

## WATER AGREEMENT

This Agreement, made and entered into as dated herein, by and between the CITY OF CARTERSVILLE, GEORGIA, a municipal corporation of the State of Georgia (hereinafter referred to as “**Cartersville**”) and BARTOW COUNTY, GEORGIA, a political subdivision of the State of Georgia (hereinafter referred to as “**Bartow**”).

### W I T N E S S E T H:

**WHEREAS**, the **City** has excess capacity in its water system; and

**WHEREAS**, currently, **Bartow** is a customer of **Cartersville**; and

**WHEREAS**, **Cartersville** and **Bartow** desire to continue their relationship to allow for the supply of water to customers in **Bartow** and **Cartersville**; and

**WHEREAS**, due to issues related to public safety and health, logistical, economic, environmental, topographical, water system proximity, and de-annexations, and annexations, it has been necessary for **Cartersville** and **Bartow** to provide service in each other’s respective jurisdictional limits; and

**WHEREAS**, **Bartow** desires to contract with **Cartersville** to have a stable source of water supply for its customers and water system and expansion thereto; and

**WHEREAS**, **Cartersville** currently has allocated raw water storage as indicated herein; and

**WHEREAS**, the Commissioner of Bartow County at its meeting on the \_\_\_ day of \_\_\_\_\_, 2023 adopted this Agreement; and

**WHEREAS**, the Mayor and City Council of the City of Cartersville at its meeting on the \_\_\_ day of \_\_\_\_\_, 2023 adopted this Agreement; and

**WHEREAS, Cartersville and Bartow** shall enter into this contract agreement, as provided herein, pursuant to the authority granted to each by Paragraph I, Section IV, Article VII, of the Constitution of the State of Georgia.

**NOW, THEREFORE,** for and in consideration of the promises herein, and the mutual benefits to the parties hereto, said parties hereby agree as follows:

**1. TERM.**

For a period commencing on the \_\_\_\_\_ day of \_\_\_\_\_, 2023, and ending on the \_\_\_\_\_ day of \_\_\_\_\_, 2053, **Bartow** shall have the right to purchase water from **Cartersville** for the operation of the Bartow County Water System and extensions thereof as provided for herein.

**2. SERVICE TERRITORY.**

- a. **Bartow and Cartersville** due to issues related to public health and safety, logistical, economic, geographic, environmental, topographical, water system proximity, de-annexations, and annexations have found it necessary to supply water to customers in each other’s respective jurisdictions. **Bartow and Cartersville** desire to establish service territories for each water system as outlined in Exhibit “A”, which Exhibit shall include points of interconnection between the two water systems, attached hereto and incorporated herein by reference.
- b. To the extent the matters set out herein require addendums to the applicable Service Delivery Strategy Agreement, including service territories as outlined in Exhibit “A”, the parties agree to cooperate in amending same and to incorporate the matters set forth herein into any future service territories and Service Delivery Strategy Agreement.

**3. QUANTITY OF WATER DELIVERED AND CAPACITY LIMITATIONS**

- a. **Contracted Capacity:** **Cartersville** hereby agrees to supply **Bartow** a volume of seven million five hundred thousand gallons per day (hereinafter referred to as “7.5 MGD”) as an average monthly day, which is calculated by dividing the monthly total of gallons delivered by the number of days in the month. This shall be Bartow’s “Contracted Capacity.”
- b. Currently **Cartersville** has contracted storage and permitted withdrawal rights in Lake Allatoona of 21.42 MGD Maximum 24-hour withdrawal, not to exceed 18.0 MGD monthly average, and 16.8 MGD average annual flow (Permit No. 008-1491-06). Additionally, **Cartersville** has withdrawal rights from the Etowah River of 26.42 MGD Maximum 24-hour withdrawal, not to exceed a monthly average withdrawal of 23.0 MGD. Special conditions of this permit stipulate the combined withdrawals from Lake Allatoona and the Etowah River are limited to 21.8 MGD Average Annual Flow / 23.0 MGD Maximum monthly average / 26.42 MGD Maximum 24-hour withdrawal (Permit No. 008-1423-04).
- c. Based on current information known to **Cartersville** and factors which can be reasonably forecast, **Cartersville** has water withdrawal rights, productive capacity and necessary infrastructure to fulfill **Cartersville’s** obligations under this agreement.
- d. **Cartersville** shall hold sufficient productive capacity in its water treatment plant and distribution system to fulfill its obligation under this Agreement. **Cartersville** reserves the right at its sole discretion, to combine new or additional sources of capacity to meet its obligation to **Bartow**, provided these sources produce an equivalent product in quality, pressure, and availability.

e. In the event that **Bartow** desires an increase in contracted capacity (water in addition to the seven million five hundred thousand gallons per day 7.5 MGD), and in the event that **Cartersville** has excess capacity beyond its current obligations, then upon a mutually agreed to amendment **Cartersville** shall provide said water to **Bartow**. However, **Cartersville** makes no guarantees that it may have capacity in excess of the Contracted Capacity.

f. If any one or several customers of **Bartow's** water system desires service capacity at such a volume and rate which increases **Bartow's** demand to greater than the Contracted Capacity in paragraph "a" of this section and which necessitates capacity expansion or substantial service delivery modifications to **Cartersville's** system, **Cartersville** and **Bartow** shall enter into a separate agreement securing funding for expansion or modification projects. Such separate agreement may include a separate rate provision for such additional capacity expansion for **Bartow**. If public debt is issued for the same **Bartow** shall secure said debt with guarantee of additional revenue generated from the project.

g. **Cartersville** shall not be required to supply water at a financial loss or to reduce its reserve withdrawal, treatment, or transmission capacity to fulfill its obligations under this Agreement.

#### 4. **PURCHASE PRICE.**

a. **Cartersville** by ordinance shall establish a wholesale rate for **Bartow** for the water supplied pursuant to this Agreement. In its sole discretion, **Cartersville** may by ordinance adjust said wholesale rate, said adjustment shall become effective as indicated in said ordinance. **Bartow** shall be given at least thirty (30) days written notice prior to any rate change applicable to **Bartow**. The Wholesale rate increase for this agreement will not

exceed the rate of increase applied to **Cartersville's** inside City residential rate on a percentage basis,. **Cartersville** may make rate changes in the event of an emergency declared by the City Council, the State of Georgia, or the U.S. Army Corps of Engineers.

b. The standard billing unit used by **Cartersville** for all water customers shall be used for pricing.

c. Any federal or state mandates requiring an increase in cost shall be passed on to **Bartow**, with as much notice as possible prior to the adjustment.

d. **Take or Pay Provision.** **Bartow** shall regardless of the actual volume used, pay to **Cartersville** a minimum of sixty-five (65%) percent of the contracted volume of seven million five hundred thousand gallons per day (7.5 MGD), whether **Bartow** takes delivery or not, as long as the obligated volume is available for supply to **Bartow**.

e. In the event of a drought declared by proclamation of the Governor of the State of Georgia, the minimum payment is reduced by the same percentage ordered by the State for reduction. This provision can be modified by agreement of the parties.

f. Any water delivered to **Bartow** from a source other than Lake Allatoona may have additional costs. **Cartersville** shall have the right to impose surcharges to recover such additional costs from **Bartow** proportional to **Bartow's** water demand from the **Cartersville** system. **Cartersville** shall notify **Bartow** of such additional costs and **Bartow** shall have the right to accept or deny those charges prior to delivery of additional water.

## 5. **RATES AND CHARGES.**

a. **Bartow** agrees that it will pay to **Cartersville** the rates and charges calculated in accordance with the terms of this Agreement.

b. The charges levied by **Cartersville** to **Bartow** will consist of the following elements:

- i. Extraterritorial Capacity Fee: As detailed in Section 15 of this agreement, payment for each new meter setting based on meter size connected to the **Bartow** system in accordance with Intergovernmental Agreement with effective date September 15, 2000.
- ii. Volumetric Rate: A wholesale rate for potable water delivery as established by ordinance as amended from time to time.

## 6. **BILLING AND PAYMENT**

a. Conditions permitting, **Cartersville** will cause its meters to be read at monthly intervals. As associated technology advances, meter data will be shared between **Cartersville** and **Bartow** to assist with planning and coordination of water use and demand management.

b. **Cartersville** will deliver to **Bartow** an itemized statement of charges for the water furnished during the previous month and **Bartow** will make payment of such bill within fifteen (15) days of receipt of the statement of charges unless there is a legal dispute as to the accuracy of the statement of charges. Should such a dispute arise, **Bartow** shall pay that portion of the bill that is not disputed within fifteen (15) days.

c. If all or part of any bill remains unpaid for twenty (20) days after such bill is received by **Bartow**, interest thereon will accrue at a rate of two (2%) percent per month, unless there is a legitimate dispute as to the accuracy of the bill.

## 7. **DELIVERY OF WATER.**

- a. The physical point of delivery shall be the interconnection(s) between the two systems. **Cartersville** will be deemed to be in control and possession of water delivered under this Agreement until it has been delivered to **Bartow** at Points of Delivery, after which **Bartow** will be deemed to be in control and possession thereof.
- b. **Bartow** will have no responsibility with respect to any potable water deliverable hereunder until it is delivered to **Bartow** at Points of Delivery or on account of anything which may be done, happens, or arises, with respect to said water before such delivery unless due to a cause attributable to the negligent actions of **Bartow**, and **Cartersville** will have no responsibility with respect to such water after its delivery to **Bartow** or on account of anything which may be done, happens, or arises, with respect to said water after such delivery, unless due to cause attributable to the negligent actions of **Cartersville**.
- c. All delivery points will be metered at all times. Either party will have a right to examine such metering equipment with reasonable prior notice during normal business hours. It shall be the duty of each party to give immediate notice to the other party of any such equipment found to be malfunctioning. Upon discovery or notice to **Cartersville**, **Cartersville** will promptly arrange for the repair or replacement of said meter equipment.
- d. All meters will be calibrated at the factory recommended interval or not less than once annually. Both **Cartersville** and **Bartow** will have the right to be present at the time of any installing, reading, cleaning, changing, repairing, inspection, testing, calibrating, or adjusting done in connection with the meters and other measuring equipment used in measuring deliveries to **Bartow**.
- e. All costs associated with meter calibration shall be borne by **Cartersville**.

- f. All points of delivery shall be protected by an ASSE approved backflow prevention device. The device shall be tested not less than once annually. A failing device shall be repaired in not more than 30 days. Should there be a complete failure of any device **Cartersville** should be notified immediately. All costs associated with installation, testing, maintenance and repair of said devices shall be borne by **Bartow**.
- g. **Bartow** will maintain a backflow prevention program at least as stringent as **Cartersville** or install reduced pressure zone backflow prevention devices at each point of delivery.
- h. **Bartow** may install, maintain, and operate, at its expense, such telemetry equipment, operating equipment, pressure regulators, and verification measuring equipment as **Bartow** desires provided, however, the equipment will not be installed and operated in a manner that would affect the accuracy and operation of **Cartersville's** Meter or other measurement facilities.
- i. **Cartersville** will have access to **Bartow's** measuring equipment records during reasonable business hours upon request with reasonable prior notice.
- j. Delivery pressure at the point of interconnection as shown in Exhibit "A" shall not be less than 50 pounds per square inch (psi) static pressure not including emergencies, mechanical failures, force majeure events, etc..
- k. **Cartersville** shall not be obligated to supply water at any point of delivery or rate of flow as demonstrated by hydraulic modeling or actual performance which reduces pressure on **Cartersville's** water distribution system below 50 pounds per square inch (psi), if such reduction is caused by **Bartow's** pumping, draw, or system modifications.



l. **Bartow** shall be responsible for the cost of design and construction of all new interconnections. **Cartersville** shall have the right to approve all plans and specifications prior to construction. **Bartow** is responsible for any and all permits, licenses or other approvals necessary to construct and operate the interconnections.

m. Maintenance cost of existing interconnections as constructed shall be the responsibility of **Cartersville**. Should **Cartersville** decide to upgrade metering equipment or make other improvements to existing interconnections, including meters, vaults, piping, valves and appurtenances, those costs will be borne entirely by **Cartersville**.

8. **HEALTH AND SAFETY.**

**Cartersville** may adopt any protective or health measures it deems advisable or desirable for the benefit of its water customers, in any manner that **Cartersville** sees fit.

9. **CARTERSVILLE'S OBLIGATIONS.**

a. Subject to all terms, conditions, and limitations of this agreement, commencing with the execution and continuing thru the term of this Agreement, **Cartersville** agrees to sell treated water to **Bartow** and to deliver potable water to **Bartow** at the Points of Delivery, and **Bartow** will have the right to purchase and receive said services from **Cartersville** subject to limitations outlined in the agreement every Contract Day.

b. For purposes of this agreement and subject to Force Majeure, **Cartersville** shall have fulfilled its obligation to supply water to **Bartow** so long as such water is available at the points of interconnection. **Cartersville** shall be relieved of this obligation upon proper notification to **Bartow** that abnormal operations (maintenance, construction, etc.) are planned. **Cartersville** shall provide as much notice as possible of potential disruption to the water supply.

c. **Cartersville** shall ensure the quality of the water made available for delivery is of the same quality supplied to its own customers. The quality will comply with all federal, state and local laws, regulations and permit requirements which are applicable to **Cartersville** at the time of delivery. Should quality standards applicable to **Bartow** exceed those applicable to **Cartersville**, **Bartow** shall be responsible for all additional treatment costs to achieve those standards.

d. In the event of a legal challenge to **Bartow's** Connection Fees for water service, **Cartersville** will assist **Bartow** in the defense of any portion of the Extraterritorial Capacity Fees that are collected by **Bartow** on **Cartersville's** behalf.

e. **Cartersville** will operate the water system or cause the same to be operated in a safe, efficient, and economical manner. In addition, **Cartersville** will maintain the water system in good repair and sound operating conditions, ordinary wear and tear and obsolescence in spite of repair, notwithstanding. **Cartersville** will make all repairs, renewals, and replacements that are necessary to the maintenance and operation of the water system consistent with good business and usual operating practices for comparable facilities. **Cartersville** will notify **Bartow** of any major malfunctions of the water system related to water service to **Bartow** and **Cartersville** will make necessary repairs to **Cartersville's** system promptly.

f. **Cartersville** will maintain all of their facilities and appurtenances used for or related to service to **Bartow**. Any normal industry-standard, scheduled preventive or recuperative maintenance requiring that service delivery or receipt be reduced or interrupted will be determined thru prudent management and operations practices. Notice of curtailment or interruption of water service will be provided in writing to **Bartow** at least

fourteen (14) calendar days in advance of interrupting activity to allow time for alternative operation of **Bartow's** system. **Cartersville** will make necessary repairs in a reasonable time.

g. In the event it is determined the primary billing meter is inaccurate, billing for the location will be determined by the following methods in order of preference:

i. Using the registration of any check or verification meter if installed and accurately registering.

ii. By correcting the error if the percentage error is ascertainable by calibration, testing or mathematical calculation.

iii. By estimating the quantity of water delivered from historical demand under similar conditions when the location was registering accurately.

h. Should any reading be estimated by the methods above, **Bartow** will be notified prior to billing. All data and calculations will be available to **Bartow** for review.

i. An appropriate billing adjustment (credit or additional charge) will be made for the period during which said meter was defective or failed to register.

j. **Cartersville** and **Bartow** will jointly review at least annually capacity utilization at each point of delivery. Any point of delivery found to be in excess of seventy-five percent (75%) of existing capacity will be noted and evaluated by both **Cartersville** and **Bartow** for upgrades and/or expansion of capacity.

#### 10. **BARTOW'S OBLIGATIONS.**

a. **Bartow** covenants and agrees to enact and maintain and thereafter collect rates and charges which will, at all times be sufficient to satisfy and discharge its obligations under

this Agreement. **Bartow** agrees to periodically review and revise such rates and charges as necessary to comply with the foregoing requirements.

b. When **Bartow** constructs new water lines or replaces existing lines inside the incorporated area of **Cartersville** they will install fire hydrants in accordance with **Cartersville** Development Regulations, including **Cartersville** Ordinance Article V, Section 7.5-123.

c. **Bartow** will include in their development regulations a stipulation that any person applying for water service or rezoning outside of the incorporated area of **Cartersville**, but within the **Cartersville** service area, as illustrated in Exhibit "A" must obtain written approval of water availability from **Cartersville** before **Bartow** will issue a building permit or rezoning approval.

d. **Bartow** will require that anyone using **Bartow** fire hydrants excluding the Fire Department, will not be allowed to receive water from hydrants without an approved backflow prevention device on the hydrant.

e. **Bartow** will work in concert with **Cartersville** to implement and enforce a drought management plan in the event a drought is declared by the State of Georgia which requires reductions in water consumption.

f. **Bartow** shall enact, within a reasonable time after the date of this Agreement ordinances, rules and regulations substantially the same as those of **Cartersville** relative to the use of its water system, installation and connection of buildings and construction of **Bartow's** Water System. After **Bartow's** enactment, **Bartow** shall maintain and enforce said ordinances, rules and regulations as required to conform to reasonable and lawful amendments to said **Cartersville** ordinances, rules and regulations which may be enacted

from time to time. Said amendments by **Cartersville** shall not be discriminatory and **Bartow** shall be given at least thirty (30) days written notice prior to **Cartersville's** enactment of any amendment applicable to **Bartow**. Unless deemed an emergency by the Mayor and City Council of the City of Cartersville, then said changes shall be effective as indicated in said ordinances.

g. **Bartow** shall adopt and enforce for its water system minimum standards and specifications in accordance with generally accepted industry standards. Nothing in this Agreement shall prevent **Bartow** from adopting and enforcing more stringent standards than those enforced by **Cartersville**.

h. **Bartow** assumes full responsibility for the operation, supervision, management, maintenance, repair, replacement and expansion of all portions of the **Bartow** Water System. To the fullest extent permitted by law, **Bartow** shall indemnify and hold harmless **Cartersville**, its officers, employees, and agents from and against any and all claims, costs, losses and damages caused solely by the negligent acts or omissions of its officers, employees, and agents in its performance of duties with respect to this Agreement.

i. **Bartow** shall have the sole right to make or deny connections to said **Bartow** Water System, subject to the provisions of this Agreement.

j. **Bartow** shall give **Cartersville** reasonable notice of proposed commercial or industrial developments projected to increase demand on **Cartersville's** system by 100,000 gallons per day (0.1 MGD) at any single or multiple points of delivery, and all residential developments in excess of fifty (50) units that are approved by **Bartow** for development. **Cartersville** shall have the right to inspect and approve or reject any such connection not

in conference with applicable ordinances or this agreement. All such inspections shall be at **Cartersville's** expense.

**11. REMARKETING.**

a. **Bartow** shall be free to remarket without restriction to price or terms supplied water to other parties within **Bartow's** designated service area as depicted in Exhibit A. Additionally, **Bartow** may remarket to parties contiguous to their system provided a volume of water equal to that sold outside their jurisdictional boundary is returned to the ACT Basin.

b. **Cartersville** agrees to not sell water to other parties or persons within the **Bartow** designated service area, according to Exhibit A, Service Territory Map, as amended from time to time without first obtaining written approval from **Bartow**.

c. Nothing in this agreement is intended nor shall it be interpreted to waive the right of **Cartersville** to provide water service to current or future areas within or adjacent to its existing service area. **Cartersville and Bartow** retain the right to continue serving all current customers as of the date of execution of this Agreement regardless of their location.

**12. AVAILABILITY OF RESOURCES.-Reserved.**

**13. JOINT PLANNING AND DEVELOPMENT.**

i. **Cartersville** and **Bartow** shall work jointly to develop and update models of their respective systems and establish System Development Plans which take into account future land use, population projections, capacity use by customer class, and such other factors as agreed to by both parties.

ii. Certain elements of this plan may be performed as separate exercises from this agreement, such as through the Metropolitan Water Planning District's Water

Resource Plan, Service Delivery Strategy Plans, or other inter-governmental planning efforts. These plans will serve to satisfy the intent of this section.

**14. RECORDS AND AUDITS.**

- a. **Cartersville** will maintain books and records in accordance with generally accepted accounting principles and with proper utility accounting principles.
- b. **Bartow** will maintain books and records in accordance with generally accepted accounting principles and with proper utility accounting principles.
- c. During normal business hours and subject to conditions consistent with the conduct by **Cartersville** of its regular business affairs and responsibilities, **Cartersville** will provide **Bartow** or its authorized representatives with access to **Cartersville's** books, records, and other documents of its water system upon request.
- d. During normal business hours and subject to conditions consistent with the conduct by **Bartow** of its regular business affairs and responsibilities, **Bartow** will provide **Cartersville** or its authorized representatives with access to **Bartow's** books, records, and other documents of its water system upon request.
- e. At the end of **Bartow's** fiscal year, **Bartow** shall submit to **Cartersville** a written report detailing **Bartow's** prevailing water rate schedules, and use by customer classification and premises on which the rates have been formulated.

**15. CAPACITY FEE.**

- a. **Cartersville** and **Bartow** currently have executed a Capacity Fee Agreement with effective date of September 15, 2000, as may be amended. Both parties acknowledge that upon completion of periodic capacity fee analyses by **Cartersville**, a new Capacity Fee Agreement shall be entered into between the

parties herein. . **Cartersville** shall give **Bartow** thirty (30) days' notice of any change in its fees to ensure that **Bartow** assesses fees accordingly.

b. **Bartow** shall hereinafter pay to **Cartersville** a capacity fee equal to **Cartersville** capacity fee then in effect and applicable for water service outside the city limits of **Cartersville** for each water customer connected to, or committed to connect to **Bartow's** water system. Such capacity fees collected by **Bartow** on behalf of **Cartersville** shall be paid to **Cartersville** by the 21<sup>st</sup> day of the month following the billing period and shall be accompanied by a list of names and connection addresses of new individual customers.

c. Nothing in this Agreement shall prohibit **Bartow** from assessing and collecting capacity fees from existing and future water customers of **Bartow** water system in addition to **Cartersville's** capacity fees.

#### **16. TERMINATION.**

Notice of termination by either party must be provided at least twelve (12) months before the effective date of termination of this agreement. This agreement may be modified from time to time to enhance the operations of each system and further benefits to residents of **Cartersville** and **Bartow**.

#### **17. RULES AND REGULATIONS.**

The Parties will collaborate and obtain such permits, certificates or the like, as may be required by applicable law. To the extent allowed by applicable state and federal law, **Bartow** agrees to comply with all rules and regulation that **Cartersville** has now or may in the future impose on its water customers; provided that, in the event of any addition or change to the **Cartersville's** rules



and regulations, and to the extent possible and allowed by applicable law, **Cartersville** shall provide written notice of such addition or change to **Bartow** at least sixty (60) days before such addition or change becomes effective; and **Bartow** may, at its option, terminate this Agreement upon such addition or change to the rules or regulations becoming effective, subject to Section 16 of this agreement. Those rules and regulations may include but shall not be limited to emergency measures such as limits on outdoor water use or required reductions due to a locally imposed drought management policy.

**18. MISCELLANEOUS.**

- a. **Insurance.** **Bartow** and **Cartersville** shall each have and maintain during the term of this Agreement commercially reasonable insurance insuring against claims for injuries to persons or damages to property which may arise from or in connection with its (respective) performance of this Agreement
- b. **Assignment.** Neither party shall assign any right or obligation under this Agreement without the other party's prior written consent.
- c. **Force Majeure.** Neither party, nor their respective employees or agents, shall be liable for its respective non-negligent or non-willful 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: (a) any cause beyond its respective reasonable control; (b) any act of God; (c) except as otherwise provided in this Agreement, any change in applicable governmental rules or regulations rendering the performance of any portion of this Agreement legally impossible, which change shall not include any mandate(s) with which **Cartersville** must comply, which, in the event of non-compliance, may result in termination

of this Agreement in **Bartow's** sole discretion; (d) earthquake, fire, explosion or flood; (e) strike or labor dispute; (f) delay or failure to act by any governmental or military authority other than the government entity claiming a force majeure under this paragraph; or (g) 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.

d. **Entire Agreement.** This Agreement, and the Exhibits hereto which are incorporated herein by this reference, constitute the entire agreement 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 instrument signed by a duly authorized representative of each of the parties. The terms of this Agreement shall prevail notwithstanding any variance with the terms and conditions of any invoice, purchase orders or any other such document subsequently submitted by either party hereunder. The parties acknowledge that this Agreement, as it may be amended as provided herein, shall be incorporated as part of any Service Delivery Strategy Agreement entered into between the parties subsequent to the date of this Agreement.

e. **No Joint Venture.** The parties hereto agree that nothing contained within this Agreement can be or should be construed as creating a joint venture or partnership between the parties.

f. **Public Procurement Requirements.** The parties agree that any procurement related to this Agreement will be done in full compliance with all public works bidding requirements of the State of Georgia.

g. **Authority.** Each of the individuals executing this Agreement on behalf of his or her respective party agrees and represents to the other party that he or she is authorized to do so and further agrees and represents that this Agreement has been duly passed upon by the required governmental agency or board in accordance with all applicable laws and spread upon the minutes thereof. The parties hereto agree that this Agreement is an intergovernmental contract, and is entered into pursuant to Article IX, Section III, Paragraph I of the Constitution of the State of Georgia 1983.

h. **Records.** Each party shall maintain records relating to matters covered by this Agreement as required by Georgia law. Such records shall be maintained for at least a period of three years following the termination of this Agreement.

i. **Interpretation.** The parties hereto have cooperated in the preparation of this Agreement, and hence, it shall not be interpreted or construed against or in favor of either party by virtue of identity, interest, or affiliation of its preparer.

j. **Notice.** All 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 addresses given below, or at a substitute address previously furnished to the other party by written notice in accordance herewith:

BARTOW COUNTY: Bartow County Commissioner's Office  
135 West Cherokee Avenue, STE 251  
Cartersville, Georgia 30120

CITY OF CARTERSVILLE: City of Cartersville  
1 North Erwin Street  
PO Box 1390  
Cartersville, Georgia 30120  
Attn: City Manager

k. **No Third-Party Rights.** This Agreement is entered into for the benefit of the parties hereto only and shall confer no benefits, direct or implied, to any third persons or authorize anyone not a party to this Agreement to maintain an action pursuant to the terms or provisions of this Agreement.

l. **Waiver.** No failure by either party to enforce any right or power granted under this Agreement, or to insist upon strict compliance with this Agreement, and no custom or practice at variance with the terms and conditions of this Agreement shall constitute a general waiver of any future breach or default or affect either party's right to demand exact and strict compliance 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.

m. **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, provided that no party may assign this Agreement without prior written approval of the other party.

n. **Governing Law, Disputes and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia. If any disputes or issues arise in connection with this Agreement which cannot be resolved amicably, then either party

shall have the right to request the other party participate in non-binding mediation. Any resulting mediation shall be purely voluntary. If both parties agree to mediate, the mediator shall be mutually agreed upon, and the costs of the mediator shall be shared equally between the parties. In the event there is no request for mediation, mediation is not jointly agreed upon, or mediation efforts fail, then any dispute or issues shall be resolved through litigation. 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 Bartow County, Georgia or the US District Court, Northern District of Georgia, Rome Division, as applicable.

o. **Cancellation Due to Corps of Engineers or State of Georgia Actions.** This Agreement is subject to cancellation in the event the U.S. Army Corps of Engineers or the State of Georgia or a court of competent jurisdiction restricts or limits, directly or indirectly, any of **Cartersville** rights to obtain, sell, contract for or distribute its raw storage capacity of Lake Allatoona.

p. **No Damages for Interruption/Failure of Service.** **Cartersville** shall not be responsible in damages for any interruption or failure to supply water and **Bartow** shall defend and be responsible for any and all claims and damages of **Bartow's** customers.

q. **Power to Modify Agreement.** No officer, official, or agent of **Cartersville** or **Bartow** has the power to amend, modify or alter this Agreement or waive any of the conditions or to bind **Cartersville** or **Bartow** without the prior approval of their respective governing bodies.

r. **No Debt, Pledge of Faith or Credit.** The parties agree that this Agreement and all undertakings and obligations herein contained shall not be deemed to constitute a debt of either of the parties hereunder or a pledge of the faith and credit of either party, and the respective subdivisions to perform any of the terms hereof or to pay any sums due hereunder, and neither party shall be subject to any pecuniary liability hereunder in connection with payment for water furnished except to the extent of funds available which have been produced by the water system.

s. **Validity/Invalidity of Provisions.** Cartersville and Bartow agree that if any condition or provision contained in this Agreement is held to be invalid by any court of competent jurisdiction, such invalidity shall not affect the validity of any other such condition or provision herein contained; provided, however, that the validity of any such condition or provision does not materially prejudice either parties' respective rights and obligations contained in the remaining valid conditions or provision of this Agreement.

t. **Rate Structure Lawsuits.** In the event Cartersville is sued by reason of having entered into this Agreement or the rate structure set out herein is attached in the Courts, Bartow County hereby agrees to share the cost of the defense of such lawsuit.

u. **Applicability of Cartersville's Rules & Regulations.** All general rules, regulations and ordinances of Cartersville having application to all its other water customers shall be applicable to Bartow.

v. **Captions and Severability.** The caption or headnote on articles or sections of this Agreement are intended for convenience and reference purposes only and in no way define, limit or describe the scope or intent thereof, or of this Agreement nor in any way affect this Agreement. Should any article(s) or section(s), 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 the parties declare they would have agreed to the remaining parts of this Agreement if they had known that the severed provisions or portions thereof would be determined illegal, invalid or unenforceable.

w. **E-Verify and Title VI.** The parties agree that they will comply with all applicable E-Verify and Title VI requirements, and any contracts let related to this Agreement shall contain all required E-verify and Title VI requirements under applicable law.

x. **Counterparts.** This Agreement may be executed in multiple counterparts, and each counterpart shall be considered an original.

y. **Effective Date.** This Agreement is effective as of the later date, it is approved by **Cartersville and Bartow.**

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by duly authorized representatives as of the \_\_\_\_\_ day of \_\_\_\_\_, 2023, of their signatures.

**BARTOW:**  
BARTOW COUNTY, GEORGIA

By: Steve Taylor  
Steve Taylor, Sole Commissioner

Attest: Kathy Gill  
Kathy Gill, County Clerk

[AFFIX SEAL]



[SIGNATURES CONTINUE ON FOLLOWING PAGE]



**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by duly authorized representatives the \_\_\_\_\_ day of \_\_\_\_\_, 2023, of their signatures.

**CARTERSVILLE:**

CITY OF CARTERSVILLE

By: \_\_\_\_\_  
Matthew J. Santini, Mayor

Attest:

\_\_\_\_\_  
Julia Drake, City Clerk

[AFFIX SEAL]

BARTOW COUNTY / CITY OF CARTERSVILLE SEWER SERVICE AREA MAP - EST. FEBRUARY 2023  
EXHIBIT "A"

ELEVATION 1050 AND ABOVE  
AREA CANNOT BE SERVED BY CITY  
WATER

CITY AND COUNTY WATER SERVICE  
BORDER



BARTOW COUNTY PURCHASE POINTS

CITY OF CARTERSVILLE WATER LINES

BARTOW COUNTY WATER LINES



City of Cartersville

City of Cartersville  
PO Box 1390  
Cartersville, GA 30120

