To: Parties Interested In RFQP2019-15

From: Cindy Clack

Date: October 31, 2018

Re: RFQP2019-15 Professional Water System Engineering & Consulting Services

RFQP2019-15 is attached for your consideration. Anyone accessing this Request for Qualification-Based Proposal from the Barrow County website www.barrowga.org is responsible to insure the latest documents are in their possession including any addenda. All addenda, questions and answers will be posted on this site. *This site should be visited frequently to insure an awareness of any updates.*

Please insure proposals are submitted exactly as specified in the RFQP. If you have any questions, please submit them in writing as called for in the RFQP.

Thank you.
REQUEST FOR QUALIFICATION-BASED PROPOSALS
RFQP2019-15

PROFESSIONAL WATER SYSTEM ENGINEERING & CONSULTING SERVICES

BARROW COUNTY, GEORGIA
OCTOBER 31, 2018

DATE OF OPENING: NOVEMBER 29, 2018

Barrow County Board of Commissioners
30 North Broad Street; Winder, GA 30680
REQUEST FOR QUALIFICATION-BASED PROPOSALS
RFQP2019-15

PROFESSIONAL WATER SYSTEM ENGINEERING & CONSULTING SERVICES
BARROW COUNTY, GEORGIA

Date: October 31, 2018

PURPOSE:

The purposes of this Request are: 1) to provide interested professional firms (“Consultant”) with sufficient information to enable them to submit a uniform responsive qualification-based proposal (“Proposal”) for the County’s review; 2) to set forth a systematic method of evaluation that will be fair and impartial to all interested Consultants; and 3) to generate uniform Proposals for evaluation by the County. This RFQP is complex and requires your immediate and careful attention.

GENERAL:

Barrow County, Georgia (“Owner”) is in the process of securing competitive sealed qualification-based Proposals to provide professional water system engineering and consulting services. Said services shall include, but are not limited to, development plan reviews, preparation of plans, studies, permit applications, specifications, sketches, cost projections, reports, presentations, assessments, project construction coordination and oversight, engineering support for existing water distribution & transmission systems, etc., as specified and agreed to for each approved project.

It is intended that Owner will enter into a professional services agreement, on the form provided by the County, with a qualified Consultant for an initial period ending June 30, 2019 with the option to extend the agreement for up to 4 (four) additional one (1) year periods. Extensions will be predicated on satisfactory performance and funds availability.

Regular and Uniform Proposal: Each Consultant must comply with all requirements for a regular Proposal as directed or required by this Request. Notice is hereby given to all proposing Consultants that Proposals found to be defective or irregular in any respect may be rejected immediately. To facilitate comparative analysis and evaluation of Proposals, a uniform format shall be employed in structuring each Proposal. The required format will coincide with specifications given later in this request. The Consultant’s degree of compliance with the requirements of this request will be a factor in the subsequent evaluation and award of the contract for the designated services. All instructions contained herein and attachments hereto shall constitute an integral part of this RFQP.
INQUIRIES: Proposing Consultants, or their representatives or agents shall not contact any members, or employees, of the Barrow County Board of Commissioners or any Barrow County Elected Official or employee of any Barrow County Elected Official regarding this RFQP, Proposal evaluation, or selection process from the time the RFQP is issued until the time a notification of intent to award is announced. Questions relating to this RFQP must be submitted in writing to: Cindy Clack, Senior Buyer (email: cclack@barrowga.org). The deadline for submission of questions relating to this RFQP shall be 12:00 (noon) “Local Time”, Tuesday, November 20, 2018, All questions submitted in writing prior to the deadline will be compiled, answered in writing, and posted to the website as an addendum.

SEALED PROPOSAL: An original and five copies of the Proposal must be submitted in a sealed envelope/package, addressed to Owner. Each sealed envelope/package containing a Proposal must be plainly marked on the outside as “RFQP2019-15 Professional Water System Engineering and Consulting Services”. If the Proposal is forwarded by mail, the sealed envelope/package containing the Proposal must be enclosed in another envelope/package to the attention of the Owner at the address below and also marked on the outside as “RFQP2019-15 Professional Water System Engineering and Consulting Services”. The Owner will not be responsible for late mail deliveries, and no Proposal will be accepted if received after the time as stipulated by this RFQP. No Proposal may be withdrawn or modified in any way after the deadline for the RFQP opening. FAILURE TO COMPLY WITH THE ABOVE INSTRUCTIONS WILL RESULT IN DISQUALIFICATION.

PROPOSALS SHALL BE SUBMITTED TO:
Barrow County Board of Commissioners
Danielle Austin, County Clerk’s Office
30 North Broad Street
Winder, GA 30680

EVENTS: The following dates and times apply to this RFQP:

1. Issue Request for Proposal ---------------October 31, 2018
2. Deadline for Questions ---------------November 20, 2018 (12:00 Noon “Local Time”) 
3. Proposal Due Date ----------------------November 29, 2018 (12:00 Noon “Local Time”) 
4. Proposal Opening -----------------------November 29, 2018 (2:00 P.M. “Local Time”) 
5. Selection Recommendation to BOC ----Within sixty (60) days of opening of Proposals
6. Award of Agreement If Approved--------Within sixty (60) days of opening of Proposals

Sealed Proposals will be accepted no later than 12:00 p.m. (Noon “Local Time”) Thursday, November 29, 2018. Any Proposal received after said time and date will not be considered by Owner. Proposals will be opened in the Historic Courthouse Conference Room at 30 North Broad Street at 2:00 p.m. “Local Time”, November 29, 2018. Proposals will be reviewed and a recommendation will be presented, if it is
presented, to the Barrow County Board of Commissioners. Award of the contract is anticipated within sixty (60) days of opening of Proposals.

QUALIFICATIONS OF PROPOSING CONSULTANT:

- Each proposing consultant shall provide a general overview of the company and the proposed sub-consultants.
- Each proposing consultant shall provide a qualification statement addressing the specialized design and technical competence of the firm and key personnel.
- Proposing consultant shall provide the names of key team members including the project manager that would be assigned to/involved with Owner’s projects along with individual personal resumes.
- Proposing consultant shall provide the names and addresses of anticipated subs that would be assigned to/involved with Owner’s projects:
  a) Environmental
  b) Mechanical
  c) Electrical
  d) Surveying
  e) Other
- Proposing consultant shall provide a list of at least five (5) representative projects which are providing or have provided the same or similar type of service within the past five (5) years and shall provide a contact person and telephone number. The reference list shall include current clients. Owner reserves the right to contact clients for reference checks.
- Proposing consultant should indicate ability to begin work on approved projects upon receipt of the executed Agreement by Barrow County.
- Proposing consultant should provide a statement that it is capable and willing to comply with Owner’s Insurance Requirements.

PRICING: Pricing shall be furnished for five (5) consecutive fiscal years as follows:
  FY19 (Date of executed Agreement – June 30, 2019)
  FY20 (July 1, 2019 – June 30, 2020)
  FY21 (July 1, 2020 – June 30, 2021)
  FY22 (July 1, 2021 – June 30, 2022)
  FY23 (July 1, 2022 – June 30, 2023)

- Tiered hourly rates based on classifications and work types. Such rates shall be inclusive of overhead costs. Rates should be identified for key personnel such as project manager, project engineer, etc.
- Mark-up of sub-contractor’s expenses should be identified.
- Travel and other chargeable expenses shall also be identified.
**PROPOSAL CONTENT:** The proposals submitted shall be structured in the following manner (please use tabs and include an original (un-bound) and five copies):

- Proposal Form (Use attached document with Fee Schedule).
- Executive Summary or Letter of Introduction (include statement company is independent of any water equipment vendor or supplier, etc). Place Non-Collusion Affidavit in this section.
- Qualifications and Experience as called for in the attached Scope of Services.
- Team Members & Resumes.
- References – Current/Past Projects (Use attached 2 page document included in RFQP). Include local government contracts where company has successfully implemented systems.
- Optional Information Not Covered Above That The Proposer Deems Relevant.
- Executed Agreement (See Instructions below)*.
- Financial Disclosure: In a separate sealed envelope addressed to the Barrow County Chief Financial Officer as “CONFIDENTIAL”, include your most current Financial Statement to include balance sheet, income statement and cash flow.

Proposals are to be limited to thirty-five (35) pages single sided (this does not include the Non-Collusion Affidavit or the Executed Agreement).

*All submitting Consultants are required to execute the Professional Services Agreement included in this package to indicate the willingness to comply with all terms of the Professional Services Agreement and to submit the executed Professional Services Agreement with the proposal (please leave date and amount of agreement blank). Upon award of the Project to the winning Consultant, the County will execute the Professional Services Agreement. Please be advised that the Consultant’s execution of the Professional Services Agreement prior to the award of the Project does not constitute the acceptance of an offer by the County or otherwise bind the County in any way until such time as the County executes the Professional Services Agreement. Exhibit D (Contractor Affidavit and Agreement) to the Professional Services Agreement must be completed, executed and submitted with the Proposal or the County must deem it non-responsive and give such proposal no further consideration.

**RIGHT TO SUBMITTED MATERIALS:** All responses, inquires, or correspondence relating or in reference to this schedule, exhibit, and other documentation by the proposing Consultant shall be properly identified with their Firm name and will become the property of the Owner upon receipt by the County.

**EVALUATION AND SELECTION:** Proposals timely received by the County will be reviewed and one Proposal may be selected that, in the opinion of the Owner, is most advantageous to Barrow County in meeting the needs of the County for this Project.

Barrow County reserves the right to reject any and all Proposals submitted, or where it may serve the best interest of the County, to request additional information or
clarification from those submitting Proposals. The County, in its sole discretion, also reserves the right to waive any informalities or technicalities relative to any or all Proposals. Where two or more Firms are deemed equal, the County reserves the right to make the award to one of the Firms. At the County’s discretion, presentations may be requested as part of the evaluation process. Barrow County reserves the right to retain all Proposals submitted, and to use any idea in any Proposal regardless of whether that Proposal is selected.

There is no expressed or implied obligation for Barrow County to reimburse any Firm for any expense incurred in preparing or presenting a Proposal in response to this RFQP.

Interested Consultants should note the following information:

1. It is extremely important that the project schedules are met. Only those Consultants or teams with the necessary resources and a commitment to complete all project design work on schedule should submit a proposal.
2. The County will expect to liaison with a single project manager representing the selected engineering company and any subcontractors.
3. All drafting and design work shall be done utilizing AutoCad. The selected Consultant shall be solely responsible for professional quality and technical accuracy.

DOCUMENTS: The following are included in this “Request For Qualification-Based Proposals”:

- Memo (1 Page)
- Request For Qualification-Based Proposals (7 Pages)
- Scope of Services (2 Pages)
- Proposal Form (1 Page)
- References document (2 Pages)
- Non-Collusion Affidavit (1 Page)
- Professional Services Agreement (26 Pages)
- Barrow County Code of Ethics (30 Pages)

INSURANCE REQUIREMENTS:

- All Consultants and subcontractors shall provide certificates of insurance to the County for the minimum amounts of insurance prescribed by the County’s Standard Professional Services Agreement and shall comply with all other insurance requirements contained therein.
- Contract will not be awarded until the appropriate certificates of insurance are in the possession of the Purchasing Office.
- Indemnification. See Standard Professional Services Agreement.

FIRM PRICE: Fees quoted by vendor shall be firm for the duration of the project and shall not include Federal or State Tax. Invoices covering required services payable by the County will be paid Net 30 days from date of invoice. Reference the enclosed Agreement for Barrow County’s payment process.
ASSIGNMENT OF CONTRACTUAL RIGHTS: It is agreed that the proposing Consultant selected will not assign, transfer, convey, or otherwise dispose of a contract that results from this invitation or his right, title, or interest in or to the same, any part thereof, without written consent by the Owner.
RFQP2019-15 PROFESSIONAL WATER SYSTEM ENGINEERING & CONSULTING SERVICES

SCOPE OF SERVICES

Barrow County is seeking to obtain professional engineering services for its water system.

The successful firm must demonstrate experience in successfully designing water distribution & transmission systems.

Services shall include, but are not limited to, development plan reviews, preparation of plans, studies, permit applications, specifications, sketches, cost projections, reports, presentations, assessments, rate studies, project construction coordination and oversight, engineering support for existing water systems, etc., as specified and agreed to for each approved project.

All design work shall be completed using AutoCad.

The consultant will develop projects from concept through permitting design and construction. The consultant may develop rate studies, cost analysis and reports. The consultant will be expected to assist Barrow County with procurement of potential funding, EPD approval, and other items that may be required to get the projects constructed to include surveying and easement acquisition. Capital cost estimates will be required early during the project development stages to allow the County to plan for the capital resources needed for the water system development. The consultant may assist with utility relocation design. The consultant may be requested to participate in the Comprehensive Plan update to better define the water needs for the land use plans that are developed. Participates in internal and external meetings involving engineering questions and issues, as requested by the Public Works Director. Attends County Commission meetings and other County meetings, as needed. The consultant should be familiar with preparing such documents as O&M Manuals, etc.

In addition to the types of projects described, anticipated projects included for this term are as follows.

- Updating water development standards & specification
- Updating GIS shapefiles of water distribution & Transmission system
- Utility relocation projects associated with GDOT projects
- Develop plan to address water loss within distribution system
- Water system modeling
- Updating Water System Master Plan
- Updating Water Supply Plan
- Updating Conservation Plan
- Other projects as assigned
Order of projects will be determined. Projects are contingent upon the budgeting and appropriation of funds.

The Consultant shall obtain and maintain delegated authority to review sewer development drawings and related documents submitted by land developers and make recommendation’s to the Water Utility Manager or Public Works Director. As applicable, the Consultant shall submit developer plans with related documents to the Georgia EPD for regulatory approval of developer projects. Construction Inspection Services shall be provided by the County unless otherwise requested by the Water Utility Manager or Director of Public Works.
PROPOSAL FORM
(SUBMIT ORIGINAL (UNBOUND) and 4 COPIES)


SUBMITTED TO: Barrow County Board of Commissioners

SUBMITTED BY (NAME, ADDRESS AND TELEPHONE NUMBER OF COMPANY):
___________________________________
___________________________________
___________________________________
___________________________________

Barrow County Board of Commissioners:

Having carefully examined the Request For Qualification-Based Proposals and Related Documents for RFQP2019-15, and Addenda ________________________, the undersigned proposes to furnish Professional Water System Engineering & Consulting Services per the Scope of Services for the following amount:

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Attached are the documents as called for in the RFQP.

Signed, sealed, and dated this _____ Day of ____________, 2018.

Proposer: _________________________(Seal)
(Company Name)

By: ________________________________
Title: ______________________________
# REQUEST FOR QUALIFICATION-BASED PROPOSALS

**RFQP2019-15 – PROFESSIONAL WATER SYSTEM ENGINEERING & CONSULTING SERVICES**

**BARROW COUNTY, GEORGIA**

**REFERENCES - CURRENT/PAST PROJECTS**

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NON-COLLUSION AFFIDAVIT
RFQP2019-15
(This Affidavit is Part of the Proposal Documents)

PROPOSAL DATE: ______________________________

PROJECT DESCRIPTION: _______________________________________________

STATE OF GEORGIA

COUNTY OF BARROW

____________________________________________, being first duly sworn, deposes

and says that he/she is ________________________________ (sole owner,

partner, president, etc.) of ________________________________, the party

making the foregoing Proposal or Bid; that such Proposal/Bid is genuine and not
collusive or sham; that said Proposer/Bidder has not colluded, conspired, connived, or

agreed, directly or indirectly, with any Proposer, Bidder, or person, to put in a sham
Proposal/Bid, or that such other person refrain from bidding, and has not in any manner,
directly or indirectly sought by agreement or collusion, or communication or conference,

with any person, to fix the Proposal/Bid Price of affiant or any other Proposer/Bidder, or
to fix any overhead, profit or cost element of said Proposal/Bid Price, or of that of any
other Proposer/Bidder, or to secure any advantage against Barrow County, or any person
interested in the proposed Agreement; and that all statements in said Proposal/Bid are
true; and further, that such Proposer/Bidder has not, directly or indirectly submitted this
Proposal/Bid, or the contents thereof, or divulged information or data relative thereto to
any association or to any member or agent thereof.

Affiant: _________________________________________________

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

______________________________________
Notary Public

My Commission Expires ____________________, 20____.
PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this____ day of _____________, 20____ (the “Effective Date”), by and between BARROW COUNTY, GEORGIA, a political subdivision of the State of Georgia, acting by and through its governing authority, the Barrow County Board of Commissioners (hereinafter referred to as the “County”), and ________________________________, a __________________________, (hereinafter referred to as the "Consultant"), collectively referred to herein as the "Parties."

WITNESSETH:

WHEREAS, County desires to retain Consultant to provide certain services generally described as professional water system engineering & consulting services related to the Barrow County water system; and

WHEREAS, County finds that specialized knowledge, skills, and training are necessary to perform the Work contemplated under this Agreement; and

WHEREAS, Consultant has represented that it is qualified by training and experience to perform the Work; and

WHEREAS, Consultant desires to perform the Work as set forth in this Agreement under the terms and conditions provided in this Agreement; and

WHEREAS, the public interest will be served by this Agreement; and

WHEREAS, Consultant has familiarized itself with the nature and extent of the Agreement, and the Work, and with all local conditions and federal, state and local laws, ordinances, rules and regulations that may in any manner affect cost, progress or performance of Work.

NOW, THEREFORE, for and in consideration of the mutual promises, the public purposes, and the acknowledgements and agreements contained herein, and other good and adequate consideration, the sufficiency of which is hereby acknowledged, the Parties do mutually agree as follows:

I. SCOPE OF SERVICES AND TERMINATION DATE

A. Agreement. The Agreement shall consist of this Professional Services Agreement and each of the Exhibits hereto, which are incorporated herein by reference, including:

   Exhibit “A” – County Solicitation Documents (RFQP2019-15)
   Exhibit “B” – Consultant’s Response/Proposal/Fee Schedule
   Exhibit “C” – Scope of Services
   Exhibit “D” – Contractor Affidavit
   Exhibit “E” – Subcontractor Affidavit
   Exhibit “F” – Key Personnel
B. **Project Description.** Consultant shall provide professional water system engineering & consulting services related to the Barrow County water system on a project by project basis per scope of services in RFQP2019-15.

C. **Applicability.** This Master Agreement shall apply to Task Orders (defined below) referencing and incorporating this Master Agreement, each of which must be executed by the parties in writing.

D. **Definitions.** “Agreement” means this Master Agreement; the Task Order referencing and incorporating this Master Agreement, which shall specify, among other things, the specific Work to be provided by Consultant under this Agreement and the compensation to be paid related to same; and any other attachments thereto, all of which are incorporated herein by this reference. In interpreting this Agreement and resolving ambiguities, this Master Agreement shall take precedence over any Task Order, and the Task Order shall take precedence over any attachment.

E. **The Work.** The Consultant shall provide professional engineering services in fulfillment of County needs, requirements, and/or obligations for specific projects as directed, from time to time, by the County (hereinafter referred to as “Projects” or “Task Orders,” which terms shall be interchangeable), collectively the “Work.” The professional engineering services provided by the Consultant pursuant to this Agreement shall include, but shall not be limited to, preparation of plans, studies, permit applications, specifications, sketches, cost projections, reports, presentations, assessments, project construction coordination and oversight, engineering support for existing water systems, etc., as specified and agreed for each approved project. The Work contemplated to be performed hereunder by Consultant is more particularly set forth in the County’s Request for Proposal (RFQP2019-15), dated October 31, 2018, (hereinafter referred to as the “RFQP”). A copy of the RFQP is attached as Exhibit “A” hereto and is incorporated herein by reference, and a copy of the Consultant’s Proposal is attached hereto as Exhibit “B” and incorporated herein by reference.

F. **Schedule, Completion Date, and Term of Agreement** Consultant warrants and represents that it will perform its services in a prompt and timely manner, which shall not impose delays on the progress of the Work. This Agreement shall commence as of the date first written above shall terminate on June 30, 2019; provided that this Agreement may be renewed by the County for up to four additional one (1) year periods. If the Term of this Agreement is longer than one year, the Parties agree that this Agreement, as required by O.C.G.A. § 36-60-13, shall terminate absolutely and without further obligation on the part of the County at the close of the County’s fiscal year during each year of the Term, and further, that this Agreement shall automatically renew upon the start of each subsequent fiscal year absent the County’s provision of written notice of non-renewal to Consultant at least five (5) days prior to the end of the then current fiscal year. Title to any supplies, materials, equipment, or other personal property shall remain in Consultant until fully paid for by the County.
II. WORK CHANGES

A. **Change Order Defined.** A “Change Order” means a written modification of the Agreement, signed by representatives of County and Consultant with appropriate authorization.

B. **Right to Order Changes.** County reserves the right to order changes in the Work to be performed under this Agreement by altering, adding to, or deducting from the Work. All such changes shall be incorporated in written Change Orders and executed by Consultant and County. Such Change Orders shall specify the changes ordered and any necessary adjustment of compensation and completion time. If the Parties cannot reach an agreement on the terms for performing the changed work within a reasonable time to avoid delay or other unfavorable impacts as determined by County in its sole discretion, County shall have the right to determine reasonable terms, and Consultant shall proceed with the changed work.

B. **Change Order Requirement.** Any work added to the scope of this Agreement by a Change Order shall be executed under all the applicable conditions of this Agreement. No claim for additional compensation or extension of time shall be recognized, unless contained in a written Change Order duly executed on behalf of County and Consultant.

C. **Authority to Execute Change Order.** The County Manager has authority to execute, without further action of the Barrow County Board of Commissioners, any number of Change Orders so long as their total effect does not materially alter the terms of this Agreement or materially increase the Maximum Contract Price, as set forth in Section III(B) below. Any such Change Orders materially altering the terms of this Agreement, or any Change Order increasing the price by more than twenty-five thousand dollars ($25,000.00), must be approved by resolution of the Barrow County Board of Commissioners.

III. COMPENSATION AND METHOD OF PAYMENT

A. **Payment Terms.** County agrees to pay Consultant for the Work performed by Consultant upon certification by County that the Work was actually performed in accordance with the Agreement. Compensation for Work performed shall be paid to Consultant upon County’s receipt and approval of invoices, setting forth in detail the services performed, along with all supporting documents requested by County to process the invoice. Invoices shall be submitted on a monthly basis. Any material deviations in tests or inspections performed, or times or locations required to complete such tests or inspections, and like deviations from the Work described in this Agreement shall be clearly communicated to County before charges are incurred and shall be handled through Change Orders as described in Section II above. County shall pay Consultant within thirty (30) days after approval of the invoice by County staff.

B. **Compensation.** The total amount paid for Work performed and reimbursement for costs incurred for any individual project (task order) completed pursuant to this Agreement shall not, in any case, exceed $25,000.00, except upon separate approval by the Barrow County Board of Commissioners. **The compensation for Work performed shall be based upon specified hourly rates and costs provided in the Proposal Documents, attached hereto as Exhibit “B”**
and incorporated herein by reference, which rates and costs shall be used in negotiating an individual Task Order to be executed by both Parties. Each individual Task Order shall contain a not to exceed amount of compensation for the defined scope of work described for that task. A Task Order, with an associated purchase order number generated by the Barrow County Purchasing Department, will be executed by the Consultant and County for each Project. Each Task Order shall reference and incorporate the terms of this Master Agreement.

C. Reimbursement for Costs. The Maximum Contract Price set forth in Section III(B) above includes all costs, direct and indirect, needed to perform the Work and complete the Project.

IV. COVENANTS OF CONSULTANT

A. Expertise of Consultant; Licenses, Certification and Permits. Consultant accepts the relationship of trust and confidence established between it and County, recognizing that County’s intention and purpose in entering into this Agreement is to engage an entity with the requisite capacity, experience, and professional skill and judgment to provide the Work in pursuit of the timely and competent completion of the Work undertaken by Consultant under this Agreement. Consultant shall employ only persons duly qualified in the appropriate area of expertise to perform the Work described in this Agreement.

Consultant covenants and declares that it has obtained all diplomas, certificates, licenses, permits or the like required of Consultant by any and all national, state, regional, county, or local boards, agencies, commissions, committees or other regulatory bodies in order to perform the Work contracted for under this Agreement. Further, Consultant agrees that it will perform all Work in accordance with the standard of care and quality ordinarily expected of competent professionals and in compliance with all federal, state, and local laws, regulations, codes, ordinances, or orders applicable to the Project, including, but not limited to, any applicable records retention requirements and Georgia’s Open Records Act (O.C.G.A. § 50-18-71, et seq.). Any additional work or costs incurred as a result of error and/or omission by Consultant as a result of not meeting the applicable standard of care or quality will be provided by Consultant at no additional cost to County. This provision shall survive termination of this Agreement.

B. Budgetary Limitations. Consultant agrees and acknowledges that budgetary limitations are not a justification for breach of sound principles of Consultant’s profession and industry. Consultant shall take no calculated risk in the performance of the Work. Specifically, Consultant agrees that, in the event it cannot perform the Work within the budgetary limitations established without disregarding sound principles of Consultant’s profession and industry, Consultant will give written notice immediately to County.

C. County’s Reliance on the Work. Consultant acknowledges and agrees that County does not undertake to approve or pass upon matters of expertise of Consultant and that, therefore, County bears no responsibility for Consultant’s Work performed under this Agreement. Consultant acknowledges and agrees that the acceptance of Work by County is limited to the function of determining whether there has been compliance with what is required to be produced under this Agreement. County will not, and need not, inquire into adequacy, fitness, suitability or
correctness of Consultant’s performance. Consultant further agrees that no approval of designs, plans, specifications or other work product by any person, body or agency shall relieve Consultant of the responsibility for adequacy, fitness, suitability, and correctness of Consultant’s Work under professional and industry standards, or for performing services under this Agreement in accordance with sound and accepted professional and industry principles.

D. Consultant’s Reliance on Submissions by County. Consultant must have timely information and input from County in order to perform the Work required under this Agreement. Consultant is entitled to rely upon information provided by County, but Consultant shall provide immediate written notice to County if Consultant knows or reasonably should know that any information provided by County is erroneous, inconsistent, or otherwise problematic.

E. Consultant’s Representative. shall be authorized to act on Consultant’s behalf with respect to the Work as Consultant’s designated representative, provided that this designation shall not relieve either Party of any written notice requirements set forth elsewhere in this Agreement.

F. Assignment of Agreement. Consultant covenants and agrees not to assign or transfer any interest in, or delegate any duties of this Agreement, without the prior express written consent of County. As to any approved subcontractors, Consultant shall be solely responsible for reimbursing them, and County shall have no obligation to them.

G. Responsibility of Consultant and Indemnification of County. Consultant covenants and agrees to take and assume all responsibility for the Work rendered in connection with this Agreement. Consultant shall bear all losses and damages directly or indirectly resulting to it and/or County on account of the performance or character of the Work rendered pursuant to this Agreement. Consultant shall defend, indemnify and hold harmless County and County’s elected and appointed officials, officers, boards, commissions, employees, representatives, consultants, servants, agents, attorneys and volunteers (individually an “Indemnified Party” and collectively “Indemnified Parties”) from and against any and all claims, suits, actions, judgments, injuries, damages, losses, costs, expenses and liability of any kind whatsoever, including but not limited to attorney’s fees and costs of defense (“Liabilities”), which may arise from or be the result of an alleged willful, negligent or tortious act or omission arising out of the Work, performance of contracted services, or operations by Consultant, any subcontractor, anyone directly or indirectly employed by Consultant or subcontractor or anyone for whose acts or omissions Consultant or subcontractor may be liable, regardless of whether or not the act or omission is caused in part by a party indemnified hereunder; provided that this indemnity obligation shall only apply to the extent Liabilities are caused by or result from the negligence, recklessness, or intentionally wrongful conduct of the Consultant or other persons employed or utilized by the Consultant in the performance of this Agreement. This indemnity obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this provision.

In any and all claims against an Indemnified Party, by any employee of Consultant, its subcontractor, anyone directly or indirectly employed by Consultant or subcontractor or anyone for whose acts Consultant or subcontractor may be liable, the indemnification obligation set forth
in this provision shall not be limited in any way by any limitation on the amount or type of
damages, compensation or benefits payable by or for Consultant or any subcontractor under
workers’ or workmen’s compensation acts, disability benefit acts or other employee benefit acts.
This obligation to indemnify, defend, and hold harmless the Indemnified Party(ies) shall survive
expiration or termination of this Agreement, provided that the claims are based upon or arise out
of actions or omissions that occurred during the performance of this Agreement.

H. Independent Contractor. Consultant hereby covenants and declares that it is
engaged in an independent business and agrees to perform the Work as an independent contractor
and not as the agent or employee of County. Nothing in this Agreement shall be construed to make
Consultant or any of its employees, servants, or subcontractors, an employee, servant or agent of
County for any purpose. Consultant agrees to be solely responsible for its own matters relating to
the time and place the Work is performed and the method used to perform such Work; the
instrumentalities, tools, supplies and/or materials necessary to complete the Work; hiring of
consultants, agents or employees to complete the Work; and the payment of employees, including
benefits and compliance with Social Security, withholding and all other regulations governing
such matters. Consultant agrees to be solely responsible for its own acts and those of its
subordinates, employees, and subcontractors during the life of this Agreement. There shall be no
contractual relationship between any subcontractor or supplier and County by virtue of this
Agreement with Consultant. Any provisions of this Agreement that may appear to give County
the right to direct Consultant as to the details of the services to be performed by Consultant or to
exercise a measure of control over such services will be deemed to mean that Consultant shall
follow the directions of County with regard to the results of such services only. It is further
understood that this Agreement is not exclusive, and County may hire additional entities to perform
the Work related to this Agreement.

Inasmuch as County and Consultant are independent of each other, neither has the authority
to bind the other to any third person or otherwise to act in any way as the representative of the
other, unless otherwise expressly agreed to in writing signed by both Parties hereto. Consultant
agrees not to represent itself as County’s agent for any purpose to any party or to allow any
employee of Consultant to do so, unless specifically authorized, in advance and in writing, to do
so, and then only for the limited purpose stated in such authorization. Consultant shall assume full
liability for any contracts or agreements Consultant enters into on behalf of County without the
express knowledge and prior written consent of County.

I. Insurance.

(1) Requirements: Consultant shall have and maintain in full force and effect
for the duration of this Agreement, insurance insuring against claims for
injuries to persons or damages to property which may arise from or in
connection with the performance of the Work by Consultant, its agents,
representatives, employees or subcontractors. All policies shall be subject
to approval by County as to form and content. These requirements are
subject to amendment or waiver if so approved in writing by the County
Manager.
(2) **Minimum Limits of Insurance:** Consultant shall maintain the following insurance policies with coverage and limits no less than:

(a) Commercial General Liability coverage of at least $1,000,000 (one million dollars) combined single limit per occurrence for comprehensive coverage including for bodily and personal injury, sickness, disease or death, injury to or destruction of property, including loss of use resulting therefrom. If general aggregate limit applies, the general aggregate limit shall be twice the required occurrence limit.

(b) Commercial Automobile Liability (owned, non-owned, hired) coverage of at least $1,000,000 (one million dollars) combined single limit per occurrence for comprehensive coverage including bodily and personal injury, sickness, disease or death, injury to or destruction of property, including loss of use resulting therefrom.

(c) Valuable Papers Coverage in an amount sufficient to assure the restoration of any plans, drawings, field notes, or other similar data relating to the Work covered by this Agreement.

(c) Professional Liability of at least $1,000,000 (one million dollars) limit for claims arising out of professional services and caused by Consultant’s errors, omissions, or negligent acts.

(d) Workers’ Compensation limits as required by the State of Georgia and Employers’ Liability limits of $1,000,000 (one million dollars) per occurrence or disease. (If Consultant is a sole proprietor, who is otherwise not entitled to coverage under Georgia’s Workers’ Compensation Act, Consultant must secure Workers’ Compensation coverage approved by both the State Board of Workers’ Compensation and the Commissioner of Insurance. The amount of such coverage shall be the same as what is otherwise required of employers entitled to coverage under the Georgia Workers’ Compensation Act. Further, Consultant shall provide a certificate of insurance indicating that such coverage has been secured and that no individual has been excluded from coverage.)

If higher limits are maintained by Consultant than shown above, the County shall be entitled to coverage for any additional insurance proceeds in excess of the specified minimum limits maintained by the Consultant.

(3) **Deductibles and Self-Insured Retentions:** Any deductibles or self-insured retentions must be declared to and approved by County in writing so that County may ensure the financial solvency of Consultant; self-insured retentions should be included on the certificate of insurance.
Other Insurance Provisions: Each policy shall contain, or be endorsed to contain, the following provisions respectively:

(a) General Liability, Automobile Liability and (if applicable) Umbrella Liability Coverage.

(i) Additional Insured Requirement. County and County’s elected and appointed officials, officers, boards, commissioners, employees, representatives, consultants, servants, agents and volunteers (individually “Insured Party” and collectively “Insured Parties”) shall be named as additional insureds as respects: liability arising out of activities performed by or on behalf of Consultant; products and completed operations of Consultant; premises owned, leased, or used by Consultant; automobiles owned, leased, hired, or borrowed by Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the Insured Parties. Nothing contained in this section shall be construed to require the Consultant to provide liability insurance coverage to any Insured Party for claims asserted against such Insured Party for its sole negligence.

(ii) Primary Insurance Requirement. Consultant’s insurance coverage shall be primary noncontributing insurance as respects to any other insurance or self-insurance available to the Insured Parties. Any insurance or self-insurance maintained by the Insured Parties shall be in excess of Consultant’s insurance and shall not contribute with it.

(iii) Reporting Requirement. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Insured Parties.

(iv) Separate Coverage. Coverage shall state that Consultant’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to limits of insurance provided.

(v) Defense Costs/Cross Liability. Coverage shall be provided on a “pay on behalf” basis, with defense costs payable in addition to policy limits. There shall be no cross liability exclusion.

(vi) Subrogation. The insurer shall agree to waive all rights of
subrogation against the Insured Parties for losses arising from Work performed by Consultant for County.

(b) **Workers’ Compensation Coverage.** The insurer providing Workers’ Compensation Coverage will agree to waive all rights of subrogation against the Insured Parties for losses arising from Work performed by Consultant for County.

(c) **All Coverages.**

(i) **Notice Requirement.** Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be reduced, suspended, voided, or canceled except after thirty (30) calendar days prior written notice (or 10 calendar days if due to non-payment) has been given to County. In addition, Consultant shall provide written notice to County at least thirty (30) days prior to any reduction, suspension, voiding, or cancellation of coverage. County reserves the right to accept alternate notice terms and provisions, provided they meet the minimum requirements under Georgia law.

(ii) **Starting and Ending Dates.** Policies shall have concurrent starting and ending dates.

(iii) **Incorporation of Indemnification Obligations.** Policies shall include a Project-specific endorsement incorporating the indemnification obligations assumed by Consultant under the terms of this Agreement, including but not limited to Section IV(G) of this Agreement.

(5) **Acceptability of Insurers:** The insurance to be maintained by Consultant must be issued by a company licensed or approved by the Insurance Commissioner to transact business in the State of Georgia. Such insurance policies shall be placed with insurer(s) with an A.M. Best Policyholder’s rate of no less than “A-” and with a financial rating of Class VII or greater. The Consultant shall be responsible for any delay resulting from the failure of its insurer to provide proof of coverage in the proscribed form.

(6) **Verification of Coverage:** Consultant shall furnish to County for County approval certificates of insurance and endorsements to the policies evidencing all coverage required by this Agreement prior to the start of work. Without limiting the general scope of this requirement, Consultant is specifically required to provide an endorsement naming County as an additional insured when required. The certificates of insurance and endorsements for each insurance policy are to be on a form utilized by
Consultant’s insurer in its normal course of business and are to be signed by a person authorized by that insurer to bind coverage on its behalf, unless alternate sufficient evidence of their validity and incorporation into the policy is provided. County reserves the right to require complete, certified copies of all required insurance policies at any time. Consultant shall provide proof that any expiring coverage has been renewed or replaced prior to the expiration of the coverage.

(7) **Subcontractors:** Consultant shall either (1) ensure that its insurance policies (as described herein) cover all subcontractors and the Work performed by such subcontractors or (2) ensure that any subcontractor secures separate policies covering that subcontractor and its Work. All coverage for subcontractors shall be subject to all of the requirements stated in this Agreement, including, but not limited to, naming the Insured Parties as additional insureds.

(8) **Claims-Made Policies:** Consultant shall extend any claims-made insurance policy for at least six (6) years after termination or final payment under the Agreement, whichever is later, and have an effective date which is on or prior to the Effective Date.

(9) **County as Additional Insured and Loss Payee:** County shall be named as an additional insured and loss payee on all policies required by this Agreement, except County need not be named as an additional insured and loss payee on any Professional Liability policy or Workers’ Compensation policy.

(10) **Progress Payments:** The making of progress payments to Consultant shall not be construed as relieving Consultant or its subcontractors or insurance carriers from providing the coverage required in this Agreement.

**J. Employment of Unauthorized Aliens Prohibited – E-Verify Affidavit.** Pursuant to O.C.G.A. § 13-10-91, County shall not enter into a contract for the physical performance of services unless:

(1) Consultant shall provide evidence on County-provided forms, attached hereto as **Exhibits “D” and “E”** (affidavits regarding compliance with the E-Verify program to be sworn under oath under criminal penalty of false swearing pursuant to O.C.G.A. § 16-10-71), that it and Consultant’s subcontractors have registered with, are authorized to use and use the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91, and that they will continue to use the federal work authorization program throughout the contract period, or
Consultant provides evidence that it is not required to provide an affidavit because it is an *individual* (not a company) licensed pursuant to Title 26 or Title 43 or by the State Bar of Georgia and is in good standing.

Consultant hereby verifies that it has, prior to executing this Agreement, executed a notarized affidavit, the form of which is provided in Exhibit “D”, and submitted such affidavit to County or provided County with evidence that it is an individual not required to provide such an affidavit because it is licensed and in good standing as noted in sub-subsection (2) above. Further, Consultant hereby agrees to comply with the requirements of the federal Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603, O.C.G.A. § 13-10-91 and Georgia Department of Labor Rule 300-10-1-.02.

In the event Consultant employs or contracts with any subcontractor(s) in connection with the covered contract, Consultant agrees to secure from such subcontractor(s) attestation of the subcontractor’s compliance with O.C.G.A. § 13-10-91 and Rule 300-10-1-.02 by the subcontractor’s execution of the subcontractor affidavit, the form of which is attached hereto as Exhibit “E”, which subcontractor affidavit shall become part of the Consultant/subcontractor agreement, or evidence that the subcontractor is not required to provide such an affidavit because it is an *individual* licensed and in good standing as noted in sub-subsection (2) above. If a subcontractor affidavit is obtained, Consultant agrees to provide a completed copy to County within five (5) business days of receipt from any subcontractor.

Where Consultant is required to provide an affidavit pursuant to O.C.G.A. § 13-10-91, the County Manager or his/her designee shall be authorized to conduct an inspection of Consultant’s and Consultant’s subcontractors’ verification process at any time to determine that the verification was correct and complete. Consultant and Consultant’s subcontractors shall retain all documents and records of their respective verification process for a period of five (5) years following completion of the contract. Further, where Consultant is required to provide an affidavit pursuant to O.C.G.A. § 13-10-91, the County Manager or his/her designee shall further be authorized to conduct periodic inspections to ensure that no County Consultant or Consultant’s subcontractors employ unauthorized aliens on County contracts. By entering into a contract with County, Consultant and Consultant’s subcontractors agree to cooperate with any such investigation by making their records and personnel available upon reasonable notice for inspection and questioning. Where Consultant or Consultant’s subcontractors are found to have employed an unauthorized alien, the County Manager or his/her designee may report same to the Department of Homeland Security. Consultant’s failure to cooperate with the investigation may be sanctioned by termination of the Agreement, and Consultant shall be liable for all damages and delays occasioned by County thereby.

Consultant agrees that the employee-number category designated below is applicable to Consultant. [Information only required if a contractor affidavit is required pursuant to O.C.G.A. § 13-10-91.]
Consultant hereby agrees that, in the event Consultant employs or contracts with any subcontractor(s) in connection with this Agreement and where the subcontractor is required to provide an affidavit pursuant to O.C.G.A. § 13-10-91, Consultant will secure from the subcontractor(s) such subcontractor(s’) indication of the above employee-number category that is applicable to the subcontractor.

The above requirements shall be in addition to the requirements of state and federal law, and shall be construed to be in conformity with those laws.

K. Records, Reports and Audits.

(1) Records:

(a) Books, records, documents, account ledgers, data bases, and similar materials relating to the Work performed for County under this Agreement (“Records”) shall be established and maintained by Consultant in accordance with applicable law and requirements prescribed by County with respect to all matters covered by this Agreement. Except as otherwise authorized or required, such Records shall be maintained for at least three (3) years from the date that final payment is made to Consultant by County under this Agreement. Furthermore, Records that are the subject of audit findings shall be retained for three (3) years or until such audit findings have been resolved, whichever is later.

(b) All costs claimed or anticipated to be incurred in the performance of this Agreement shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.

(2) Reports and Information: Upon request, Consultant shall furnish to County any and all Records in the form requested by County. All Records provided electronically must be in a format compatible with County’s computer systems and software.

(3) Audits and Inspections: At any time during normal business hours and as often as County may deem necessary, Consultant shall make available to County or County’s representative(s) for examination all Records. Consultant will permit County or County’s representative(s) to audit,
examine, and make excerpts or transcripts from such Records. Consultant shall provide proper facilities for County or County’s representative(s) to access and inspect the Records, or, at the request of County, shall make the Records available for inspection at County’s office. Further, Consultant shall permit County or County’s representative(s) to observe and inspect any or all of Consultant’s facilities and activities during normal hours of business for the purpose of evaluating Consultant’s compliance with the terms of this Agreement. In such instances, County or County’s representative(s) shall not interfere with or disrupt such activities.

L. Ethics Code; Conflict of Interest. Consultant agrees that it shall not engage in any activity or conduct that would result in a violation of the Barrow County Code of Ethics or any other similar law or regulation. Consultant certifies that to the best of its knowledge no circumstances exist which will cause a conflict of interest in performing the Work. Should Consultant become aware of any circumstances that may cause a conflict of interest during the Term of this Agreement, Consultant shall immediately notify County. If County determines that a conflict of interest exists, County may require that Consultant take action to remedy the conflict of interest or terminate the Agreement without liability. County shall have the right to recover any fees paid for services rendered by Consultant when such services were performed while a conflict of interest existed if Consultant had knowledge of the conflict of interest and did not notify County within five (5) business days of becoming aware of the existence of the conflict of interest.

M. Confidentiality. Consultant acknowledges that it may receive confidential information of County and that it will protect the confidentiality of any such confidential information and will require any of its subcontractors, consultants, and/or staff to likewise protect such confidential information. Consultant agrees that confidential information it learns or receives or such reports, information, opinions or conclusions that Consultant creates under this Agreement shall not be made available to, or discussed with, any individual or organization, including the news media, without prior written approval of County. Consultant shall exercise reasonable precautions to prevent the unauthorized disclosure and use of County information whether specifically deemed confidential or not.

Consultant acknowledges that County’s disclosure of documentation is governed by Georgia’s Open Records Act, and Consultant further acknowledges that if Consultant submits records containing trade secret information, and if Consultant wishes to keep such records confidential, Consultant must submit and attach to such records an affidavit affirmatively declaring that specific information in the records constitutes trade secrets pursuant to Article 27 of Chapter 1 of Title 10, and the Parties shall follow the requirements of O.C.G.A. § 50-18-72(a)(34) related thereto.

N. Key Personnel. All of the individuals identified in Exhibit “F”, attached hereto, are necessary for the successful completion of the Work due to their unique expertise and depth and breadth of experience. There shall be no change in Consultant’s Project Manager or members of the Project team, as listed in Exhibit “F”, without written approval of County. Consultant recognizes that the composition of this team was instrumental in County’s decision to award the Work to Consultant and that compelling reasons for substituting these individuals must be
demonstrated for County’s consent to be granted. Any substitutes shall be persons of comparable or superior expertise and experience. Failure to comply with the provisions of this paragraph shall constitute a material breach of Consultant’s obligations under this Agreement and shall be grounds for termination.

O. **Meetings.** Consultant is required to meet with County’s personnel, or designated representatives, to resolve technical or contractual problems that may occur during the Term of this Agreement at no additional cost to County. Meetings will occur as problems arise and will be coordinated by County. County shall inform Consultant’s Representative of the need for a meeting and of the date, time and location of the meeting at least three (3) full business days prior to the date of the meeting. Face-to-face meetings are desired. However, at Consultant’s option and expense, a conference call meeting may be substituted. Consistent failure to participate in problem resolution meetings, two consecutive missed or rescheduled meetings, or failure to make a good faith effort to resolve problems, may result in termination of this Agreement for cause.

P. **Authority to Contract.** The individual executing this Agreement on behalf of Consultant covenants and declares that it has obtained all necessary approvals of Consultant’s board of directors, stockholders, general partners, limited partners or similar authorities to simultaneously execute and bind Consultant to the terms of this Agreement, if applicable.

Q. **Ownership of Work.** All reports, designs, drawings, plans, specifications, schedules, work product and other materials, including, but not limited to, those in electronic form, prepared or in the process of being prepared for the Work to be performed by Consultant (“Materials”) shall be the property of County, and County shall be entitled to full access and copies of all Materials in the form prescribed by County. Any Materials remaining in the hands of Consultant or subcontractor upon completion or termination of the Work shall be delivered immediately to County whether or not the Project or Work is commenced or completed; provided, however, that Consultant may retain a copy of any deliverables for its records. Consultant assumes all risk of loss, damage or destruction of or to Materials. If any Materials are lost, damaged or destroyed before final delivery to County, Consultant shall replace them at its own expense. Any and all copyrightable subject matter in all Materials is hereby assigned to County, and Consultant agrees to execute any additional documents that may be necessary to evidence such assignment.

R. **Nondiscrimination.** In accordance with Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and all other provisions of Federal law, Consultant agrees that, during performance of this Agreement, Consultant, for itself, its assignees and successors in interest, will not discriminate against any employee or applicant for employment, any subcontractor, or any supplier because of race, color, creed, national origin, gender, age or disability. In addition, Consultant agrees to comply with all applicable implementing regulations and shall include the provisions of this paragraph in every subcontract for services contemplated under this Agreement.

**V. COVENANTS OF COUNTY**

A. **Right of Entry.** County shall provide for right of entry for Consultant and all
necessary equipment as required for Consultant to complete the Work; provided that Consultant shall not unreasonably encumber the Project site(s) with materials or equipment.

B. **County’s Representative.** Autron Hayes, Director of Public Works, shall be authorized to act on County’s behalf with respect to the Work as County’s designated representative on this Project; provided that any changes to the Work or the terms of this Agreement must be approved as provided in Section II above.

VI. TERMINATION

A. **For Convenience.** County may terminate this Agreement for convenience at any time upon providing written notice thereof at least seven (7) calendar days in advance of the termination date.

B. **For Cause.** Consultant shall have no right to terminate this Agreement prior to completion of the Work, except in the event of County’s failure to pay Consultant within thirty (30) calendar days of Consultant providing County with notice of a delinquent payment and an opportunity to cure. In the event of Consultant’s breach or default under this Agreement, County may terminate this Agreement for cause. County shall give Consultant at least seven (7) calendar days’ written notice of its intent to terminate the Agreement for cause and the reasons therefor. If Consultant fails to cure the breach or default within that seven (7) day period, or otherwise remedy the breach or default to the reasonable satisfaction of County, then County may, at its election: (a) in writing terminate the Agreement in whole or in part; (b) cure such default itself and charge Consultant for the costs of curing the default against any sums due or which become due to Consultant under this Agreement; and/or (c) pursue any other remedy then available, at law or in equity, to County for such default.

C. **Statutory Termination.** In compliance with O.C.G.A. § 36-60-13, this Agreement shall be deemed terminated as provided in I(D) of this Agreement. Further, this Agreement shall terminate immediately and absolutely at such time as appropriated or otherwise unobligated funds are no longer available to satisfy the obligation of County.

D. **Payment Upon Termination.** Upon termination, County shall provide for payment to Consultant for services rendered and, where authorized, expenses incurred prior to the termination date; provided that, where this Agreement is terminated for cause, County may deduct from such payment any portion of the cost for County to complete (or hire someone to complete) the Work, as determined at the time of termination, not otherwise covered by the remaining unpaid Maximum Contract Price.

E. **Conversion to Termination for Convenience.** If County terminates this Agreement for cause and it is later determined that County did not have grounds to do so, the termination will be converted to and treated as a termination for convenience under the terms of Section VI(A) above.

F. **Requirements Upon Termination.** Upon termination, Consultant shall: (1) promptly discontinue all services, cancel as many outstanding obligations as possible, and not
incur any new obligations, unless the County directs otherwise; and (2) promptly deliver to County all data, drawings, reports, summaries, and such other information and materials as may have been generated or used by Consultant in performing this Agreement, whether completed or in process, in the form specified by County.

G. **Reservation of Rights and Remedies.** The rights and remedies of County and Consultant provided in this Article are in addition to any other rights and remedies provided under this Agreement or at law or in equity.

**VII. MISCELLANEOUS**

A. **Entire Agreement.** This Agreement, including any exhibits hereto, constitutes the complete agreement between the Parties and supersedes any and all other agreements, either oral or in writing, between the Parties with respect to the subject matter of this Agreement. No other agreement, statement or promise relating to the subject matter of this Agreement not contained in this Agreement shall be valid or binding. This Agreement may be modified or amended only by a written Change Order (as provided in Section II above) or other document signed by representatives of both Parties with appropriate authorization.

B. **Successors and Assigns.** Subject to the provision of this Agreement regarding assignment, this Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the respective Parties.

C. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia without regard to choice of law principles. If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the rules, regulations, statutes and laws of the State of Georgia will control. Any action or suit related to this Agreement shall be brought in the Superior Court of Barrow County, Georgia, or the U.S. District Court for the Northern District of Georgia – Gainesville Division, and Consultant submits to the jurisdiction and venue of such court.

D. **Captions and Severability.** All headings herein are intended for convenience and ease of reference purposes only and in no way define, limit or describe the scope or intent thereof, or of this Agreement, or in any way affect this Agreement. Should any article(s) or section(s) of this Agreement, or any part thereof, later be deemed illegal, invalid or unenforceable by a court of competent jurisdiction, the offending portion of the Agreement should be severed, and the remainder of this Agreement shall remain in full force and effect to the extent possible as if this Agreement had been executed with the invalid portion hereof eliminated, it being the intention of the Parties that they would have executed the remaining portion of this Agreement without including any such part, parts, or portions that may for any reason be hereafter declared in valid.

E. **Business License.** Consultant must provide a current business license prior to commencement of the services to be provided hereunder. If a current business license is not available, Consultant shall apply to County for a business license, pay the applicable business license fee, and maintain said business license during the Term of this Agreement, unless Consultant provides evidence that no such license is required.
F. Notices.

(1) **Communications Relating to Day-to-Day Activities.** All communications relating to the day-to-day activities of the Work shall be exchanged between County’s Representative (named above) for County and Consultant’s Representative (named above) for Consultant.

(2) **Official Notices.** All other notices, requests, demands, writings, or correspondence, as required by this Agreement, shall be in writing and shall be deemed received, and shall be effective, when: (1) personally delivered, or (2) on the third day after the postmark date when mailed by certified mail, postage prepaid, return receipt requested, or (3) upon actual delivery when sent via national overnight commercial carrier to the Party at the address given below, or at a substitute address previously furnished to the other Party by written notice in accordance herewith.

NOTICE TO COUNTY shall be sent to:
County Manager
Barrow County, Georgia
Barrow County Historic Courthouse
30 N. Broad Street
Winder, GA 30680

NOTICE TO CONSULTANT shall be sent to:

____________________
____________________
____________________
____________________
____________________

G. **Waiver of Agreement.** No failure by County to enforce any right or power granted under this Agreement, or to insist upon strict compliance by Consultant with this Agreement, and no custom or practice of County at variance with the terms and conditions of this Agreement shall constitute a general waiver of any future breach or default or affect County’s right to demand exact and strict compliance by Consultant with the terms and conditions of this Agreement. Further, no express waiver shall affect any Term or condition other than the one specified in such waiver, and that one only for the time and manner specifically stated.

H. **Survival.** All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, confidentiality obligations and insurance maintenance requirements.

I. **No Third Party Rights.** This Agreement shall be exclusively for the benefit of the Parties and shall not provide any third parties with any remedy, claim, liability, reimbursement, cause of action or other right.
J. **Sovereign Immunity; Ratification.** Nothing contained in this Agreement shall be construed to be a waiver of County’s sovereign immunity or any individual’s qualified, good faith or official immunities. Ratification of this Agreement by a majority of the Board of Commissioners shall authorize the Chairman to execute this Agreement on behalf of County.

K. **No Personal Liability.** Nothing herein shall be construed as creating any individual or personal liability on the part of any of County’s elected or appointed officials, officers, boards, commissions, employees, representatives, consultants, servants, agents, attorneys or volunteers. No such individual shall be personally liable to Consultant or any successor in interest in the event of any default or breach by County or for any amount which may become due to Consultant or successor or on any obligation under the terms of this Agreement. Likewise, Consultant’s performance of services under this Agreement shall not subject Consultant’s individual employees, officers, or directors to any personal contractual liability, except where Consultant is a sole proprietor. The Parties agree that, except where Consultant is a sole proprietor, their sole and exclusive remedy, claim, demand or suit for contractual liability shall be directed and/or asserted only against Consultant or County, respectively, and not against any elected or appointed official, officers, boards, commissions, employees, representatives, consultants, servants, agents, attorneys and volunteers.

L. **Counterparts; Agreement Construction and Interpretation.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. Consultant represents that it has reviewed and become familiar with this Agreement. In the event of a conflict in the terms of this Agreement and/or the exhibits attached hereto, the terms most beneficial to County shall govern. The Parties hereto agree that, if an ambiguity or question of intent or interpretation arises, this Agreement is to be construed as if the Parties had drafted it jointly, as opposed to being construed against a Party because it was responsible for drafting one or more provisions of the Agreement. In the interest of brevity, the Agreement may omit modifying words such as “all” and “any” and articles such as “the” and “an,” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement. Words or terms used as nouns in the Agreement shall be inclusive of their singular and plural forms, unless the context of their usage clearly requires contrary meaning.

M. **Force Majeure.** Neither County nor Consultant shall be liable for its respective non-negligent or non-willful failure to perform or shall be deemed in default with respect to the failure to perform (or cure a failure to perform) any of its respective duties or obligations under this Agreement or for any delay in such performance due to: (i) any cause beyond its respective reasonable control; (ii) any act of God; (iii) any change in applicable governmental rules or regulations rendering the performance of any portion of this Agreement legally impossible; (iv) earthquake, fire, explosion or flood; (v) strike or labor dispute, excluding strikes or labor disputes by employees and/or agents of Consultant; (vi) delay or failure to act by any governmental or military authority; or (vii) any war, hostility, embargo, sabotage, civil disturbance, riot, insurrection or invasion. In such event, the time for performance shall be extended by an amount of time equal to the period of delay caused by such acts, and all other obligations shall remain intact.
N. **Material Condition.** Each term of this Agreement is material, and Consultant’s breach of any term of this Agreement shall be considered a material breach of the entire Agreement and shall be grounds for termination or exercise of any other remedies available to County at law or in equity.

[SIGNATURES ON FOLLOWING PAGE]
IN WITNESS WHEREOF, County and Consultant have executed this Agreement, effective as of the Effective Date first above written.

CONSULTANT:

___________________________________________
By: ______________________________________________________________________
Its: ______________________________________________________________________

[CORPORATE SEAL]

Attest/Witness:

Signature: __________________________________________________________________
Print Name:  
Title:  

BARROW COUNTY, GEORGIA

___________________________________
By: ______________________________________________________________________
Its: ______________________________________________________________________

[COUNTY SEAL]

Attest:

Signature: __________________________________________________________________
Print Name: Danielle Austin
Title: County Clerk

Approved as to Form:

By: ______________________________________________________________________
County Attorney
EXHIBIT “C”

SCOPE OF SERVICES
EXHIBIT “D”

STATE OF __________
COUNTY OF __________

CONTRACTOR AFFIDAVIT AND AGREEMENT

By executing this affidavit, the undersigned contractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm, or corporation which is engaged in the physical performance of services on behalf of Barrow County, Georgia has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned contractor will continue to use the federal work authorization program throughout the contract period and the undersigned contractor will contract for the physical performance of services in satisfaction of such contract only with subcontractors who present an affidavit to the contractor with the information required by O.C.G.A. § 13-10-91(b).

Contractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

Federal Work Authorization User Identification Number
_________________________________

Date of Authorization

_________________________________

Name of Contractor

_________________________________

Name of Project

Barrow County, Georgia
Name of Public Employer

I hereby declare under penalty of perjury that the foregoing is true and correct.
Executed on _________, 20___ in
___________________ (city), _____ (state).

Signature of Authorized Officer or Agent

Printed Name and Title of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE ME
ON THIS THE ______ DAY OF
______________, 20___.

NOTARY PUBLIC

[NOTARY SEAL]

My Commission Expires:

_________________________________
STATE OF ____________  
COUNTY OF ___________

SUBCONTRACTOR AFFIDAVIT

By executing this affidavit, the undersigned subcontractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services under a contract with _______________________ (name of contractor) on behalf of Barrow County, Georgia has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned subcontractor will continue to use the federal work authorization program throughout the contract period, and the undersigned subcontractor will contract for the physical performance of services in satisfaction of such contract only with sub-subcontractors who present an affidavit to the subcontractor with the information required by O.C.G.A. § 13-10-91(b). Additionally, the undersigned subcontractor will forward notice of the receipt of an affidavit from a sub-subcontractor to the contractor within five (5) business days of receipt. If the undersigned subcontractor receives notice that a sub-subcontractor has received an affidavit from any other contracted sub-subcontractor, the undersigned subcontractor must forward, within five (5) business days of receipt, a copy of the notice to the contractor.

Subcontractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

Federal Work Authorization User Identification Number

_________________________________

Date of Authorization

_________________________________

Name of Contractor

_________________________________

Name of Project

Barrow County, Georgia

Name of Public Employer

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on _________, 20__ in
______________________ (city), ______ (state).

_________________________________

Signature of Authorized Officer or Agent

Printed Name and Title of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE ME ON THIS THE ______ DAY OF
______________________, 20__.

NOTARY PUBLIC

[NOTARY SEAL]

My Commission Expires:

_________________________________
EXHIBIT “F”

The following individuals are designated as Key Personnel under this Agreement and, as such, are necessary for the successful prosecution of the Work:

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F
COUNTY OF BARROW
STATE OF GEORGIA

BARROW COUNTY ETHICS ORDINANCE

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES OF BARROW COUNTY, TO ESTABLISH THE CODE OF ETHICS FOR BARROW COUNTY; TO FURTHER AND INCORPORATE THE POLICIES AND LAWS OF THE STATE OF GEORGIA RELATING TO ETHICAL STANDARDS; TO CREATE THE BOARD OF ETHICS AND PROVIDE FOR ITS CONSTITUENT MEMBERSHIP, DUTIES, AND RESPONSIBILITIES; TO PROVIDE FOR THE INVESTIGATION OF ETHICS COMPLAINTS; TO PROVIDE FOR THE ENFORCEMENT OF ETHICAL STANDARDS; TO PROVIDE FOR SEVERABILITY; TO PROVIDE FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, the Constitution of the State of Georgia, approved by the voters of the State in November of 1982, and effective July 1, 1983, provides in Article IX, Section II, Paragraph I thereof, that the governing authority of the county may adopt clearly reasonable ordinances, resolutions and regulations;

WHEREAS, O.C.G.A. § 36-1-20 authorizes counties to enact ordinances for protection and preserving the public health, safety and welfare of the population of the unincorporated areas of the County;

WHEREAS, the governing authority of Barrow County, to wit, the Board of Commissioners, desires to exercise its authority in adopting this Ordinance;

WHEREAS, it is essential to the proper operation of democratic government that public officials of independent and impartial, that governmental decisions and policy be made in the proper channels of the governmental structure, that public office not be used for private gain other than the remuneration provided by law, and that there be public confidence in the integrity of government;
WHEREAS, the attainment of one or more of these ends is impaired whenever there exists a conflict between the private interests of an elected official or a governmental employee and his duties as such;

WHEREAS, the public interest, therefore, requires that the law protect against such conflicts of interest and establish appropriate ethical standards with respect to the conduct of elected officials and government employees in situations where conflicts exist;

WHEREAS, it is also essential to the proper operation of government that those best qualified be encouraged to serve the government. Accordingly, legal safeguards against conflicts of interest must be so designed as not unnecessarily or unreasonably to impede the recruitment and retention by the government of those men and women who are best qualified to serve it;

WHEREAS, an essential principle underlying the staffing of our government structure is that its elected officials and employees should not be denied the opportunity, available to all other citizens, to acquire and retain private economic and other interests, except where conflicts with the responsibility of such elected officials and employees to the public cannot be avoided;

WHEREAS, in recognition of these goals and principles, it is the policy of the Board of Commissioners to institute, establish, promote and enforce standards of ethical conduct for all of Barrow County's officers and employees; and

WHEREAS, it is a further policy of the Board of Commissioners that the proper administration of Barrow County's government and the promotion and enforcement of standards of ethical conduct for Barrow County's officers and employees would be best served by the creation of a Barrow County Board of Ethics for the investigation of complaints related to ethical standards;
NOW, THEREFORE, BE IT ORDAINED AND RESOLVED BY THE BOARD OF

COMMISSIONERS OF BARROW COUNTY, GEORGIA AS FOLLOWS:

ARTICLE ONE: GENERAL PROVISIONS

Section One. Short Title.

This Ordinance shall be known as "The Barrow County Ethics Ordinance," and may be Cited and referred to as such.

Section Two. Definitions.

For the purposes of this Ordinance, the following terms, phrases, words and their derivations shall have the meaning provided herein. When no inconsistent with the context, words used in the present tense include the future, words in the plural number included the singular number and words in the singular number include the plural number.

(A) "Board" means the Barrow County Board of Commissioners.

(B) "Board of Ethics" means the Barrow County Board of Ethics as formed and described herein.

(C) "Business Entity" means any business of whatever nature regardless of how designated or formed, whether a sole proprietorship, partnership, joint venture, association, trust, corporation, limited liability company, or any other type of business enterprise and whether a person acting on behalf of, or as a representative or agent of, the business entity.

(D) "Confidential Information" means any information that, by law or practice, is not reasonably available to the public.

(E) "County Official" means the Barrow County Board of Commissioners, any member of a board, commission or authority appointed by the Board, the Chief of
Operations or his/her equivalent and any other elected or appointed officer or
employee of Barrow County, including those employees who are exempt from the
Barrow County Civil Service System, except to the extent prohibited by law.

(F) "Employee" means all those persons employed on a regular or part-time basis by
The County, as well as those persons whose services are retained under the
terms of a contract with the County, including those employees who are exempt
from the Barrow County Civil Service System, except to the extent prohibited by
law.

(G) "Family" means the spouse, parents, children, brothers and sisters, related
by blood or marriage of a county official or employee.

(H) "Interest" means direct or indirect pecuniary or material benefit accruing to a
County Official or Employee as a result of a contract or transaction which is or
may be the subject of an official act or action by or with the County, except for
such contracts or transactions which, by their terms and by the substance of their
provisions, confer the opportunity and right to realize the accrual of similar
benefits to all other persons and/or property similarly situated. The term "interest"
shall not include any remote interest. For purposes of this Ordinance, a County
Official or Employee shall be deemed to have an interest in the affairs of:

(1) His or her family;

(2) Any business entity in which the county official or employee is a member,
on officer, director, employee or prospective employee;

(3) Any business entity as to which the stock, legal ownership, or beneficial
ownership of a county official or employee is in excess of five percent
(5%) of the total stock or total legal and beneficial ownership, or which is
controlled or owned directly or indirectly by the county official or employee.

(I) "Official Act" or "Official Duties" means any legislative, administrative, appointive or discretionary act of any County Official or Employee of the County or any agency, board, authority or commission thereof.

ARTICLE TWO: CODE OF ETHICS FOR COUNTY SERVICE GENERALLY AND FOR EMPLOYEES

This Article Two is intended to adopt and incorporate herein for local enforcement the ethical standards of O.C.G.A. § 45-10-1, as it may be amended from time to time.

Any person in County service shall;

Section One.

Put loyalty to the highest moral principles and to country above loyalty to person, party, or government department.

Section Two.

Uphold the Constitution, laws and legal regulations of the United States and the State of Georgia and of all governments therein and never be a party to their evasion.

Section Three.

Give a full day's labor for a full day's pay and give to the performance of his duties his earnest effort and best thought.

Section Four.

Seek to find and employ more efficient and economical ways of getting tasks accomplished.
Section Five

Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not, and never accept, for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.

Section Six

Make no private promises of any kind binding upon the duties of office, since a government employee has no private word that can be binding on public duty.

Section Seven.

Engage in no business with the government, either directly or indirectly, which is inconsistent with the conscientious performance of his governmental duties.

Section Eight.

Never use any information coming to him confidentially in the performance of governmental duties as a means for making private profit.

Section Nine.

Expose corruption wherever discovered.

Section Ten.

Uphold these principles, ever conscious that public office is a public trust.

ARTICLE THREE: CODE OF ETHICS FOR COUNTY OFFICIALS AND DEPARTMENT DIRECTORS

This Article Three is intended to adopt and incorporate herein for local enforcement the ethical standards of O.C.G.A.§ 45-10-3, as it may be amended from time to time.

All County Officials and Department Directors shall:
Section One.

Uphold the Constitution, laws and regulations of the United States, the State of Georgia, the County of Barrow and all governments therein and never be a party to their evasion.

Section Two.

Never discriminate by the dispensing of special favors or privileges to anyone, whether or not for remuneration.

Section Three.

Not engage in any business with the government, either directly or indirectly, which is inconsistent with the conscientious performance of his governmental duties.

Section Four.

Never use any information coming to him confidentially in the performance of governmental duties as a means for making private profit.

Section Five.

Expose corruption wherever discovered.

Section Six.

Never solicit, accept, or agree to accept gifts, loans, gratuities, discounts, favors, hospitality or services from any person, association or corporation under circumstances from which it could reasonably be inferred that a major purpose of the donor is to influence the performance of the member’s official duties.

Section Seven.

Never accept any economic opportunity under circumstances where he knows or should know that there is a substantial possibility that the opportunity is being afforded him with intent to influence his conduct in the performance of his official duties.
Section Eight.

Never engage in other conduct which is unbecoming to a member or which constitutes a breach of public trust.

Section Nine.

Never take any official action with regard to any matter under circumstances in which he knows or should know that he has a direct or indirect monetary interest in the subject matter of such matter or in the outcome of such official action.

ARTICLE FOUR: SPECIFIC PROVISIONS RELATED TO CONFLICT OF INTEREST TRANSACTIONS AND DISCLOSURES

The following provisions related to conflict of interest transactions and disclosures are intended to supplement and elaborate upon the Code of Ethics set forth in Articles Two and Three above and all such provisions shall be read and interpreted in accordance therewith.

Section One. Compliance with Applicable Law.

No County Official or Employee shall engage in any activity or transaction that is prohibited by law, now existing or hereafter enacted, which is applicable to him or her by virtue of his or her office or employment. Other provisions of law or regulations shall apply when any provisions of this Ordinance shall conflict with the laws of the State of Georgia or the United States, except to the extent that this Ordinance permissibly sets forth a more stringent standard of conduct. The laws of the State of Georgia or the United States shall apply when this Ordinance is silent.

Section Two. Conflict of Interest Transactions.

(A) No County Official or Employee shall acquire or maintain an interest in any contract or transaction if a reasonable basis exists that such an interest will be affected directly by his or her official act or action or by official acts or actions of
the County, which the County Official or Employee has a reasonable opportunity to influence, except consistent with the disclosure and abstention provisions set forth herein.

(B) Barrow County shall not enter into any contract involving services or property with a County Official or Employee or with a business entity in which the County Official or an Employee has an interest. Provided that the disclosure and abstention provisions set forth herein are followed, this paragraph shall not apply to the following:

(1) The designation of a bank or trust company as a depository for county funds;

(2) The borrowing of funds from any bank or lending institution which offers competitive rates for such loans;

(3) Contracts entered into with a business which employs a consultant, provided that the consultant’s employment with the business is not incompatible with this Ordinance;

(4) Contracts for services entered into with a business which is the only available source for such goods or services; and

(5) Contracts entered into under circumstances that constitute and emergency situation, provided that a record explaining the emergency is prepared by the Board and submitted to the Chief of Operations (or his/her equivalent) to be kept on file.
Section Three. **Financial Disclosures.**

Financial disclosures shall be governed by federal and state law as it may be amended from time to time and this Ordinance shall not require any additional financial disclosure reports to be filed other than those required by federal and state law.

Section Four. **Zoning Application Disclosures.**

All disclosures with regard to zoning applications shall be governed in their entirety by the Conflict of Interest in Zoning Actions provisions contained in O.C.G.A.§ 36-67A-1, *et seq.*, as it may be amended from time to time.

Section Five. **Disclosures Related to Submission of Bids or Proposals for County Work or Contract.**

Persons submitting bids or proposals for county work who have contributed $250.00 or more to a County Official must disclose on their bid or proposal the name of the County Official(s) to whom the contribution was made and the amount contributed. Such a disclosure must also be made prior to a request for any change order or extension of any contract awarded to the person who submitted the successful bid or proposal.

Section Six. **Withholding of Information.**

No County Official or Employee shall knowingly withhold any information that would impair the proper decision making of the Board or any of the County's boards, agencies, authorities or departments.

Section Seven. **Incompatible Service.**

No County Official or Employee shall engage in or accept private or public employment or render service for any private or public entity, when such employment or service is incompatible with the proper discharge of his or her official duties or would tend to impair his or her independence of judgment or action in the performance of his or her official duties, unless
otherwise permitted by law and unless public disclosure is made.

**Section Eight. Unauthorized Use of Public Property.**

No County Official or Employee shall request or permit the unauthorized use of county-owned vehicles and equipment, including but not limited to computers, pagers and cellular telephones, materials or property for personal convenience or profit.

**Section Nine. Political Recrimination and Activity.**

(A) No County Official or Employee, whether elected or appointed, shall either cause the dismissal or threaten the dismissal from any county position as a reward or punishment for any political activity. No County Official or Employee shall direct any person employed by the County to undertake political activity on behalf of such County Official or Employee, any other County Official or Employee, or any other individual, political party, group or business organization, during such time that the Employee is required to conduct county business. This section does not prohibit incidental telephone calls made for the purpose of scheduling a County Official's daily county business.

(B) Employees of the county are encouraged to exercise their right to vote, but no employee shall make use of government time or equipment to aid a political candidate, party or cause; or use a government position to influence, coerce, or intimidate any person in the interest of a political candidate, party or cause. No employee shall be hired, promoted, favored or discriminated against with respect to employments because of his or her political opinions or affiliations.

(1) *Seeking elective office.* A government employee seeking elective office within the county may, upon declaring candidacy, either resign or submit a
request in writing to the Chief of Operations (or his/her equivalent) for a leave of absence without pay from the date of his or her announcement through the duration of the campaign or announcement of the election results. In the alternative, the government employee seeking elective office within the County may continue to work for the County, provided, however, that the employee shall not engage in election activities during his or her County working hours or with use of County equipment. If elected to office, the employee shall immediately, upon the date of election, be separated from employment with the county upon written request and approval of the Chief of Operations (or his/her equivalent).

(2) **Political campaign involvement.** A government employee may not be involved in any political activity which would constitute a conflict of interest; including participation in any aspect of any political campaign for any office in Barrow County Government.

(3) **Solicitation of contributions.** A government employee may not knowingly solicit, accept or receive political contributions from any person, to be used in support of or opposition to any candidate for office in the county.

**Section Ten. Appearance Before County Entities.**

No County Official or Employee shall appear on behalf of any private person other than himself or herself, his or her spouse, or his or her minor children, before any county agency, authority or board. However, a member of the Board of Commissioners may appear before such groups on behalf of his constituents in the course of his duties as a representative of the electorate or in the performance of public or civic obligations.
Section Eleven. **Timely Payment of Debts to the County and Fiscal Responsibility.**

All County Officials and Employees shall pay and settle, in a timely and prompt fashion, all accounts between them and Barrow County, including the prompt payment of all taxes and shall otherwise demonstrate personal fiscal responsibility.

Section Twelve. **Solicitation or Acceptance of Gifts.**

(A) County Officials and employees shall not accept gifts, gratuities or loans from organizations, business concerns, or individuals with whom he or she has official relationships on business of the county government. These limitations are not intended to prohibit the acceptance of articles of negligible value which are distributed generally, nor to prohibit employees from accepting social courtesies which promote good public relations, or to prohibit employees from obtaining loans from regular lending institutions. It is particularly important that inspectors, contracting officers and enforcement officers guard against relationships which might be construed as evidence of favoritism, coercion, unfair advantage or collusion.

(B) Consistent with the provisions set forth in Articles Two and Three and Section 12(A) above, there shall be no violation of this Ordinance in the following circumstances:

(1) Meals and beverages given in the usual course of entertaining associated with normal and customary business or social functions.

(2) An occasional gift from a single source of $101.00 or less in any calendar year.

(3) Ceremonial gifts or awards.
(4) Gifts of advertising value only or promotional items generally distributed
To public officials.

(5) Awards presented in recognition of public service.

(6) Reasonable expenses of food, travel, lodging and scheduled entertainment
for a meeting that is given in return for participation in a panel or speaking
engagement at the meeting.

(7) Courtesy tickets or free admission extended for an event as a courtesy or
for ceremonial purposes, given on an occasional basis and not to include
season tickets of any nature.

(8) Gifts from relatives or members of the County Official or Employee’s
household.

(9) Honorariums or awards for professional achievement.

(10) Courtesy tickets or free admission to educational seminars, educational or
information conventions or other similar events.

Section Thirteen. Disclosure of Interest.

Any member of the Board who has a financial or personal interest in any proposed
legislation or action before the Board shall immediately disclose publicly the nature and extent
of such interest.

Any other County Official or Employee who has a financial or personal interest in any
proposed legislation or action before the Board and who participates in discussion with or
gives an official opinion or recommendation to the Board in connection with such proposed
legislation or action shall disclose publicly the nature and extent of such interest.
Section Fourteen. Abstention to Avoid Conflicts of Interest.

(A) Except as otherwise provided by law, no County Official or Employee shall participate in the discussion, debate, deliberation, vote or otherwise take part in the decision-making process on any item before him in which the County Official or Employee has a conflict of interest as set forth above.

(B) To avoid the appearance of impropriety, if any County Official or Employee has a conflict of interest or has an interest that he or she has reason to believe either violates this Ordinance or may affect his or her official acts or actions in any matter, the County Official or Employee shall immediately leave the meeting room, except that if the matter is being considered at a public meeting, the County Official or Employee may remain in the meeting room.

(C) In the event of a conflict of interest, the County Official or Employee shall announce his or her intent to abstain prior to the beginning of the discussion, debate, deliberation or vote on the item, shall not participate in any way, and shall abstain from casting a vote.

ARTICLE FIVE: THE BOARD OF ETHICS

Section One. Creation and Composition of Board of Ethics.

There is hereby created a five-member Barrow County Board of Ethics, which shall consist of the following members:

(A) One appointee by the Board of Directors of the Barrow County Chamber of Commerce.

(B) One appointee selected by a majority of the voting County elected officials (not including the members of the Board of Commissioners) who shall each have one vote for such appointee.
(C) One appointee selected by a majority of the voting employees of Barrow County (not including the County elected officials or the members of the Board of Commissioners) who are in the employ of Barrow County on a full-time basis on the effective date of the vote, which vote shall be conducted by the Director of Human Resources or his/her designee;

(D) One appointee of the Barrow County Personnel Review Board; and

(E) One appointee of the Barrow County Board of Commissioners, which appointee shall be selected by a majority vote of the Board of Commissioners.

Section Two. Appointment Procedures.

The initial appointments of the members of the Board of Ethics shall be accomplished as follows: Within five (5) business days of the effective date of this Ordinance, the Barrow County Chief of Operations (or his/her equivalent) or his/her designee shall notify the respective appointing body or individuals of the duty to appoint or vote upon a member for placement on the Board of Ethics. The body or individuals so notified shall have thirty (30) days in which to conduct their appointment process and provide the Chief of Operations (or his/her equivalent) with the name of the appointment, or the name of the individual for whom he or she is voting as the appointee in the case of the elected officials. Within five (5) business days of receipt of the appointment information or calculation of the votes as the case may be, the Chief of Operations (or his/her equivalent) shall thereafter provide the names of the appointees to the Board of Commissioners. The Board of Commissioners shall appoint the five persons so identified at the next regular meeting of the Board of Commissioners following receipt of the names of the appointees from the Chief of Operations (or his/her equivalent).

All appointments following the expiration of the initial terms and all appointments made
In the cases of vacancies created during a particular term shall be made by the applicable body or individuals as indicated in Section One of this Article. The Chief of Operations (or his/her equivalent) or his/her designee shall notify the applicable body or individuals responsible for making an appointment at least forty-five (45) days prior to the expiration of the respective term or immediately upon knowledge of a vacancy created during a term. Upon such notification, the appointment process shall proceed as set forth above in this Section.

Section Three. Qualifications of Members of Board of Ethics.

A person is eligible to be appointed as a member of the Board of Ethics if the person, while serving:

(A) Resides in the County and is a registered voter;

(B) Is not an Employee or County Official and has not been an Employee or County Official during the three (3) months immediately preceding his or her appointment Or be the spouse, parent, child or sibling of an Employee or County Official;

(C) Is not an officer or employee of any political party;

(D) Does not hold any elected or appointed office and is not a candidate for office of the United States, this State or the County and has not held any elected or appointed office during the three (3) months immediately preceding his or her appointment.

Section Four. Terms; Vacancies.

Members of the Board of Ethics shall each serve a two (2) year term without compensation, and shall continue to serve until their successors are appointed and qualified. The Board positions appointed pursuant to sub-sections (A), (B), and (C) of Section One of this
Article shall serve an initial full two-year term and shall thereafter serve two-year terms upon appointment. The Board positions appointed pursuant to sub-sections (D) and (E) of Section One of this Article shall serve an initial one-year term and shall thereafter serve two-year terms upon appointment. If any vacancy occurs during a term, the remaining members shall at that time choose an alternate member mutually agreed upon to temporarily serve until the position is filled by appointment as provided in Section One and Section Two to fulfill the remainder of the then existing term.

Section Five. **Removal of Member.**

The Board of Commissioners may remove a member of the Board of Ethics on the grounds of neglect of duty, misconduct in office or engagement in political activity in violation of this Ordinance. Before initiating the removal of a member from the Board of Ethics, the Board of Commissioners shall give the member written notice of the reason for the intended action and the member shall have the opportunity to reply. Thereafter, the Board of Commissioners shall afford such member an opportunity for a hearing before the Board of Commissioners.

Section Six. **Organization and Internal Operating Regulations.**

(A) Members of the Board of Ethics shall not be compensated.

(B) The Board of Ethics shall elect one of its members to act as Chairperson for a term of one year or until a successor is duly elected. The Board of Ethics shall also elect one of its members to act as Vice-Chairperson for the same term and to act for the Chairperson in his or her absence, because of disqualification or vacancy.

(C) There shall be no regularly scheduled monthly or bimonthly meetings of the
Board of Ethics, however, the Board of Ethics shall meet at least once annually in January of each year for purposes of election of officers and such other business as the Board of Ethics deems proper and in accordance with this Ordinance. Meetings shall be called by majority vote or by call of the chairperson. Meetings of the Board of Ethics shall be conducted in the public hearing room utilized by the Board of Commissioners, shall be duly publicized, and shall be otherwise conducted in accordance with the open meetings requirements under state law.

(D) Three members of the Board of Ethics shall constitute a quorum for the transaction of business. The Chairperson shall be entitled to the same voting rights as the other members of the Board of Ethics.

(E) No official action concerning complaints shall be taken by the Board of Ethics, except by the affirmative vote of at least four (4) members of the Board of Ethics.

Section Seven. Duties and Powers.

The Board of Ethics shall have the following duties and powers:

(A) To establish any procedures, rules and regulations governing its internal organization and conduct of its affairs, provided that such procedures, rules and regulations do not conflict with any provision contained herein.

(B) To receive and hear complaints of violations of standards required by this Ordinance.

(C) To make investigations as it deems necessary to determine whether any person has violated this Ordinance, but only after a least four (4) members of the Board of Ethics have voted affirmatively to conduct the investigation.

(D) To take such action as provided in this Ordinance as deemed appropriate because of any violation of this Ordinance.
(E) To perform any other function authorized by this Ordinance.

(F) To issue advisory opinions as provided in this Ordinance.

Section Eight. Staffing and Expenses.

The Board of Ethics shall be provided sufficient meeting space and other reasonable supportive services to carry out its duties required under this Ordinance. The Chief of Operations (or his/her equivalent) shall designate an administration employee who shall serve as the filing clerk for the Board of Ethics and who shall be authorized to receive all filings before the Board of Ethics to publish notices of all meetings upon request of the Board of Ethics' Chairperson and to serve as the recording clerk for the Board of Ethics.

Section Nine. Counsel.

The Board of Ethics may petition the Barrow County Board of Commissioners for appointment of counsel on a case-by-case basis to assist it in carrying out its responsibilities or to act as a hearing officer. Any such appointed counsel shall be approved by the Board of Commissioners, shall perform services at an approved hourly rate, and shall serve at the joint pleasure of the Board of Ethics and the Board of Commissioners.

Section Ten. Adherence to the Ethics Ordinance.

The Board of Ethics shall be governed by and subject to this Ordinance, except as to any requirements related to financial disclosures. If a member of the Board of Ethics has a conflict of interest or must disqualify himself under this Ethics Code or by law, the remaining members shall at that time choose an alternate person mutually agreed upon to hear that matter.
Section Eleven. Prohibition Against Certain Conflicting Political Activity.

(A) Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them, except where the context clearly indicates a different meaning:

(1) "Member of the Board of Ethics" means an individual who occupies the position of a member of the Board of Ethics or a prospective member of the Board of Ethics.

(2) "Political Party" means a national political party, a state political party, a political action committee, and/or any affiliated organization.

(3) "Election" includes a primary, special and general election.

(4) "Nonpartisan Election" means:

   (a) An election at which none of the candidates is to be nominated or elected as representing a political party, any of whose candidates for presidential elector received votes in the last preceding election at which presidential electors were selected; and

   (b) An election involving a question or issue which is not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a governmental ordinance, or any question or issue of similar character

(5) "Partisan" when used as an adjective, refers to a political party.

(6) "Political Fund" means any fund, organization, political action committee or other entity that, for purposes of influencing in any way the outcome of any partisan election, receives or expends money or
anything of value or transfers money or anything of value to any other
fund, political party, candidate, organization, political action committee
or other entity.

(7) "Contribution" means any gift, subscription, loan, advance, deposit of
money, allotment of money, or anything of value given or transferred by
one person to another, including in cash, by check, by draft, through a
payroll deduction or allotment plan, by pledge or promise, whether or
not enforceable, or otherwise.

(B) Permissible Activities. All members of the Board of Ethics are free to engage in
political activity to the widest extent consistent with the restrictions imposed in
this Section, which restrictions are imposed for the sole purpose of ensuring
neutrality and the appearance of neutrality of the Board of Ethics. Each member
of the Board of Ethics retains the right to:

(1) Register and vote in any election;

(2) Participate in the nonpartisan activities of a civic, community, social,
labor, or professional organization or of a similar organization;

(3) Be a member of a political party or other political organization and
participate in its activities to the extent consistent with law;

(4) Attend a political convention, rally, fundraising function, or other
political gathering;

(5) Sign a political petition as an individual;

(6) Make a financial contribution to a political party or organization;

(7) Take an active part, as a candidate or in support of a candidate, in a
nonpartisan election;

(8) Be politically active in connection with a question which is not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a governmental ordinance or any other question or issue of a similar character;

(9) Serve as an election judge or clerk or in a similar position to perform nonpartisan duties as prescribed by state or local law; and

(10) Otherwise participate fully in public affairs in a manner which does not materially compromise his or her efficiency or integrity as a member of the Board of Ethics or the neutrality, efficiency or integrity of the Board of Ethics.

(C) Prohibited Activities.

(1) A member of the Board of Ethics may not take an active part in political management or in a political campaign, except as permitted by subsection of this section.

(2) A member of the Board of Ethics shall not take part in or be permitted to do any of the following activities:

(a) Serve as an officer of a political party, a member of a national, state or local committee of a political party, an officer or member of a committee of a partisan political club, or be a candidate for any of these positions;

(b) Organize or reorganize a political party organization or political club;

(c) Directly or indirectly solicit, receive, collect, handle, disburse, or
account for assessments, contributions or other funds for a partisan political purpose;

(d) Organize, sell tickets to, promote or actively participate in a fundraising activity of a candidate in a partisan election or of a political party or political club;

(e) Take an active part in managing the political campaign of a Candidate for public office in a partisan election or a candidate for political party office;

(f) Become a candidate for, or campaign for, an elective public office in a partisan election;

(g) Solicit votes in support of or in opposition to a candidate for Public office in a partisan election;

(h) Act as recorder, watcher, challenger or similar officer at the polls on behalf of a political party or a candidate in a partisan election;

(i) Drive voters to the polls on behalf of a political party or a candidate in a partisan election;

(j) Endorse or oppose a candidate for public office in a partisan election or a candidate for political party office in a political advertisement, broadcast, campaign literature, or similar material;

(k) Serve as a delegate, alternate or proxy to a political party convention;

(l) Address a convention, caucus, rally or similar gathering of a political party in support of or in opposition to a partisan
candidate for public office or political party office;

(m) Initiate or circulate a partisan nominating position.

(3) Nothing contained in this section shall prohibit activity in political management or in a political campaign by any member of the Board of ethics connected with a nonpartisan election or a nonpartisan issue of any type.

Section Twelve. Limitation of Liability.

No member of the Board of Ethics, or any person acting on behalf of the Board of Ethics, shall be liable to any person for any damages arising out of the enforcement or operation of this Ethics Ordinance, except in the case of willful or wanton conduct. This limitation of liability shall apply to the County, the members of the Board of Ethics, the employees of the Board of Ethics and any person acting under the direction of the Board of Ethics.

Section Thirteen. Advisory Opinion.

The Board of Ethics shall render an advisory opinion based on a real or hypothetical set of circumstances when requested to do so in writing by a County Official or Employee related to that County Official's or Employee's conduct or transaction of business. Such advisory opinions shall be rendered pursuant only to a written request, fully setting forth the circumstances to be reviewed by the Ethics Board. The proceedings of the Ethics Board pursuant to this section shall be held in public to the extent consistent with state law and the opinions of the Ethics Board shall be made available to the public.

Section Fourteen. Complaints.

The Board of Ethics shall be responsible for hearing and deciding any complaints filed regarding alleged violations of this Ordinance by any person. The following procedures shall be followed when filing a complaint:
(A) Any person may file a complaint alleging a violation of any of the provisions of This Ordinance by submitting it to the Chief of Operations (or his/her equivalent), who shall immediately deliver such complaint to the Chairman of the Board of Ethics or his or her designee. A copy of such complaint shall immediately be forwarded by registered mail to the County Official or Employee against whom the complaint was filed. The complaint must be supported by affidavits based on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. All documents referred to in an affidavit(s) should be attached to the affidavit(s). The person filing the complaint shall verify the complaint by his or her signature thereon. A complaint must be filed within six (6) months of the date the alleged violation is said to have occurred, or in case of concealment or nondisclosure within six (6) months of the date the alleged violation should have been discovered after due diligence. In the event the Board of Ethics makes an initial determination that a complaint is technically deficient, the Board of Ethics shall submit a list of deficiencies to the complainant and offer the complainant the opportunity to correct the deficiencies within seven (7) days prior to the complaint being dismissed for technical deficiencies.

(B) Upon receipt of a complaint alleging misconduct, the County Official or Employee against whom the complaint was filed may reply to the complaint within thirty (30) days, unless such time for reply is extended by the Board of Ethics upon good cause shown. The response of the County Official or Employee must be supported by affidavits based on personal knowledge, must set forth such facts as would be admissible in evidence and must show
affirmatively that the affiant is competent to testify to the matters stated therein. All documents referred to in an affidavit(s) should be attached to the affidavit(s).

(C) Within sixty (60) days of receipt of a complaint, the Board of Ethics shall conduct an investigatory review to determine whether specific substantiated evidence from a credible source(s) exists to support a reasonable belief that there has been a violation of this Ordinance. If after reviewing the complaint the Board of Ethics by vote determines that no specific, substantiated evidence from a credible source(s) exists to support a reasonable belief that there has been a violation of this Ordinance or determines that no violation occurred, it may dismiss the complaint without further proceedings. In the event a complaint is dismissed based upon the merits of the complaint, the complaint may not be re-filed.

(D) If the Board of Ethics determines that specific, substantiated evidence from a credible sources(s) exists to support a reasonable belief that there has been a violation of this Ordinance, certified written notice of a hearing, containing the time, date and place of such hearing, shall be given to each party by the Board of Ethics and a formal public hearing shall be conducted and both parties afforded an opportunity to be heard. Any formal public hearing shall be conducted in accordance with the requirements of due process. The Board of Ethics is authorized to swear witnesses.

(E) Any final determination resulting from the hearing shall include written findings of fact and conclusions of law. The Board of Ethics shall determine if clear and convincing evidence shows any violation of this Ordinance.

(F) Nothing in this section shall be considered to limit or encumber the right of the Board of Ethics to initiate an investigation on its own cognizance as it deems
Necessary to fulfill its obligations under this Ordinance.

Section Fifteen. Disciplinary Action.

(A) Upon a determination that an employee has violated this Ordinance, the Board of Ethics may recommend the following penalties and actions:

1. Written warning or reprimand;
2. Suspension without pay;
3. Termination of employment; and
4. Repayment to the County of any unjust enrichment.

(B) Upon a determination that a County Official has violated this Ordinance, the Board of Ethics may recommend the following penalties and actions:

1. Written warning, censure or reprimand;
2. Removal from office to the extent provided by Georgia law; and
3. Repayment to the County of any unjust enrichment.

(C) Upon direction of the Board of Ethics, a petition may be filed for injunctive relief, or any other appropriate relief, in the county superior court or in any other court having proper venue and jurisdiction, for the purpose of requiring compliance with the provisions of this Ordinance. In addition, the court may issue an order to cease and desist from the violation of the Ordinance. The court also may void an official action that is the subject of the violation, provided that the legal action to void the matter was brought with ninety (90) days of the occurrence of the official action, if the court deems voiding the action to be in the best interest of the public. The Court, after hearing and considering all the circumstances in the case, may grant all or part of the relief sought. However, the court may not void any official action appropriating public funds, levying taxes or providing for the
issuance of bonds, notes or other evidence of public obligation under this Ordinance.

(D) In addition to any other remedy provided herein, upon determination of a Violation of this Ordinance, the Board of Ethics may recommend to the Board of Commissioners in writing that any contract, bid or change order that was the Subject of the violation should be cancelled or rescinded. The Board of Commissioners, however, shall retain the discretion to determine whether such a Cancellation or rescission would be in the best interest of the County and shall not be bound in any way by a recommendation of the Board of Ethics.

(E) The Ethics Board may also forward its findings of fact and conclusions of law to the Barrow County District Attorney's Office and/or the Office of the Governor for appropriate action.

Section Sixteen. Judicial review.

(A) Any party against whom a decision of the Board of Ethics is rendered may obtain judicial review of the decision by writ of certiorari to the superior court of the County. The application for the writ must be filed within thirty (30) days from the date of the written decision. Judicial review shall be based upon the record. No party shall be entitled to a de novo appeal.

(B) Upon failure to timely request judicial review of the decision by writ of certiorari as provided in this section, the decision shall be binding and final upon all parties.

(C) The appellate rights afforded hereunder shall be in lieu of any right to appeal an adverse employment action under the Barrow County Civil Service
System, to the extent the County Official or employee may be subject to the Civil Service System.

**ARTICLE SIX: MISCELLANEOUS**

**Section One.**  **Severability.**

If any provision of this Ordinance is found by a court of competent jurisdiction to be invalid or unconstitutional, or if the application of this Ordinance to any person or circumstances is found to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid or unconstitutional provision or application.

**Section Two.**  **Repealer**

All laws, resolution, or ordinances or parts thereof that conflict with the provisions of this Ordinance are repealed.

**Section Three.**  **Effective Date.**

The effective date of this Ordinance shall be July 1, 2004.

**AMENDED:**

Article Five, Section 1, Subparagraph (A)    January 25, 2005
Article Five, Section 6, Subparagraph (C)    January 8, 2008