

May 2, 2017

DEKALB COUNTY
401(a) DEFINED CONTRIBUTION PLAN

Amended and Restated
Effective August 1, 2017

DEKALB COUNTY 401(a) DEFINED CONTRIBUTION PLAN

Introduction

DeKalb County (the County) adopted the DeKalb County 401(a) Defined Contribution Plan, effective January 1, 2016, to receive and hold County contributions (the Plan). The Plan is governed by Section 401(a) of the Internal Revenue Code (the IRC), and is commonly called the *401(a) Plan* or the *DC Plan*.

All employees who are initially hired on and after the effective date (January 1, 2016) and become group 3 participants in the DeKalb County Pension Plan (called the Defined Benefit Plan) will automatically participate in the 401(a) Plan on their first day of employment. All employees who are group 1 or group 2 participants in the Defined Benefit Plan, have a break in service, and are rehired as group 3 participants on or after January 1, 2016, will be treated as new employees for purposes of automatically participating in the 401(a) Plan. Employees who are automatically enrolled in the 401(a) Plan are called *Hybrid Participants* because the County uses both a defined contribution plan and a defined benefit plan to provide their retirement benefit. No employee will be considered a Hybrid Participant during any period when he or she is a group 1 or group 2 participant in the Defined Benefit Plan. Hybrid Participants will receive employer contributions in this 401(a) Plan whether or not they elect to participate in the County's 457(b) Plan. Hybrid Participants become 100% vested in their 401(a) account balances after they complete 3 years of vesting service as a Hybrid Participant.

Because the two Plans are separate, the employer contributions to the 401(a) Plan do not impact the maximum annual dollar amount that each participant can contribute to the County 457(b) Plan.

The purpose of the 401(a) Plan is to provide retirement income to Hybrid Participants in addition to the benefits they earn under the Defined Benefit Plan.

Since the County is a governmental entity, the Plan described in this document is a governmental plan within the meaning of IRC § 414(d). The Plan's qualification as a governmental plan exempts the Plan from Titles I and IV of the Employee Retirement Income Security Act (ERISA). However, the County has voluntarily included in the Plan certain employee protections that are not required to be included in governmental plans.

Notwithstanding any other provision in the Plans, the County's voluntary provision of such benefits and protections is not to be interpreted as a relinquishment of (1) any exemption available to the Plan under ERISA or the IRC, or (2) any of the discretion afforded to the sponsors of governmental plans under ERISA or the IRC.

The Plan Fiduciaries will administer the Plan in accordance with its written terms and with applicable laws enacted from time to time, and will implement operational compliance between the effective dates of such laws and the corollary Plan amendment dates.

The Plan is designed to comply with all applicable requirements of the IRC, and with the Family and Medical Leave Act of 1993 (FMLA), the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), the Small Business Jobs Protection Act a/k/a the Pension Simplification Act of 1996 (SBJPA-1996), the Taxpayer Relief Act of 1997 (TRA), the Restructuring and Reform Act of 1998 (RRA), the Community Renewal Tax Relief Act of 2000 (CRTRA), the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), the Servicemembers Civil Relief Act of 2003 (SCRA), the Pension Protection Act of 2006 (PPA), the Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART), the Worker, Retiree and Employer Recovery Act of 2008 (WRERA), the Small Business Jobs Act of 2010 (SBJA-2010), and all regulations, rulings and other official guidance published under each such law.

The rights of all employees who terminate employment, and their beneficiaries, will be governed by the Plan as in effect on the employee's termination date, except to the extent an amendment is expressly given retroactive application. However, the account balances of terminated Participants will be administered and distributed in compliance with Plan provisions and applicable law as in effect from time to time.

DEKALB COUNTY 401(a) DEFINED CONTRIBUTION PLAN

Table of Contents

	Page
ARTICLE 1 DEFINITIONS	
1.1 Account (or 401(a) Account or Employer Contribution Account)	1
1.2 Annual Addition	1
1.3 Break in Service	1
1.4 Committee	1
1.5 Compensation	1
(a) For Purposes of Contributions	1
(b) Statutory Limit	2
1.6 Contributions or Employer Contributions	2
1.7 County	2
1.8 Defined Benefit Plan	2
1.9 Disability (or Disabled)	2
1.10 Effective Date	3
1.11 Employee	3
1.12 Employment	3
1.13 Employment Date	3
1.14 Governing Authority	3
1.15 Group 3 participant in the Defined Benefit Plan	3
1.16 Hybrid Participant	3
1.17 IRC	4
1.18 Plan	4
1.19 Plan Administrator	4
1.20 Plan Fiduciary	4
1.21 Plan Year	4
1.22 Qualified Military Service	4
1.23 Surviving Spouse	5
1.24 Termination Date	5
1.25 Trust (or Trust Fund)	5
1.26 Trustee	5
1.27 Years of Service (also called Vesting Service)	5
(a) Computation	5
(b) Approved Leave of Absence	5
(c) Qualified Military Service	6
(d) Forfeiture of Vesting Service	6
1.28 Valuation Date	6
ARTICLE 2 ELIGIBILITY	
2.1 Eligibility	7
2.2 Eligibility after Break in Service	7
2.3 Repayment not Permitted	7
2.4 Leased Employees and Independent Contractors	7

ARTICLE 3	EMPLOYER CONTRIBUTIONS TO THE 401(a) PLAN	
3.1	Employer Contributions	9
3.2	Vesting	9
3.3	Forfeiture	9
3.4	Contributions for Period of Qualified Military Service	9
3.5	Transfer to the Trustee	10
ARTICLE 4	ALLOCATIONS TO ACCOUNTS	
4.1	Adjustments to Account Balances	11
	(a) Regular Valuation Dates	11
	(b) Administrative Fees	11
	(c) Valuations Binding	11
	(d) Statement of Account Balances	11
	(e) Mistakes in Account Balances	11
4.2	Investment Elections	12
	(a) Investment Funds	12
	(b) Liquidity	12
	(c) Investment Elections	12
	(d) Change in Investment Election	13
	(e) Investment Fee Payment and Disclosure	13
	(f) Special Election Procedures	13
	(g) Election Rights of Terminated Participants	13
ARTICLE 5	POST-EMPLOYMENT DISTRIBUTIONS	
5.1	Distribution Events	14
	(a) Termination of Employment	14
	(b) Death	14
	(c) Disability	15
	(d) Plan Termination	15
5.2	Amount of Distribution	15
5.3	Timing of Distribution	15
	(a) Automatic Cash-Out	15
	(b) Distribution to a Participant	15
	(c) Distribution to a Beneficiary	15
	(d) Automatic Rollover Rules	16
5.4	Lump Sum and As-Needed Distributions	16
	(a) Automatic Cash-Out	16
	(b) Lump Sum Form of Distribution	16
	(c) As-Needed Distribution	16
5.5	Minimum Required Distributions	16
	(a) Applicable Definitions	17
	(b) Participant's Death Before his/her Required Distribution Date	18
	(c) Trust as Designated Beneficiary	19
5.6	Beneficiary Designation	19
	(a) Procedure	19
	(b) Distribution to Minor or Incompetent Beneficiaries	19
	(c) Disclaimer of Beneficiary Status	20
	(d) Judicial Determination	20
5.7	Distribution to the Participant's Representative	20
5.8	Unclaimed Benefits	20

5.9	Direct Rollover of Eligible Distributions	20
	(a) Applicable Definitions	20
	(b) Persons Eligible to Direct a Rollover	21
	(c) Written Explanation	21
	(d) Rollover Procedures	21
5.10	IRC § 415 Limitation	22
5.11	Return of Contributions to the County	22
 ARTICLE 6 AMENDMENT, TERMINATION AND MERGER		
6.1	Amendment	23
	(a) Procedure	23
	(b) Prohibited Amendments	23
	(c) Administrative Changes Without Plan Amendment	23
6.2	Termination of the Plan	24
	(a) Right to Terminate	24
	(b) Provision for Benefits Upon Plan Termination	24
 ARTICLE 7 ADMINISTRATION		
7.1	The Governing Authority	25
7.2	The Administrative Committee	25
	(a) Plan Administrator	25
	(b) Powers and Duties of the Committee	25
	(c) The Trustee	27
7.3	Expenses	27
7.4	Indemnification	27
7.5	Claims Procedure	27
	(a) Application for Benefits	27
	(b) Decision on Claim	28
	(c) Appeal	28
	(d) Exhaustion of Administrative Remedies	29
	(e) Limitation Period for Litigation	29
7.6	Suspension of Transactions	29
7.7	Blackout Periods	30
 ARTICLE 8 MISCELLANEOUS		
8.1	Headings	31
8.2	Construction	31
8.3	Qualification for Tax-Exempt Status	31
8.4	Nonalienation	31
8.5	No Employment Rights	32
8.6	No Enlargement of Rights	32
8.7	Exclusive Benefit Rule	32
8.8	Withholding for Taxes	32
8.9	Suspension of Transactions	32

**ARTICLE 1
Definitions**

As used in this Plan, the following words and phrases and any derivatives thereof have the meanings set forth below unless the context clearly indicates otherwise. Definitions of other words and phrases are set forth throughout the Plan. Section references indicate sections of the Plan unless otherwise stated. The masculine pronoun includes the feminine, and the singular number includes the plural and the plural the singular, whenever applicable.

- 1.1 **Account (or 401(a) Account or Employer Contribution Account)** means the record the Plan maintains of the County's Contributions, investment gains/ losses/expenses, and distributions allocated to each Hybrid Participant, for accounting purposes.
- 1.2 **Annual Addition** means the maximum dollar amount that the County can contribute to the 401(a) Plan for each Hybrid Participant for the Plan Year under IRC § 415(c), which is \$54,000 for 2017.
- 1.3 **Break in Service** means the period between the date when a Hybrid Participant terminates Employment and the date when he/she resumes Employment. An Employee who terminates Employment with the status of a *group 1* or *group 2* participant in the Defined Benefit Plan and is rehired as a Hybrid Participant (i.e., a group 3 participant in the Defined Benefit Plan) is not treated as having had a Break in Service for purposes of the 401(a) Plan but rather is treated as a new Employee.
- 1.4 **Committee** means the Administrative Committee, the members of which are chosen in the manner described in the Administrative Committee Charter adopted by the Governing Authority, and who have primary responsibility for administering the 401(a) Plan (as well as the County's 457(b) Plan, beginning in August 2017), including the selection and monitoring of the investment managers and investments for Account balances. The Committee serves as the Plan Administrator of the Plan. See Section 7.2.
- 1.5 **Compensation.**
 - (a) **For purposes of Contributions, Compensation** means the regular salary actually paid by the County to a Hybrid Participant during any calendar month,

excluding overtime pay, reimbursed expenses, bonuses, commissions, automobile allowances, and any other remuneration, and including before-tax or salary deferral contributions made under IRC §§ 125, 132, 402(g)(3), 457(b) and/or 414(h), to any plan maintained by the County.

- (b) **Statutory Limit.** Each Hybrid Participant's Compensation taken into account for all purposes under the Plans is limited to the annual amount prescribed under IRC § 401(a)(17) for the Plan Year (\$270,000 for 2017), which is indexed annually in \$5,000 increments. The 401(a) Plan does not apply the statutory limit on a payroll-period basis, but rather applies the limit on a Plan Year basis. The Plan will not prorate the statutory limit on Compensation for any Hybrid Participant who participates in the 401(a) Plan for less than a full Plan Year.

1.6 **Contributions or Employer Contributions** means the Plan Contributions made by the County for the Plan Year, which initially will be in an amount equal to 3% of the Compensation paid to each Hybrid Participant. The County reserves the right to change the level of its Contributions or to stop making Contributions at any time. See Subsection 2.2 for the rules governing rehired Hybrid Participants. The County will not make Employer Contributions to anyone other than a Hybrid Participant. The County will not make Employer Contributions to any Hybrid Participant for any period of time for which he/she receives retirement benefits under the Defined Benefit Plan. The 401(a) Plan will not accept employee contributions of any kind.

1.7 **County** means DeKalb County.

1.8 **Defined Benefit Plan** means the DeKalb County Pension Plan, which is qualified for tax-exempt status under IRC §§ 401(a) and 501(a), and which has three groups of participants based on their hire dates or rehire dates if they terminated and received a refund of their own contributions (group 1, group 2, and group 3).

1.9 **Disability (or Disabled)** means a Hybrid Participant's inability to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment that can be expected to result in death or to be of long-continued and indefinite duration, and which makes the Hybrid Participant eligible for a distribution under Section 5.1(c).

- 1.10 **Effective Date** of the Plan means January 1, 2016.
- 1.11 **Employee** means, for purposes of eligibility to participate in the 401(a) Plan, an individual who is compensated by the County as a common-law employee, officer or deputy and has FICA taxes deducted from his/her Compensation, and is a Hybrid Participant, i.e., a group 3 participant in the Defined Benefit Plan. If the County or any governmental entity reclassifies an individual who had been classified as not being an eligible Employee, such reclassification will be prospective only, except to the extent the County expressly applies the reclassification retroactively.
- 1.12 **Employment** means the period during which an individual is an Employee compensated by the County.
- 1.13 **Employment Date** means the date on which an Employee first earns Compensation, except that the Employment Date for an Employee who terminates Employment as a group 1 or group 2 participant in the Defined Benefit Plan and resumes Employment as a group 3 participant is the date when he/she resumes Employment as a group 3 participant, for purposes of eligibility to participate in the 401(a) Plan and earning Vesting Service credit.
- 1.14 **Governing Authority** means the DeKalb County Governing Authority (currently the DeKalb County Board of Commissioners and Chief Executive Officer).
- 1.15 **Group 3 participant in the Defined Benefit Plan** means an individual whose first day as a participant in the Defined Benefit Plan is on or after January 1, 2016, or an individual who returns to DeKalb County service on January 1, 2016 or later after receiving a return of contributions the individual made to the Defined Benefit Plan during earlier participation in the Defined Benefit Plan.
- 1.16 **Hybrid Participant** means either (a) an Employee whose Employment Date is on or after January 1, 2016 and who is a group 3 participant in the Defined Benefit Plan, or (b) an Employee who, after terminating Employment as a group 1 or group 2 participant in the Defined Benefit Plan, resumes Employment as a group 3 participant in the Defined Benefit Plan. A Hybrid Participant will retain his/her status as an active Hybrid Participant so long as he/she receives Compensation upon which Employer

Contributions are based, except that a Hybrid Participant will not receive Employer Contributions for any time period for which he/she receives retirement benefits under the Defined Benefit Plan. The word *Hybrid* references the County's provision of retirement benefits through a combination of the 401(a) Plan and the Defined Benefit Plan for group 3 participants in the Defined Benefit Plan. In limited circumstances, the Defined Benefit Plan permits certain employees compensated by both County and State to make a one-time irrevocable election to opt out of becoming participants in the Defined Benefit Plan. Such an employee who elects to opt out of becoming a participant in the Defined Benefit Plan will not be considered a Hybrid Participant and will not be eligible for Employer Contributions under the 401(a) Plan. To the extent indicated by the text of this Plan, the term Hybrid Participant may apply to a former Employee who continues to have an Account balance.

- 1.17 **IRC** means the Internal Revenue Code of 1986 as amended from time to time, and regulations and rulings issued under the IRC.
- 1.18 **Plan** means the DeKalb County 401(a) Defined Contribution Plan, as set forth in this document and as amended from time to time.
- 1.19 **Plan Administrator** means the Committee.
- 1.20 **Plan Fiduciary** means any individual and/or entity who exercises any discretionary authority or discretionary control or responsibility in the administration of the Plan, or has any discretionary authority or control with respect to the management or disposition of Plan assets.
- 1.21 **Plan Year** means the calendar year.
- 1.22 **Qualified Military Service** means the period during which a Hybrid Participant performs service (while on active or inactive duty or training, with the Army, Navy, Air Force, Marines, Coast Guard, Reserves, and/or the Army, and/or Air National Guard, Commissioned Corps of the Public Health Service, and any other service designated by Executive Order) that remains protected by the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), 38 U.S.C. § 4301 *et seq.* so that he/she retains statutory re-employment rights. To be eligible for USERRA rights, the Hybrid Participant must resume Employment after his/her honorable discharge, within the time

limits prescribed by applicable law for the length of his/her leave, which range from immediately after termination of Qualified Military Service to 90 days. As described in specific provisions throughout this Plan document, the Plans will treat the Hybrid Participant as if his/her Employment had not been interrupted by Qualified Military Service, for purposes of the right to receive Employer Contributions and Vesting Service for the period of Qualified Military Service, in compliance with IRC § 414(u).

- 1.23 **Surviving Spouse** means the individual to whom a Hybrid Participant is lawfully married under the laws of any state or other jurisdiction, without regard to the state of residence, on his/her date of death.
- 1.24 **Termination Date** means the date Employment ends for any reason.
- 1.25 **Trust (or Trust Fund)** means the fund maintained under a trust agreement executed between the County and a Trustee for the Plan, which constitutes a part of the Plan.
- 1.26 **Trustee** means the corporation(s), individual(s) or other entity(s) appointed by the County to administer each Trust or a portion thereof, as provided in Article 7.
- 1.27 **Years of Service (also called Vesting Service)** means the period beginning on the Hybrid Participant's Employment Date and ending on his/her Termination Date, subject to the following rules:
- (a) **Computation.** The Plan will compute Years of Service in whole and partial years, by measuring months from the Employment Date, counting each month as 1/12 year, aggregating non-continuous partial months into whole 30-day months, and ignoring any remaining days. This is the Elapsed-Time method of counting Vesting Service.
 - (b) **Approved Leave of Absence.** Except as provided in this Subsection, each Hybrid Participant will be credited with Vesting Service as if his/her status as an Employee had continued during the period of his/her approved leave of absence granted under the Employer's standard, uniformly-applied personnel policies, but only if he/she resumes active Employment promptly upon the expiration of the approved leave.

- (c) **Qualified Military Service.** Each Hybrid Participant will receive credit for Vesting Service as if his/her active Employment had continued during the period of his/her Qualified Military Service. For purposes of Vesting Service, the Committee will treat a Hybrid Participant who suspended or terminated Employment as a result of Qualified Military Service and died while performing Qualified Military Service, as if he/she had resumed Employment and then died.

- (d) **Forfeiture of Vesting Service.** A vested Hybrid Participant will forfeit his/her Vesting Service if he/she terminates Employment and elects to receive a distribution of his/her 401(a) Account balance. An automatic cash out under Subsection 5.4(a) will not cause a vested Hybrid Participant to forfeit his/her Vesting Service. A terminated non-vested Hybrid Participant will forfeit his/her Vesting Service on the second anniversary of his/her Termination Date unless he/she resumes Employment before that date. A Hybrid Participant's distribution from the Defined Benefit Plan will not affect his/her Vesting Service under the 401(a) Plan.

1.28 **Valuation Date** means each business day during the Plan Year when the New York Stock Exchange is open for trading, as of which the Trustee or recordkeeper will determine the fair market value of the Trust Fund and of each Account, and will make allocations to Accounts as provided in Section 4.1. The County may establish different allocation and/or Valuation Dates from time to time as it considers appropriate.

ARTICLE 2
Eligibility

- 2.1 **Eligibility.** Each Employee whose Employment Date is on or after January 1, 2016 and who is a group 3 participant in the Defined Benefit Plan, and each Employee who, after terminating Employment as a group 1 or group 2 participant in the Defined Benefit Plan, resumes Employment as a Hybrid Participant (i.e., a group 3 participant in the Defined Benefit Plan), automatically will participate in the 401(a) Plan and will receive Employer Contributions at the rate then in effect, beginning on his/her Employment Date as a Hybrid Participant.
- 2.2 **Eligibility after Break in Service.** After a Break in Service, a Hybrid Participant automatically will resume participating in the 401(a) Plan and will receive Employer Contributions at the rate then in effect, beginning on the date he/she resumes Employment (unless he/she is receiving retirement benefits under the Defined Benefit Plan). If a rehired Hybrid Participant was vested in his/her 401(a) Account balance when he/she terminated, he/she will retain his/her Vesting Service after a Break in Service unless he/she elected to withdraw his/her 401(a) Account balance, in which case he/she will be treated as a new Employee. If a vested rehired Hybrid Participant left his/her Account balance in the 401(a) Plan, the balance will include any investment earnings accrued during the Break in Service. If a rehired Hybrid Participant was not vested in his/her 401(a) Account Balance when he/she terminated, he/she will retain his/her Vesting Service only if he/she resumes Employment before the second anniversary of his/her Termination Date. If a non-vested terminated Hybrid Participant is rehired before the second anniversary of his/her Termination Date, the 401(a) Plan will restore his/her Account balance with any investment earnings accrued during the Break in Service.
- 2.3 **Repayment not Permitted.** A Hybrid Participant who terminates Employment, withdraws his/her vested Account balance from the Plan, and resumes Employment, will not be permitted to repay the amount withdrawn.
- 2.4 **Leased Employees and Independent Contractors.** A leased employee is an individual who is not employed by the County but has performed services for the County on a substantially full-time basis for at least one year, under the County's primary

direction or control and pursuant to an agreement between the County and a leasing organization. Leased employees will be treated as Employees to the extent required under IRC § 414(n), but will not be eligible to participate in this Plan unless and until they becomes Employees. If an individual who has worked for the County as an independent contractor becomes a common-law Employee, or if a court or administrative agency determines that an individual whom the County has designated as an independent contractor is in fact a common-law Employee, he/she will not receive credit for any purpose under the Plan until the date when the County designates him/her as an eligible Employee under the Plan.

ARTICLE 3

Employer Contributions to the 401(a) Plan

- 3.1 **Employer Contributions.** The County initially will contribute 3% of each Hybrid Participant's Compensation for each pay period, which will be allocated to his/her 401(a) Plan Account. The County reserves the right to change the level of its Contributions or discontinue its Contributions at any time.
- 3.2 **Vesting.** Each Hybrid Participant will become 100% vested in his/her Employer Contribution Account as of the date he/she completes 3 Years of Service. The 401(a) Plan does not accelerate vesting upon death or Disability.
- 3.3 **Forfeiture.** A non-vested Hybrid Participant who terminates Employment will forfeit his/her entire Account balance and Vesting Service on the second anniversary of his/her Termination Date, unless he/she has resumed Employment before that date. Until the forfeiture date, the 401(a) Plan will allow the non-vested terminated Participant to continue to direct the investment of his/her Account balance. A vested Hybrid Participant who terminates Employment will retain his/her Account balance and Vesting Service, and the right to direct the investment of his/her Account balance, until he/she elects to receive a total distribution and will then forfeit his/her Vesting Service. In its discretion, the County will use forfeitures (1) to help fund Employer Contributions, and/or (2) to pay administrative expenses of the Plan, and/or (3) to reinstate forfeited vested Account balances of previously missing Participants who have been located under Section 5.8 and have submitted claims for distribution.
- 3.4 **Contributions for Period of Qualified Military Service.** If a Hybrid Participant takes a Qualified Military Service leave, retains his/her reemployment rights, and timely resumes Employment, the County will allocate to his/her Employer Contribution Account an amount equal to 3% of the Compensation he/she would have received if he/she had remained in active Employment during the leave. If the pay rate(s) that would have applied during that leave period cannot be determined with certainty, the 401(a) Plan will compute the Compensation he/she would have received for the period of military leave based on his/her average rate of Compensation during the 12-month period immediately preceding the military leave (or, if shorter, the full period of employment immediately

preceding such military leave). The County will not allocate to his/her Account any investment earnings or forfeitures related to the period of leave. If a Hybrid Participant suspended or terminated Employment as a result of Qualified Military Service and dies while performing Qualified Military Service, the County will make this Contribution as if he/she had resumed Employment and then died.

- 3.5 **Transfer to the Trustee(s).** The County will transfer its Contributions to the Trustee(s) as soon as practicable after the end of the payroll period for which they are made.

ARTICLE 4
Allocations to Accounts

4.1 Adjustments to Account Balances.

- (a) **Regular Valuation Dates.** As of each Valuation Date, the recordkeeper will determine the fair market value of the Trust Fund. As soon as practicable after the recordkeeper processes the County's payroll data and other relevant records, the recordkeeper will adjust the Account balances of each Hybrid Participant to reflect his/her allocations of Employer Contributions (if any), any distributions from his/her Accounts, and investment gains or losses and expenses.
- (b) **Administrative Fees.** The Plans may charge reasonable and uniform administrative fees to Participant Accounts. The recordkeeper will disclose all such fees to affected Participants.
- (c) **Valuations Binding.** In determining the value of the Trust Funds and the individual Accounts, the recordkeeper and the County will exercise their best judgment. All determinations of value are binding upon Hybrid Participants and their beneficiaries.
- (d) **Statement of Account Balances.** As soon as practicable after the end of each calendar quarter, the Plans will provide to each Hybrid Participant and beneficiary for whom an Account is maintained a statement showing all allocations to and distributions from his/her Accounts, and the current value of his/her Accounts. For any Plan Year, the Plan may provide statements more frequently, and may provide Hybrid Participants electronic access to their statements in lieu of paper statements.
- (e) **Mistakes in Account Balances.** The Committee will take reasonable steps to ensure that this Plan document is in compliance with all applicable laws as in effect from time to time, and to ensure that the 401(a) Plan is administered as written. If the Committee discovers a material defect in any Account balance or distribution from the Plan, it will take reasonable steps to correct the defect as promptly as

practicable. The Committee will make a good faith effort to correct administrative errors in the manner it considers appropriate under the circumstances and in compliance with the principles of Revenue Procedure 2008-50 or any succeeding IRS guidance on self-correction of operational defects. If the Committee determines that the burden or expense of seeking recovery of any overpayment or correcting any immaterial defect would be greater than is warranted under the circumstances, it may in its discretion forego recovery or other correction efforts. In correcting administrative defects, the Committee may make insignificant variances from Plan provisions (including but not limited to timing of payment), to the extent any such variance would comply with applicable qualification requirements if it were set forth in a written provision of the Plan.

4.2 **Investment Elections.**

- (a) **Investment Funds.** From time to time, the Committee will direct the record-keeper and/or the Plans' investment advisor(s) to make available one or more funds for the investment of Account balances, as elected by each Hybrid Participant or beneficiary. The Committee or its agent will timely describe to Hybrid Participants or their beneficiaries the investment funds that are available from time to time, either electronically or in written notices, or in prospectuses upon request.
- (b) **Liquidity.** The Trust Fund may hold cash and other liquid investments in such amounts as the Committee and/or the Trustee consider necessary to meet the Plan's liquidity requirements and to pay administrative expenses.
- (c) **Investment Elections.** Hybrid Participants must contact the recordkeeper to make their investment elections. The recordkeeper will issue a written confirmation of each election.
 - (1) **Initial Election.** Hybrid Participants may elect to have the aggregate balances in their Accounts invested among the investment funds in 1% increments.
 - (2) **Failure to Elect.** The Committee will direct the Trustee and/or the recordkeeper to invest the Account balances of any Hybrid Participant who

fails to timely submit his/her investment election. Although this is a governmental plan, the Trustee and/or recordkeeper may invest 100% of such Participant's contributions in a fund that meets the statutory requirements for Qualified Default Investment Alternatives (QDIAs) under ERISA § 404(c) (i.e., life-cycle funds, balanced funds, and/or professionally managed funds).

- (d) **Change in Investment Election.** As of any Valuation Date, each Hybrid Participant may change his/her investment election for the balance(s) in his/her existing Account(s), in 1% increments. Re-investment elections for existing balances will become effective as of the Valuation Date when made if the Participant submits his/her investment election no later than the daily time deadline established by the recordkeeper and communicated to Participants. Otherwise, the election will become effective as of the next following Valuation Date. Investment elections for future Contributions will be effective when made.
- (e) **Investment Fee Payment and Disclosure.** All fees related to each investment fund will be paid from that fund. Although the Plan is governmental, it may comply with guidance on disclosure of investment fees as may be issued by the U. S. Department of Labor from time to time.
- (f) **Special Election Procedures.** The Committee may direct or permit (1) termination of investment funds; (2) selection of new investment funds; (3) other election submission dates; and/or (4) any other variance from the provisions stated in this Article 4 as it considers appropriate, under procedures adopted by the Committee, published to Employees, and uniformly applied.
- (g) **Election Rights of Terminated Participants.** The Plan will permit a vested terminated Hybrid Participant, and a non-vested terminated Hybrid Participant who has not forfeited his/her Account balance under Section 3.3, to continue to direct the investment of his/her Account balance.

ARTICLE 5

Post-Employment Distributions

- 5.1 **Distribution Events.** Each Hybrid Participant may leave his/her Account balance(s) in the Plan(s) until the later of his/her Termination Date or the end of the Plan Year when he/she reaches age 70-1/2. Each beneficiary may leave his/her Account balance(s) in the Plan(s) until his/her Required Distribution Date under Section 5.5.
- (a) **Termination of Employment.** A Hybrid Participant who terminates Employment for any reason will be eligible for either immediate or deferred distribution of his/her aggregate vested Account balance(s). The Participant must apply for distribution using the procedures prescribed by the Committee from time to time, and must provide all requested documentation. The Trustee will issue the distribution as soon as practicable after approval of the application.
- (b) **Death.** If a Hybrid Participant dies with an Account balance in the Plan, the Plan will pay his/her vested balances to his/her beneficiary(s). The Surviving Spouse will be the sole primary beneficiary unless the Participant has designated another beneficiary. The beneficiary(s) must apply for a distribution using the procedures prescribed by the Committee from time to time, and must provide proof of death, proof of identity, and all documentation required by the Committee. If the Surviving Spouse is the beneficiary, he/she may apply for the distribution at any time after the Participant's death, but the distribution must be made no later than the end of the year when the Participant would have reached age 70-1/2. If the beneficiary is not the Surviving Spouse, the Plan will make the distribution no later than the end of the fifth year following the year of the Participant's death. Upon request, the Plan will make all or part of the distribution as a direct rollover, which will permit the beneficiary(s) to defer taxation until they receive a distribution. The Surviving Spouse or non-Spouse beneficiary will be assessed ordinary income tax on the amount distributed for the year when it is received from this Plan or from the rollover plan or account. The Trustee will issue the distribution or make the rollover as soon as practicable after approval of the application.

- (c) **Disability.** If a Hybrid Participant incurs a Disability and applies for distribution of his/her Account balance before his/her Termination Date, the Committee may approve distribution of vested amounts from his/her Employer Contribution Account.
 - (d) **Plan Termination.** If the County terminates the 401(a) Plan in part or in whole, and the Committee directs distribution of benefits to affected Hybrid Participants the Plan will make lump sum distributions as soon as practicable.
- 5.2 **Amount of Distribution.** A Hybrid Participant or beneficiary will receive his/her distribution based on the amount of his/her Account balance(s) determined as of the Valuation Date on which the distribution is processed.
- 5.3 **Timing of Distribution.** The Plan will direct the Trustee to make distribution to a Hybrid Participant or beneficiary as soon as practicable after the application is approved.
- (a) **Automatic Cash-Out.** The Plan automatically will distribute any Account balance not over \$1,000 as soon as practicable after the Hybrid Participant's Termination Date.
 - (b) **Distribution to a Participant.** A Hybrid Participant may elect to receive distribution of his/her Account balance(s) as soon as administratively practicable after his/her Termination Date, or may defer distribution to the extent permitted by the Minimum Required Distribution rules in Section 5.5. A terminated Hybrid Participant whose Account balance in the Plan exceeds \$1,000 may leave his/her Account balance in the Plan until distribution is required under Section 5.5.
 - (c) **Distribution to a Beneficiary.** The beneficiary(s) of a deceased Hybrid Participant may elect to receive distribution of his/her Account balance(s) as soon as administratively practicable after providing evidence satisfactory to the Committee of the Participant's death and the beneficiary's identity. A non-Spouse beneficiary may not defer distribution later than December 31 of the fifth year following the year of the Participant's death (*the Five-Year Distribution Rule*). A Surviving Spouse may not defer distribution later than December 31 of the year in which the deceased Participant would have reached age 70-1/2.

- (d) **Automatic Rollover Rules.** If a terminated Hybrid Participant's Account balance in the Plan is more than \$1,000, and the Participant does not affirmatively elect to receive the distribution directly or to have the distribution paid directly to an eligible retirement plan or IRA by the first day of month in which his/her Required Distribution Date occurs under Section 5.5, the Plan will pay his/her Account balances to him/her in a single lump sum. The Committee reserves the right to automatically roll over any Account balance between \$1,000 and \$5,000 to an individual retirement account (IRA) designated by the Committee if it determines that the administrative expense of retaining such balances in this Plan is not in the best interest of the affected Plan or its Participants.

5.4 **Lump Sum and As-Needed Distributions.**

- (a) **Automatic Cash-Out.** The Plan will cash out the Account balance of any terminated Hybrid Participant in the Plan whose balance is not over \$1,000.
- (b) **Lump Sum Form of Distribution.** The Plan will make all post-Employment distributions in a single lump sum, except as provided in Subsection (c).
- (c) **As-Needed Distributions.** Any Hybrid Participant whose Account balance in the Plan exceeds \$1,000, and who defers distribution after his/her Termination Date, may request distributions as needed, but not more frequently than once each calendar quarter and not in amounts less than \$1,000. The Plan will not make an as-needed distribution that reduces the Participant's Account balance below \$1,000. Each Participant may elect a final distribution at any time and is required to take a final distribution no later than his/her Required Distribution Date under Section 5.5.

5.5 **Minimum Required Distributions.** The requirements of this Section take precedence over any inconsistent provisions of the Plan. The Plan will determine and pay all distributions required under this Section in accordance with IRC § 401(a)(9) and Treas.

Regs. § 1.401(a)(9), which are incorporated into both Plans. If any provision of this Plan document is inconsistent with IRC § 401(a)(9), the latter will prevail.

(a) **Applicable Definitions.** For purposes of this Section, the following terms have the meanings set forth below.

- (1) **Account Balance** means the Hybrid Participant's aggregate Account balances as of the last valuation date in the calendar year immediately preceding the Distribution Calendar Year.
- (2) **Distribution Calendar Year** means a calendar year for which a minimum distribution is required.
- (3) **Designated Beneficiary** means the Hybrid Participant's Surviving Spouse, or another individual who is designated as a beneficiary under Section 5.6, and is a Designated Beneficiary within the meaning of Treasury Regulations § 1.401(a)(9)-4 and remains so as of September 30 of the year following the Participant's year of death. The Plan permits Participants to designate multiple beneficiaries.
- (4) **Five-Year Rule** means the rule that requires the Plan to distribute the entire balance in an Account by December 31 of the fifth year following the year of the Hybrid Participant's death, or the Surviving Spouse's death if he/she is the sole beneficiary and does not survive long enough to receive the distribution.
- (5) **Required Distribution Date**, for the Hybrid Participant, means December 31 of the later of the calendar year in which the Hybrid Participant reaches age 70-1/2 or the year in which he/she terminates from the County (although IRC § 401(a)(9) would permit distribution to be deferred to the following April 1). The Required Distribution Date for a Surviving Spouse is December 31 of the calendar year in which the Participant would have reached age 70-1/2 if he/she had survived, or if later December 31 of the year when the Participant

died while in Employment. The Required Distribution Date for a non-Spouse Beneficiary is December 31 of the fifth year following the year of the Participant's death. The Plan will distribute each Participant's and each beneficiary's entire interest no later than his/her Required Distribution Date. A Participant may elect to receive as-needed withdrawals under Section 5.4 until his/her Required Distribution Date.

- (b) **Participant's Death Before his/her Required Distribution Date.** If a Hybrid Participant dies before his/her Required Distribution Date, the Plan will distribute the entire balance in his/her Account no later than the Designated Beneficiary's Required Distribution Date, as follows:
- (1) **If the Surviving Spouse is a Designated Beneficiary,** the Plan will make a lump sum distribution to him/her by December 31 of the calendar year following the later of the calendar year in which the Hybrid Participant died or the calendar year in which he/she would have attained age 70-1/2 if he/she had survived.
 - (2) **If the Surviving Spouse is not the sole Designated Beneficiary,** the Plan will make a lump sum distribution to the non-Spouse Designated Beneficiary(s) by December 31 of the fifth calendar year following the calendar year in which the Hybrid Participant died.
 - (3) **If there is no Designated Beneficiary as of September 30 of the year following the year of the Hybrid Participant's death,** the Plan will make a lump sum distribution of the entire balance in the Account by December 31 of the fifth calendar year following the year of the Participant's death, to the beneficiary(s) who have that status under Subsection 5.6(a).
 - (4) **If the Surviving Spouse is the sole Designated Beneficiary and the Surviving Spouse dies after the Hybrid Participant but before distribution to the Surviving Spouse is made,** the Plan will apply Subsections (c) (2) and (3) above as if the Surviving Spouse were the Participant.

- (c) **Trust as Designated Beneficiary.** If a Hybrid Participant names a trust as a beneficiary, the affected Plan(s) may treat the beneficiaries of the trust as the Designated Beneficiaries for purpose of the minimum distribution requirements, if the trust complies with Treas. Regs. § 1.401(a)(9)-4 Q & A 5. The Designated Beneficiaries must provide the Committee the trust documentation that certifies the Designated Beneficiaries under the trust, by October 31 of the year following the year of the Participant's death.

5.6 **Beneficiary Designation.**

- (a) **Procedure.** Each Hybrid Participant may name as his/her primary and/or contingent beneficiary one or more individuals or an entity other than a natural person, e.g., a trust, estate, foundation, charity, school, church, etc., to receive any Account balance remaining in the Plan after his/her death. If no designated beneficiary survives a Participant, the affected Plan will treat his/her Surviving Spouse (if any) as the beneficiary, or if none then the Participant's descendants per stirpes, or if none then the Participant's estate. If the Participant names more than one beneficiary, he/she must designate the amount or percentages payable to each, and may indicate whether each beneficiary is primary or secondary. A Participant may change his/her beneficiary(s) at any time before his/her death. After the Participant's death, the beneficiary will have the right to make investment elections under Section 4.2, and to elect distribution under the rules set forth in this Article 5. The Plan will not honor any beneficiary designation that the Plan did not receive before the Participant's death.
- (b) **Distribution to Minor or Incompetent Beneficiaries.** If a deceased Hybrid Participant's beneficiary is a minor, or is legally incompetent, the Trustee will make distribution to the court-appointed guardian or representative of such beneficiary, or to a trust established for the benefit of such beneficiary, as applicable. If no guardian or representative is appointed, and no trust is established, the affected Plan may defer distribution until the earlier of the date the beneficiary reaches majority or becomes legally competent under applicable state law, or the end of the fifth calendar year following the Participant's death, at which time the Plan may distribute the balance due to the beneficiary into an IRA or similar account

established in the beneficiary's name. Such distribution will be in full satisfaction of all liabilities that the Plan and Plan Fiduciaries have with respect to the deceased Participant and the beneficiary.

- (c) **Disclaimer of Beneficiary Status.** An individual beneficiary may disclaim the right to receive all or part of any Account balance that otherwise would be payable, by presenting to the Committee a written and notarized disclaimer. The affected Plan will treat the beneficiary who has disclaimed his/her rights as if he/she predeceased the Participant.
- (d) **Judicial Determination.** If the Committee for any reason considers it improper to direct any distribution as specified in this Section, it may have a court of applicable jurisdiction determine to whom distributions should be made.

5.7 **Distribution to the Participant's Representative.** If a Hybrid Participant is incompetent to handle his/her affairs at any time while he/she is eligible to receive a distribution from the Plan, the Trustee will make distribution to his/her court-appointed personal representative, or if none is appointed the Trustee may in its discretion make distribution to his/her next-of-kin or attorney-in-fact, for the benefit of the Participant. The Committee may request a court of competent jurisdiction to determine the payee. Such distribution will be in full satisfaction of all liability that the Plan and Plan Fiduciaries have with respect to the Participant.

5.8 **Unclaimed Benefits.** If the Committee cannot locate, with reasonable effort and after a period of five years, any person entitled to receive a Hybrid Participant's Account balances, his/her balances will be forfeited but will be reinstated without interest in the event he/she subsequently makes a claim for benefits. Pursuant to O.C.G.A. § 44-12-207, no unclaimed benefits under the Plan will escheat to the State of Georgia.

5.9 **Direct Rollover of Eligible Distributions.**

- (a) **Applicable Definitions.** For purposes of this Section, the following terms have the meanings set forth below:

- (1) **Eligible Rollover Distribution.** Eligible Rollover Distributions include (A)

lump sum distributions, and (B) any other distribution that is not part of a series of substantially equal periodic distributions, made at least annually, over a period of at least 10 years, or over the lifetime or life expectancy of a Hybrid Participant or the joint lifetimes or life expectancies of the Participant and his/her named beneficiary. The plans into which a Participant or beneficiary may roll over his/her Eligible Rollover Distribution include the following, if they accept such rollovers: (A) another qualified retirement plan; (B) an annuity contract described in IRC § 403(b); (C) an eligible deferred compensation plan described in IRC § 457(b) maintained by a governmental employer (if the plan agrees to separately account for the rollover); (D) an individual retirement account (IRA) described in IRC § 408(a); (E) a Roth IRA described in IRC § 408A; (F) an individual retirement annuity described in IRC § 408(b) other than an endowment contract; and (G) an annuity plan described in IRC § 403(a).

- (2) **Ineligible Distribution.** Distributions that are not Eligible Rollover Distributions include (A) minimum required distributions under IRC § 401(a)(9) as described in Section 5.5; and (B) amounts less than \$200.

- (b) **Persons Eligible to Direct a Rollover.** The following persons are eligible to instruct the Plan to roll over all or part of their Eligible Rollover Distribution to an Eligible Rollover Plan: (1) a Hybrid Participant; (2) a Surviving Spouse; and (3) a non-Spouse beneficiary (but only a direct rollover to an inherited IRA that he/she established in his/her name as beneficiary of the deceased Participant and solely to receive the distribution). Trusts, estates, and other non-human beneficiaries are not eligible to make rollovers.

- (c) **Written Explanation.** The Plan will timely provide a written explanation of the right to make a direct rollover, and the right to take a distribution, minus 20% mandatory withholding for federal income tax, and roll over all or part of the distribution within 60 days. The notice will include all information required under IRC § 402(f).

- (d) **Rollover Procedures.** The payee who wishes to direct a rollover must timely provide to the affected Plan written information required to implement the rollover.

- 5.10 **IRC § 415 Limitation.** No Hybrid Participant will receive an allocation of Employer Contributions for any Plan Year (limitation year) in excess of the limit on annual additions under IRC § 415 for the year (\$54,000 for 2017). IRC § 415 and the Final 415 Regulations are incorporated into the 401(a) Plan by this reference.
- 5.11 **Return of Contributions to the County.** Any contribution made by mistake of fact to the 401(a) Plan will be returned to the County within one year after the mistaken contribution is transferred to the Trustee.

ARTICLE 6
Amendment, Termination and Merger

6.1 Amendment.

- (a) **Procedure.** The Committee reserves the right to amend the Plan from time to time. The Committee will determine the circumstances that necessitate a formal Plan amendment, and will draft or cause the amendment to be drafted. The Chairperson of the Committee may execute any amendment that does not require the Governing Authority's approval. The Governing Authority must approve any amendment that would substantially affect the funding or expense of the Plan being amended, or that would significantly change a material feature of the Plan.

- (b) **Prohibited Amendments.** The Committee will not permit the adoption of any amendment that would have the effect of any of the following:
 - (1) **Exclusive Benefit.** No amendment will permit any part of the Trust Fund to be used for purposes other than the exclusive benefit of Participants and beneficiaries whose Account balances are in the Trust Fund, and the payment of reasonable administrative expenses.

 - (2) **Non-reversion.** No amendment will cause any assets of the Trust Fund to revert to the County.

 - (3) **No Reduction in Account Balances.** No amendment will eliminate or reduce any Participant's Account balance accrued and vested before the amendment.

- (c) **Administrative Changes Without Plan Amendment.** The Committee reserves authority to make administrative changes to this Plan document, without formal amendment to the Plan. The Committee may implement such changes by substituting pages in the Plan document with corrected pages. Administrative changes include, but are not limited to corrections of typographical errors and similar errors, conforming provisions for administrative procedures to actual

practice and changes in practice, and deleting or clarifying language that fails to accurately reflect the intended provision of the Plan.

6.2 **Termination of the Plan.**

- (a) **Right to Terminate.** The County expects the Plan to be continued indefinitely but necessarily reserves the right to terminate the Plan or any portion of the Plan and all Contributions attributable to the terminated portion at any time, subject to approval of the Governing Authority.

- (b) **Provision for Benefits Upon Plan Termination.** If the County terminates the Plan, the Committee may either: (1) continue the affected Trust, or any portion of the Trust for so long as it considers advisable and so long as permitted by law, either through the existing trust agreement(s), or through successor funding media; or (2) terminate the Trust, or any portion of the Trust, pay all expenses, and direct the payment of the benefits, either in the form of lump sum distributions, transfer to another IRC §§ 401(a) or 457(b) governmental plan, or any other form selected by the Committee and approved by the Governing Authority, to the extent permitted by applicable law.

ARTICLE 7
Administration

- 7.1 **The Governing Authority.** The Governing Authority has the responsibility for (a) making decisions about proposed amendments that would substantially affect the Plan's funding or expense, or that would significantly change a material feature of the Plan; and (b) monitoring the performance of the Committee via self-evaluation reports not less frequently than annually. The Governing Authority may choose to exercise its authority to disapprove or override the Committee's selection of a Trustee, investment advisor, recordkeeper, and other third party administrators.
- 7.2 **The Administrative Committee.** The Governing Authority will delegate responsibility for administering the Plan to an internal Administrative Committee, by adopting an Administrative Committee Charter ("Charter"). The Charter, as amended from time to time by the Governing Authority, will describe the manner in which members of the Committee will be chosen, the terms and conditions of their service on the Committee, the Committee's authority and the limitations on that authority, the timing and circumstances of the Committee's meetings, and immunities applicable to Committee members.
- (a) **Plan Administrator.** The Committee will serve as the Plan Administrator, and will have the primary responsibility for the administrative functions of the Plan, and the authority to delegate such functions to employees of the County, to third party administrators, and to other agents and representatives as the members consider appropriate for the proper administration of the Plan.
- (b) **Powers and Duties of the Committee.** The County has delegated to the Committee the primary responsibility for administering the Plan. Subject to the Governing Authority's approval, the Committee may from time to time appoint, remove, or replace investment advisors, recordkeepers, and other third party administrators. The Committee will have all powers necessary to enable it to properly perform its duties, and will have sole and complete discretionary authority in the exercise of all its powers and duties. The Governing Authority has granted to the Committee such sole and complete discretionary authority in the exercise of all its powers and duties as to invoke the arbitrary-and-capricious standard of

review as opposed to the de novo standard of review in litigation. The Committee's powers and duties will include, but will not be limited to:

- (1) **Interpretation** - interpret the Plan and make final decisions on all questions and disputes arising under the Plan;
- (2) **Individual Accounts** – select and retain a third party administrator to maintain individual Accounts for each Participant, and allocate Contributions, expenses, investment earnings/losses, withdrawals, and distributions, to the proper Accounts;
- (3) **Employee Data** – collect and maintain complete information regarding the Compensation and Employment of each Participant, and other facts necessary to determine their rights, obligations, and benefits;
- (4) **Rights to Benefits** - determine the eligibility of any individual to participate in the Plan, the right of any Participant or beneficiary to receive benefits (including in-service withdrawals) and the amount of benefits to which each claimant is entitled, and to implement the claims procedure described in Section 7.5;
- (5) **Payments** - direct the payment of Account balances from the Fund, or appoint a disbursing agent, and specify the payee, the amount and the conditions of each payment;
- (6) **Disclosure** - prepare and distribute, or make available to Employees, plan summaries, notices, prospectuses, fee disclosures, and other Plan information required by State law and any other applicable law;
- (7) **Election Forms** – provide electronic and/or paper forms for use by Participants in making contribution and investment elections, in-service withdrawals, and applying for benefits;
- (8) **Financial Statements** – prepare or cause to be prepared periodic reports of the Plan's operation, showing its assets and liabilities in reasonable detail;
- (9) **Reporting** – oversee the timely preparation and filing of any reports that may be required under Title 47 of the Georgia Code or the IRC;
- (10) **Plan Document** – ensure that required amendments are timely drafted and adopted, maintain the Plan document in compliance with all applicable laws as in effect from time to time, and ensure that the Plan is administered as written;
- (11) **Correction of Defects** – upon the discovery of any material defect in the Plan's administration, take reasonable steps to correct the defect as promptly

as practicable and in compliance with guidance issued by the IRS for the correction of operational failures;

- (12) **Rules and Procedures** – adopt, communicate, and implement rules and procedures as necessary for the proper administration of the Plan; and
- (13) **Statutory Immunity** – perform all duties in a manner to preserve the immunity granted to Committee members under O.C.G.A. § 51-1-20.

(c) **The Trustee.** The Committee may appoint the Trustee(s), discharge any Trustee(s) and appoint one or more successor Trustees. Each Trustee will have the duties and responsibilities described in the trust agreement executed by the County and the Trustee(s), which is an integral part of this Plan.

7.3 **Expenses.** The Committee will determine whether the expenses incurred in administering the Plan and Trust Fund will be paid by the County or by the Trustee from the Trust Fund. Plan expenses include but are not limited to fees and charges for attorneys, accountants, consultants, investment advisors, recordkeepers, third party administrators, and the Trustee(s). No County Employee will receive any additional compensation for services performed in connection with the Plan. Unless the Committee directs otherwise, the Trustee will pay from the Trust Fund the expenses incurred in connection with the investment of Plan assets and recordkeeping for the Plan. The Committee may direct the Trustee to reimburse the County for reasonable administrative expenses it has paid directly on behalf of the Plan.

7.4 **Indemnification.** Subject to the terms and conditions of DeKalb County Code sections 2-91 through 2-98, the County will indemnify and hold harmless the Committee and each member, and each County Employee to whom the Committee has delegated responsibility under this Article, from all joint or several liability for their acts and omissions in the administration of the Plans, including reasonable attorneys' fees and costs of litigation, except for their own willful breach of fiduciary duty and willful misconduct.

7.5 **Claims Procedure.**

- (a) **Application for Benefits.** Each Hybrid Participant, or beneficiary, must submit a written application for payment, with such documentation as the Committee considers necessary to process the claim. The Committee may adopt forms and require that the forms be used for the submission of claims. The Plan will not treat as a claim any oral or electronic request for information or for a re-determination of benefits. Any claim other than a Participant's claim for payment of his/her Account balance after he/she has a distribution event, must be submitted in writing to the Committee, stating all facts that support the claim and appending all available documentation of such facts. The claim must be submitted within 12 months from the earlier of (1) the date on which the claimant learned of facts sufficient to enable him/her to assert the claim, or (2) the date on which the claimant reasonably could be expected to have learned of facts sufficient to enable him/her to assert the claim. Any claim attempted to be made after expiration of such 12-month period will be time-barred. The Committee reserves the right to withhold payment of any claim for which conflicting claims have been asserted. The Trustee will not pay any benefit under the Plan until the Committee has determined, in its sole and complete discretion, that the claimant is entitled to the benefit.
- (b) **Decision on Claim.** Within 90 days after receipt of a claim and all necessary information, the Committee will issue a written decision. If the claim is denied in whole or in part, the notice will set forth (1) specific reasons for the denial and references to Plan provisions upon which the denial is based; (2) a description of any additional information necessary to process the claim; and (3) an explanation of the Plan's appeals procedure. If special circumstances require an extension of time (which cannot exceed 90 additional days), the Committee will furnish the claimant written notice of the extension, and an explanation why it is necessary, before the end of the initial 90-day period.
- (c) **Appeal.** The claimant and/or his/her representative may appeal an adverse decision by requesting in writing, within 60 days after he/she receives the decision, that the Committee review the decision, or, if the Committee fails to issue a decision, the claimant must submit his/her appeal within 150 days after he/she

initially filed his/her claim, or 240 days if the Committee secured the 90-day extension described in Subsection (b). The claimant may submit a statement of issues and supporting arguments and any evidence that he/she has to support his/her claim. He/she may inspect all documents that are reasonably pertinent to his/her case, upon reasonable notice to the Committee, but may not inspect confidential information concerning any other person. The Committee may set the matter for oral hearing and give the claimant reasonable notice of the time and place. The Committee will issue a written appeal decision, with a statement of reasons and references to supporting provisions of the Plan, within 60 days after it receives the request for a review including all information and documentation that the Committee needs to evaluate the appeal. If special circumstances require an extension of time, the Committee will render a decision as soon as possible, but not later than 120 days after receipt of the appeal. If an extension is required, the Committee will issue written notice with an explanation of the circumstances requiring the extension, before the extension period begins.

- (d) **Exhaustion of Administrative Remedies.** No legal action to recover Plan benefits, or alleging any fiduciary breach or prohibited transaction, or to enforce or clarify rights under the Plan, may be commenced unless and until the claimant has first exhausted the claims and appeal procedures available under the Plan, as described in this Section. A claimant must raise all issues and present to the Committee all theories related to his/her claim at one time, including claims of fiduciary breach and/or prohibited transactions. Otherwise, the claimant will be deemed to have abandoned forever all issues and theories that he/she did not raise and present to the Committee. Proper exhaustion of administrative remedies is a jurisdictional prerequisite to filing a legal action. The failure to file a claim and an appeal in the manner and within the time limits stated in this Section will be deemed to be a failure of the claimant to exhaust his/her administrative remedies and will constitute a waiver of the rights or benefits sought to be established under the Plan.
- (e) **Limitation Period for Litigation.** After the Committee issues a denial of an appeal, the claimant must file his/her complaint in state or federal court within 180

days, or he/she will forever be barred from filing a complaint based upon or directly or indirectly related to the appeal denial.

7.6 **Suspension of Transactions.** The Committee reserves the right to adopt rules and procedures that, in its discretion, it determines to be reasonably necessary:

- (a) to impose a *blackout period* or any other reasonable period of suspension, restriction, or limitation, on the rights of all or any Participants to make investment elections or transfers, or distributions, to accommodate changes in recordkeepers, trustees, investment managers or advisors, and/or investment funds;
- (b) to comply with restrictions on investment elections imposed by law or by third parties, such as stock exchanges, investment managers, fund managers or the Securities Exchange Commission or other regulatory body;
- (c) to comply with investment fund limitations on market timing, and/or
- (d) to protect the interests of other Participants and beneficiaries.

The Committee may impose penalties on any Participant who fails to comply with the Committee's rules and procedures.

7.7 **Blackout Periods.** Although this is a governmental plan, if a period of suspension of Participant rights is a *blackout period* within the meaning of ERISA § 404(c), the Committee may provide advance notice to the affected Hybrid Participants in compliance with DOL Regulations § 2520.101-3(d)(1). A *blackout period* is a period for which any ability that is otherwise available under the affected Plan, for Participants or beneficiaries to direct or diversify their Account balances, or to obtain distributions, is temporarily suspended, limited, or restricted for any period longer than three consecutive business days.

ARTICLE 8
Miscellaneous

- 8.1 **Headings.** The headings and subheadings in this Plan document have been inserted for convenient reference, and to the extent any heading or subheading conflicts with the text, the text will govern.
- 8.2 **Construction.** The Plan will be construed in accordance with the laws of the State of Georgia, without regard to its choice-of-law rules, except to the extent such laws are preempted by the IRC or any other applicable federal law.
- 8.3 **Qualification for Tax-Exempt Status.** Notwithstanding any other provision of this Plan document, the 401(a) Plan is adopted on the condition that it will not be disapproved by the Internal Revenue Service as meeting the requirements of IRC § 401(a), for tax-exempt status. In the event the Internal Revenue Service should deny tax-exempt status, and the County cannot remedy the denial by revisions satisfactory to the County, the County may declare the Plan null and void in its entirety.
- 8.4 **Nonalienation.** No benefits payable under the Plan will be subject to the claim or legal process of any creditor of any Hybrid Participant or beneficiary, and no Participant or beneficiary will alienate, transfer, anticipate or assign any benefits under the Plan, except that distributions will be made pursuant to (a) judgments and levies resulting from federal tax assessments, and (b) agreements between a Participant or beneficiary and the County for the use of all or part of his/her benefits under the Plan to repay his/her indebtedness to the County, which amount of benefits will be paid in a lump sum as soon as practicable after the agreement is executed and will be subject to the withholding requirements set forth in Section 8.8; and (c) as otherwise required by law. The County will offset the Account balances of any Participant or beneficiary if required under a judgment of conviction for a crime involving the Plan, or under a civil judgment or a consent order, or settlement agreement with a governmental agency, in an action brought in connection with a violation of fiduciary duty under the Plan.

- 8.5 **No Employment Rights.** Participation in the Plan will not give any Employee the right to be retained in employment with the County, or upon termination of Employment any right or interest in the Plan, except as provided in this Plan document.
- 8.6 **No Enlargement of Rights.** No person will have any right to or interest in any part of the Plan except as specifically provided in this Plan document.
- 8.7 **Exclusive Benefit Rule.** Under no circumstance will any part of the corpus or income of this Plan be used for, or diverted to, purposes other than the exclusive benefit of the Participants and their beneficiaries.
- 8.8 **Withholding for Taxes.** Taxable distributions from the Plan are subject to withholding for state and federal income taxes as required by law. The County withholds 20% federal income tax from each eligible rollover distribution over \$200 that is not rolled over directly into another eligible retirement plan or individual retirement account under Section 5.9. The County withholds the amount or percentage elected by each Hybrid Participant for any payment that is not an eligible rollover distribution.
- 8.9 **Suspension of Transactions.** The Committee may approve the temporary suspension of certain Plan transactions, as it considers necessary to accommodate changes in the affected Plan's recordkeeping and/or administrative systems or programs. The Committee will provide reasonable notice to Hybrid Participants of the dates when each suspension will begin and end.

May 2, 2017

The attached Amended and Restated DeKalb County 401(a) Defined Contribution Plan, effective August 1, 2017, which I have drafted and reviewed, is approved as to form this 6th day of May, 2017.

Helen Cleveland
Cleveland Gilbreath LLC
Attorney for DeKalb County, Georgia