

Gwinnett County

Defined Benefit Plan

Master Rabbi Trust for Excess Benefit Arrangement

Established
January 1, 2007

Gwinnett County
Defined Benefit Plan
Master Rabbi Trust for Excess Benefits

THIS RABBI TRUST AGREEMENT (Agreement) is entered into effective January 1, 2007, by and between the Gwinnett County Board of Commissioners (County) and the Retirement Plans Management Committee of the Gwinnett County Public Employees Retirement System (RPMC), the trustees of the Gwinnett County Defined Benefit Plan.

WITNESSETH:

WHEREAS, GWINNETT COUNTY has adopted a qualified governmental excess benefit arrangement (the Excess Benefit Arrangement) under Section 415(m) of the Internal Revenue Code of 1986, as amended, (the Code) as part of the Gwinnett County Defined Benefit Plan (Plan);

WHEREAS, Gwinnett County may have employees from time to time whose benefits are limited under the Plan by Internal Revenue Code Section 415 or whose compensation is limited by Code Section 401(a)(17) and thus are eligible for benefits under the Excess Benefit Arrangement;

WHEREAS, Internal Revenue Service requirements do not permit assets to fund the Excess Benefit Arrangement to be placed in the Gwinnett County Defined Benefit Master Trust but instead must be placed in a trust referred to as a "rabbi trust";

WHEREAS, Gwinnett County wishes to establish a rabbi trust (the Excess Benefit Trust) to hold assets to fund benefits under the Excess Benefit Arrangement; provided however, such rabbi trust assets shall be subject to claims of Gwinnett County's creditors in the event of Gwinnett County's insolvency, as herein defined, until paid to eligible participants and their beneficiaries in such manner and at such times as specified under the Excess Benefit Arrangement;

WHEREAS, it is the intention of the parties that this Excess Benefit Trust shall constitute an unfunded arrangement and shall not affect the status of the Excess Benefit Arrangement as an unfunded plan maintained for the purpose of providing excess benefits to certain eligible employees;

WHEREAS, it is the intention of Gwinnett County to make contributions to the Excess Benefit Trust, as required, to provide a source of funds to meet its liabilities under the Excess Benefit Arrangement;

NOW, THEREFORE, the parties do hereby establish the Excess Benefit Trust and agree that the Excess Benefit Trust shall be comprised, held and disposed of as follows:

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Article I: Establishment of Excess Benefit Trust

- 1.01 The County hereby deposits with the trustees in trust \$10.00, which shall become the principal of the Excess Benefit Trust to be held, administered and disposed of by the trustees as provided in this Agreement.
- 1.02 The Excess Benefit Trust hereby established shall be irrevocable.
- 1.03 The Excess Benefit Trust is intended to be a grantor trust, of which Gwinnett County is the grantor, within the meaning of subpart E, part I, subchapter J, Chapter 1, subtitle A of the Internal Revenue Code of 1986, as amended, and shall be construed accordingly.
- 1.04 The principal of the Excess Benefit Trust, and any earnings thereon shall be held separate and apart from other funds of Gwinnett County. The Excess Benefit Trust assets shall be used exclusively for the uses and purposes of Excess Benefit Arrangement participants and general creditors as herein set forth. Excess Benefit Arrangement participants and their beneficiaries shall have no preferred claim on, or any beneficial ownership interest in, any assets of the Excess Benefit Trust. Any rights created under the Excess Benefit Arrangement and this Excess Benefit Trust Agreement shall be mere unsecured contractual rights of Excess Benefit Arrangement participants and their beneficiaries against Gwinnett County. Any assets held by the Excess Benefit Trust will be subject to the claims of Gwinnett County's general creditors under federal and state law in the event of Insolvency, as defined in Article III herein.
- 1.05 Within ninety (90) days following the end of each calendar year, Gwinnett County shall be required to irrevocably deposit additional cash or other property to the Excess Benefit Trust in an amount sufficient to pay each Excess Benefit

Arrangement participant or beneficiary the benefits that are due under the terms of the Excess Benefit Arrangement as of the close of the calendar year.

Article II: Payments to Participants and Their Beneficiaries

- 2.01** The RPMC shall authorize distributions from the Excess Benefit Trust pursuant to a schedule that indicates the amounts payable in respect to each Excess Benefit Arrangement participant (and his or her beneficiaries), and the time of commencement for payment of such amounts. Such schedule shall be generated by the third party administrator and approved by Gwinnett County. The RPMC shall make provision for the reporting and withholding of any federal, state or local taxes that may be required to be withheld with respect to the payment of benefits pursuant to the terms of the Excess Benefit Arrangement and shall pay amounts withheld to the appropriate taxing authorities or determine that such amounts have been reported, withheld and paid by Gwinnett County.
- 2.02** The entitlement of an Excess Benefit Arrangement participant or his or her beneficiaries to benefits under the Excess Benefit Arrangement shall be determined by the RPMC or such party as it may designate under the Excess Benefit Arrangement, and any claim for such benefits shall be considered and reviewed under the procedures set out in the Plan and the Excess Benefit Arrangement.
- 2.03** Gwinnett County may make payment of benefits directly to Excess Benefit Arrangement participants or their beneficiaries as they become due under the terms of the Excess Benefit Arrangement. Gwinnett County shall notify the RPMC of its decision to make payment of benefits directly prior to the time amounts are payable to participants or their beneficiaries. In addition, if the principal of the Excess Benefit Trust, and any earnings thereon, are not sufficient to make payments of benefits in accordance with the terms of the Excess Benefit Arrangement, Gwinnett County shall make the balance of such payment as it falls due. The RPMC shall notify Gwinnett County when principal and earnings are not sufficient.

Article III: Retirement Plans Management Committee Responsibility Regarding Payments to Excess Benefit Trust Beneficiary When Gwinnett County Is Insolvent

- 3.01** The RPMC shall cease payment of benefits to participants and their beneficiaries under the Excess Benefits Arrangement if Gwinnett County is Insolvent. Gwinnett County shall be considered "Insolvent" for purposes of this Excess Benefit Trust Agreement if (i) it is unable to pay its debts as they become due, or

(ii) it is subject to a pending proceeding as a debtor under the United States Bankruptcy Code.

3.02 At all times during the continuance of this Excess Benefit Trust, as provided in Article I hereof, the principal and income of the Excess Benefit Trust shall be subject to claims or general creditors of Gwinnett County under federal and state law as set forth below:

- (a) The Board of Commissioners and the County Chairman (or other highest ranking officer of Gwinnett County) shall have the duty to inform the RPMC in writing of its Insolvency. If a person claiming to be a creditor of Gwinnett County alleges in writing to the RPMC that Gwinnett County has become Insolvent, the RPMC shall determine whether Gwinnett County is Insolvent and, pending such determination, the RPMC shall discontinue payment of benefits to Excess Benefit Arrangement participants or their beneficiaries.
- (b) Unless the RPMC has actual knowledge of Gwinnett County's Insolvency, or has received notice from Gwinnett County or a person claiming to be a creditor alleging that Gwinnett County is Insolvent, the RPMC shall have no duty to inquire whether Gwinnett County is Insolvent. The RPMC may in all events rely on such evidence concerning Gwinnett County's solvency as may be furnished to the RPMC and that provides the RPMC with a reasonable basis for making a determination concerning Gwinnett County's solvency.
- (c) If at any time the RPMC has determined that Gwinnett County is Insolvent, the RPMC shall discontinue payments to Excess Benefit Arrangement participants or their beneficiaries and shall hold the assets of the Excess Benefit Trust for the benefit of Gwinnett County's general creditors. Nothing in the Excess Benefit Trust Agreement shall in any way diminish any rights of Excess Benefit Arrangement participants or their beneficiaries to pursue their rights as general creditors of Gwinnett County with respect to benefits due under the Excess Benefit Arrangement or otherwise.
- (d) The RPMC shall resume the payment of benefits to Excess Benefit Arrangement participants or their beneficiaries in accordance with Article II of this Excess Benefit Trust Agreement only after the RPMC has determined that Gwinnett County is not Insolvent or is no longer Insolvent).

3.03 Provided that there are sufficient assets, if the RPMC discontinues the payment of benefits from the Excess Benefit Trust pursuant to Article III hereof and subsequently resumes such payments, the first payment following such discontinuance shall include the aggregate amount of all payments due to Excess Benefit Arrangement participants or their beneficiaries under the terms of the Excess Benefit Arrangement for the period of such discontinuance, less the aggregate amount of any payments made to the Excess Benefit Arrangement participants or their beneficiaries by Gwinnett County in lieu of the payments provided for hereunder during such period of discontinuance.

Article IV: Investment Authority

- 4.01 The assets of the Excess Benefit Trust shall be invested by the RPMC in accordance with Georgia law, the terms of the Gwinnett County Defined Benefit Plan, and the investment policy developed by the RPMC. Except to the extent such duties specifically are delegated to one or more Investment Managers, the RPMC shall manage and control assets of the Trust fund, including selecting and retaining or disposing of any investment of such assets.
- 4.02 The RPMC shall have full discretion and authority with regard to the investment of the Excess Benefit Trust, except with respect to assets under the control or direction of a properly appointed Investment Manager. The RPMC is authorized and empowered with all investment powers conferred on trustees of local retirement systems by Georgia law.
- 4.03 During the term of this Excess Benefit Trust, all income received by the Excess Benefit Trust, net of expenses and taxes, shall be accumulated and reinvested.

Article V: Responsibility of the Trustee

- 5.01 The RPMC shall act with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and like aims, provided, however, that the RPMC shall incur no liability to any person for any action taken pursuant to a direction, request or approval given by Gwinnett County which is contemplated by, and in conformity with, the terms of the Plan, the Excess Benefit Arrangement or this Excess Benefit Trust and is given in writing by Gwinnett County. In the event of a dispute between Gwinnett County and a Party, the RPMC may apply to a court of competent jurisdiction to resolve the dispute.
- 5.02 If the RPMC undertakes or defends any litigation arising in connection with this Excess Benefit Trust, Gwinnett County shall provide a defense and pay any judgments relating to its employees or creditors and will be primarily liable for such payments.
- 5.03 Gwinnett County will provide legal counsel to the RPMC, upon request, with respect to any of its duties or obligations hereunder.
- 5.04 The RPMC may hire agents, accountants, actuaries, investment advisors and other professionals to assist it in the performance of any of its duties or obligations hereunder.

- 5.05 The RPMC shall have, without exclusion, all powers conferred on trustees by applicable law for this Excess Benefit Trust, unless expressly provided otherwise herein, provided, however, that if an insurance policy is held as an asset of the Excess Benefit Trust, the RPMC shall have no power to name a beneficiary of the policy other than the Excess Benefit Trust or to assign the policy (as distinct from conversion of the policy to a different form) other than to a successor Board of Trustees.
- 5.06 Notwithstanding any powers granted to the RPMC pursuant to the Excess Benefit Trust Agreement or to applicable law, the RPMC shall not have any power that could give this Excess Benefit Trust the objective of carrying on a business and dividing the gains therefrom, within the meaning of Section 301.7701-2 of the Procedure and Administrative Regulations promulgated pursuant to the Internal Revenue Code.

Article VI: Compensation and Expenses of the Trustee

- 6.01 The RPMC shall pay all fees and expenses reasonably incurred by it as administrator of the Excess Benefit Arrangement and the Excess Benefit Trust, out of the Excess Benefit Trust, unless Gwinnett County directly pays such fees and expenses.

Article VII: Appointment of the Trustee

- 7.01 Selection, resignation and replacements of the individual members of the RPMC shall be governed by the provisions of the Gwinnett County Defined Benefit Master Trust Agreement, which are incorporated as if fully set forth herein.

Article VIII: Amendment or Termination

- 8.01 This Excess Benefit Trust Agreement may be amended by a written instrument executed by the RPMC and Gwinnett County. Notwithstanding the foregoing, no such amendment shall conflict with the terms of the Excess Benefit Arrangement or shall make the Excess Benefit Trust revocable.
- 8.02 The Excess Benefit Trust shall not terminate until the date on which Excess Benefit Arrangement participants and their beneficiaries are no longer entitled to benefits pursuant to its terms. Upon termination of the Excess Benefit Trust any assets remaining in the Excess Benefit Trust shall be returned to Gwinnett County.

Article IX: Miscellaneous

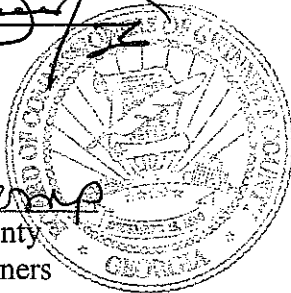
- 9.01 Any provision of this Excess Benefit Trust Agreement prohibited by law shall be ineffective to the extent of any such prohibition, without invalidating the remaining provisions hereof.
- 9.02 Benefits payable to the Excess Benefit Arrangement participants and their beneficiaries under this Excess Benefit Trust Agreement may not be anticipated, assigned (either at law or in equity), alienated, pledged, encumbered or subjected to attachment, garnishment, levy, execution or other legal or equitable process.
- 9.03 This Excess Benefit Trust Agreement shall be governed by and construed in accordance with the laws of the State of Georgia.
- 9.04 The effective date of this Excess Benefit Trust Agreement shall be January 1, 2007.

IN WITNESS WHEREOF, Gwinnett County and the Retirement Plans Management Committee have caused this Agreement to be signed by their duly authorized officers or representatives on this 5th day of October, 2006.

GWINNETT COUNTY BOARD OF COMMISSIONERS

By: [Signature]
Chairman

Attest: [Signature]
Clerk, Gwinnett County
Board of Commissioners



APPROVED AS TO FORM:
[Signature]
DEPUTY COUNTY ATTORNEY

RETIREMENT PLANS MANAGEMENT COMMITTEE

By: [Signature]
Trustee

By: [Signature]
Trustee

By: [Signature]
Trustee

By: [Signature]
Trustee

By: [Signature]
Trustee

By: [Signature]
Trustee

By: [Signature]
Trustee

By: [Signature]
Trustee