amendment which is required by the Internal Revenue Service in order for the Plan or Trust to qualify or continue to be qualified under the applicable provisions of the Code, or which in the judgment of the County is necessary or appropriate to such qualifications or continued qualification, may be made effective retroactively.

### **15.02 Limitations on Amendments**

- (a) No amendment shall be made that would jeopardize the qualified status of the Plan.
- (b) No amendment shall authorize or permit any portion of the Trust Fund (other than the part which is required to pay investment or administration expenses) to be used for or diverted to purposes other than for the exclusive benefit of the Participants or their Beneficiaries.
- (c) No amendment shall have the effect of decreasing a Participant's Non-forfeitable Accrued Benefit, including a change in the actuarial assumptions or in the Compensation levels used to determine a Participant's Normal Retirement Pension.
- (d) No amendment shall affect the rights, duties, or responsibilities of the Trustees without the written consent of the Trustees.

### **15.03 Termination or Freeze by the County**

By establishing the Plan, the County represents that the Plan is intended to be a permanent and continuing program for providing benefits to the Participants therein. However, the County shall have the right, at any time, to suspend or discontinue the Plan, and to terminate the Plan. The Plan shall terminate or freeze upon action of the County provided the County gives the Trustees ninety (90) days prior notice of termination.

### **15.04 Effect of Termination**

Upon termination of the Plan by the County, the provisions of Sections 15.08 of the Plan (relating to 100% vesting), 15.05 of the Plan (relating to allocation of Plan assets), and 15.06 of the Plan (relating to Plan assets in excess of Plan benefits) shall apply.

### **15.05 Distribution Upon Termination of Trust**

If the County terminates the Plan, the Trustees shall allocate assets of the Plan among the Participants and Beneficiaries according to the following priorities:

- (a) Benefits payable as an annuity, in the case of the benefit of a Participant or Beneficiary which was in pay status as of the termination date of the Plan, each such benefit, based on the provisions of the Plan under which such benefit would be the least;
- (b) All other Nonforfeitable benefits under the Plan; and
- (c) Any other benefits under the Plan.

If assets are insufficient to provide all benefits under the Plan, the Trustee shall allocate such assets to satisfy obligations within each category by order of priority. If assets are insufficient to provide all benefits under a priority category, the Trustee shall allocate assets to Participants within that category in the ratio which each Participant's total benefit bears to the total benefits of all Participants within that category.

#### **15.06 Over-funding**

If the County has over-funded the Plan at the time it terminates the Plan, the Trustee may return the amount by which the County has over-funded the Plan to the County after all liabilities under the Plan have been paid. The Plan's Actuary shall determine the amount of the over-funding. The County shall state by written request to the Trustee the amount of any over-funding it wishes the Trustee to return to it upon termination of the Plan.

#### **15.07 Notice Requirements**

Prior to the termination of the Plan, the County shall hold a hearing after giving prior written notice to each Employee stating the time, location, and purpose of such hearing, in addition to any other notice required by law. The purpose of such hearing shall be to provide information to and answer any question from the Employees as to any successor trustees, the provisions of any successor plan, the differences between the Plan and any successor plan, any effects of the proposed termination or withdrawal on the Employees, and all other relevant information.

#### **15.08 Full Vesting on Termination**

Notwithstanding any other provision of this Plan to the contrary, upon either full or partial termination of the Plan or the discontinuance of contributions under the Plan (i.e. a freeze), under Section 15.03 of the Plan, the Accrued Benefit of those Participants, Beneficiaries, and joint annuitants affected shall become one hundred percent (100%) vested and Non-forfeitable to the extent funded.

## **ARTICLE XVI: QUALIFIED GOVERNMENTAL EXCESS BENEFIT ARRANGEMENT**

### **16.01 Section 415(m) Arrangement**

This Article XVI shall provide additional benefits under the Plan for Participants whose Accrued Benefit exceeds the Maximum Permissible Dollar limitation under Section 11.10 of the Plan. The benefits provided under this Article XVI are intended to be provided under a qualified governmental excess benefit arrangement within the meaning of Section 415(m) of the Code and shall consist only of excess benefits that would otherwise be payable under the terms of Plan except for the limitations imposed by Code Section 415 and Section 11.10 of the Plan.

### **16.02 Benefits**

The amount of monthly benefit payable to a Participant under this Article XVI shall be determined by subtracting the amount determined under subsection (b) from the amount determined under subsection (a) where (a) and (b) are:

- (a) The amount of Pension payable to the Participant under the Plan, in the form of distribution elected by the Participant, disregarding Code Section 415 maximum benefits provisions of Section 11.10.
- (b) The amount of Pension payable to such a Participant under the Plan in the form of distribution elected by the Participant, as limited by Section 11.10. Excess benefit makes up for benefits forgone due to the application of 415 limits and due to the application of 401(a)(17) pay caps.

Any cost of living adjustment otherwise applicable to the Pension payable under the Plan shall also apply to the excess benefits payable under this Article XVI.

### **16.03 Payments to Participants**

Payment of excess benefits under this Article XV shall be made in the same form and at the same time as Pension payments under the Plan. Any designation of Beneficiary under the Plan shall also apply to the excess benefits payable under this Article.

### **16.04 Benefits Upon Reemployment**

If a Participant who is receiving benefits under the Plan is reemployed by the County, any excess benefits payable under this Article shall be treated in the same manner as his Pension payments under the Plan.

### **16.05 Limitations on Benefits**

In no event shall a Participant be entitled to receive total benefits from the Plan, including the benefits payable under this Article XVI, in excess of the benefits he would have received under Plan had the limitations under Code Section 415 and Section 401(a)17 not applied to the Plan.



#### **16.06 Errors and Omissions**

If an error or omission is discovered in the calculation of excess benefits under this Article XVI, appropriate, equitable adjustments may be made as soon as administratively practicable following the discovery of such error or omission.

#### **16.07 Taxes**

If all or any part of any Participant's or Beneficiary's benefits under this Article XVI shall be determined by the Internal Revenue Service to be subject to federal income tax in an earlier year than such benefit otherwise becomes distributable under the Plan, the Participant or Beneficiary shall have the right to receive an immediate benefit in an amount equal to the amount upon which the income tax due is based. If all or any part of any Participant's or Beneficiary's benefit under the Plan shall become subject to any estate, inheritance, income, employment or other tax which the County shall be required to pay or withhold, the County shall have the full power and authority to withhold and pay such tax out of distributions to the Participant or Beneficiary whose interests are so affected.

#### **16.08 Source of Funds**

Except as otherwise provided below, the County shall provide the excess benefits described in this Article from its general assets and ultimately shall have the obligation to pay all excess benefits due to Participants and Beneficiaries under this Article. No contribution from any Participant shall be required or permitted to fund the excess benefits under this Article. The County may provide for a separate rabbi trust to be used to fund the benefits payable under this Article. To the extent that funds in such trust are sufficient, the trust assets shall be used to pay benefits under this Article. If such trust assets are not sufficient to pay such benefits due, then the County shall have the obligation, and the Participant or Beneficiary, who is due such benefits, shall look to the County to provide such benefits.

#### **16.09 Trust**

The County shall transfer all or any portion of the funds necessary to fund benefits accrued under this Article to the Board of Trustees to be held and administered by the Trustees pursuant to the terms of the rabbi trust agreement. Each transfer into the trust shall be irrevocable as long as the County has any liability or obligations under this Article to pay excess benefits, such that the trust property is in no way subject to use by the County, provided, it is the intent of the County that the assets held by the trust are and shall remain at all times subject to the claims of the general creditors of the County in the case of insolvency as defined in the rabbi trust document. No Participant or Beneficiary shall have any interest in the assets held by the trust or in the general assets of the County other than as a general, nonsecured creditor. Accordingly, neither the County nor the Trustees shall grant a security interest in the assets held by the trust in favor of the Participants, Beneficiaries or any creditor.

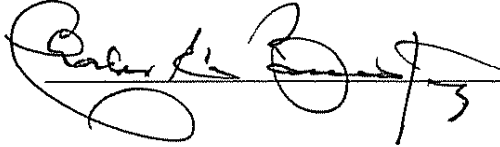
**GWINNETT COUNTY, GEORGIA**

Executed the 21<sup>st</sup> day of September, 2006

Title:

Chairman

Signature:



**APPROVED AS TO FORM:**  
Wendie K. Keels  
**DEPUTY COUNTY ATTORNEY**