

CITY MANAGER EMPLOYMENT AGREEMENT

This Agreement, made and entered into this 6th day of January, 2022, by and between the City of Cartersville, Georgia, a municipal corporation, (hereinafter called “Employer”) and Daniel T. Porta, (hereinafter called “Employee”) an individual who has the education, training and experience in local government management and who, as a member of the International City/County Management Association (ICMA), is subject to the ICMA Code of Ethics, both of whom agree as follows:

Section 1: Term

A. This Agreement shall remain in full force and effect from the 6th day of January, 2022 until January 4, 2024 unless terminated earlier by the Employer or Employee as provided in Section 9, 10 or 11 of this Agreement.

B. Employer and Employee may mutually elect to continue employment under the terms of this Agreement for an additional period of time not to exceed six (6) months, while a new employment contract is being negotiated or a mutually agreed extension to allow for the hiring of a new City Manager; however, if Employee is terminated during that time period, the provisions of Section 9, paragraph A.6 as to termination shall be applicable.

Section 2: Duties and Authority

A. Employer agrees to employ Daniel T. Porta as City Manager to perform the functions and duties specified in the Charter and Code of Ordinances of the City of Cartersville, Georgia and to perform other legally permissible and proper duties and functions without interference.

B. Employee shall serve as the City Manager of the Employer and shall faithfully perform the duties as prescribed in the job description as set forth in the Employer’s charter and/or ordinances and as may be lawfully assigned by the Employer and shall comply with all lawful governing body directives, state and federal law, Employer policies, rules and ordinances as they exist or may hereafter be amended.

C. Specifically, it shall be the duty of the Employee to employ on behalf of the Employer all other employees of the Employer consistent with the policies of the governing body and the ordinances and charter of the Employer.

D. It shall also be the duty of the Employee to direct, assign, reassign and evaluate all of the employees of the Employer consistent with policies, ordinances, charter, state and federal law.

E. It shall also be the duty of the Employee to organize, reorganize and arrange the staff of the Employer and to develop and establish internal regulations, rules and procedures which the Employee

deems necessary for the efficient and effective operation of the Employer consistent with the lawful directives, policies, ordinances, state and federal law.

F. It shall also be the duty of the Employee to accept all resignations of employees of the Employer consistent with the policies, ordinances, state and federal law, except the Employee's resignation which must be accepted by the governing body.

G. The Employee shall perform the duties of City Manager of the Employer with reasonable care, diligence, skill and expertise.

H. All duties assigned to the Employee by the governing body shall be appropriate to and consistent with the professional role and responsibility of the Employee.

I. The Employee cannot be reassigned from the position of City Manager to another position without the Employee's express written consent.

J. The Employee or his designee shall attend, and shall be permitted to attend, all meetings of the governing body, both public and closed, with the exception of those closed meetings devoted to the subject of this Agreement, or any amendment thereto or the Employee's evaluation or otherwise consistent with state law.

K. The governing body, individually and collectively, shall refer in a timely manner all substantive criticisms, complaints and suggestions called to their attention to the Employee for study and/or appropriate action.

Section 3: Compensation

A. Base Salary: Employer agrees to pay Employee an annual base salary of One Hundred Seventy-Seven Thousand Eight Hundred Nine and 41/100 Dollars (\$177,809.41), less all applicable withholdings, payable in installments at the same time that the other management employees of the Employer are paid.

B. This Agreement shall be automatically amended to reflect any salary adjustments that are provided or required by the Employer's compensation policies to include all salary adjustments on the same basis as applied to the executive classification of employees.

C. In addition, consideration shall be given on an annual basis to an increase in compensation.

D. At any time during the term of the Agreement, Employer may, in its discretion, review and adjust the salary of the Employee, but in no event shall the Employee be paid less than the salary set forth in Section 3.A. of the Agreement except by mutual written agreement between Employee and Employer. Such adjustments, if any, shall be made pursuant to a lawful governing body action. In such event,

Employer and Employee agree to provide their best efforts and reasonable cooperation to execute a new agreement incorporating the adjusted salary.

E. Except as otherwise provided in this Agreement, the Employee shall be entitled, at a minimum, to the highest level of benefits enjoyed by and/or available to other employees, department heads or general employees of the Employer as provided by the Employer's policies, Charter, ordinances, or personnel rules and regulations or other practices.

Section 4: Health, Disability and Life Insurance Benefits

A. The Employer agrees to provide and to pay the premiums for Employee's health, hospitalization, surgical, vision, dental and comprehensive medical insurance, short term disability and long-term disability, and life insurance, including for Employee's eligible dependents, at a minimum, equal to that which is provided to all other employees of the City of Cartersville.

Section 5: Vacation, Sick, and Military Leave

A. Upon commencing employment, the Employee shall be credited with his accrued sick leave hours and accrued vacation leave hours as of the 6th day of January, 2022. In addition, beginning the first day of employment, Employee shall accrue sick leave and vacation leave on an annual basis, at a minimum, at the highest rate provided or available to any other employees, under the same rules and provisions applicable to other employees. All accrued but unused vacation and sick/personal leave of the Employee shall carry over from year to year during the term of this Agreement.

Section 6: Automobile

A. The Employee's duties require exclusive and unrestricted use of an automobile for the Employee's business and personal use to be mutually agreed upon and provided to the Employee at the Employer's cost, subject to approval by Employer which shall not be withheld without good cause.

B. The Employer agrees to provide a vehicle for Employee's use. Employee shall be entitled to at no cost to use the City's fueling operation to provide fuel for the vehicle on a daily basis for normal use.

Section 7: Retirement

The Employer agrees to enroll the Employee into the City of Cartersville's Pension Plan and to make all the appropriate contributions on the Employee's behalf.

In addition to the base salary paid by the Employer to Employee, Employer agrees to pay an amount equal to fifteen (15%) percent of Employee's base salary as deferred compensation into a 401(a) or similar designated plan on the Employee's behalf, in unequal proportionate amount each pay period. Furthermore, Employer at the request of Employee may create either a mirror 457(B) or Roth or equivalent type plan, that Employee may contribute to if they deem appropriate. Furthermore, the Employer and Employee shall fully disclose to each other the financial impact of any amendment to the terms of Employee's retirement benefit.

Section 8: General Business Expenses

A. Employer agrees to budget and pay for professional dues, including but not limited to the International City/ County Management Association, and subscriptions of the Employee necessary for continuation and full participation in national, regional, state, and local associations, and organizations necessary and desirable for the Employee's continued professional participation, growth, and advancement, and for the good of the Employer.

B. Employer agrees to budget and pay for travel and subsistence expenses of Employee for professional and official travel, meetings, and occasions to adequately continue the professional development of Employee and to pursue necessary official functions for Employer, including but not limited to the ICMA Annual Conference, the state league of municipalities, Georgia Municipal Association and such other national, regional, state, and local governmental groups and committees in which Employee serves as a member.

C. Employer also agrees to budget and pay for travel and subsistence expenses of Employee for short courses, institutes, and seminars that are necessary for the Employee's professional development and for the good of the Employer.

D. Employer recognizes that certain expenses of a non-personal but job-related nature are incurred by Employee and agrees to reimburse or to pay said general expenses. Such expenses may include meals where Employer business is being discussed or conducted and participation in social events of various organizations when representing the Employer. Such expenditures are subject to annual budget constraints as well as state and Employer ethics and purchasing policies. The finance director is authorized to disburse

such moneys upon receipt of duly executed expense or petty cash vouchers, receipts, statements or personal affidavits.

E. The Employer acknowledges the value of having Employee participate and be directly involved in local civic clubs or organizations. Accordingly, Employer shall pay for the reasonable membership fees and/ or dues to enable the Employee to become an active member in local civic clubs or organizations.

F. Recognizing the importance of constant communication and maximum productivity, Employer shall provide Employee, for business and personal use, a laptop computer, software, mobile phone/personal digital assistant and/or tablet computer for business and personal use required for the Employee to perform their duties and to maintain communication with Employer's staff and officials as well as other individuals who are doing business with Employer. Upon termination of Employee's employment, the equipment described herein shall become the property of the Employee and at the discretion of the Employee any mobile phone number shall be transferred to the Employee.

Section 9: Termination

A. For the purpose of this Agreement, termination shall occur when:

1. The majority of the governing body votes to terminate the Employee in accordance with the City of Cartersville Charter at a properly posted and duly authorized public meeting. Termination may be for or without cause.

2. If the Employer, citizens or legislature acts to amend any provisions of the Charter of the City of Cartersville pertaining to the role, powers, duties, authority, responsibilities of the Employee's position that substantially changes the form of government, the Employee shall have the right to declare that such amendments constitute termination.

3. If the Employer reduces the base salary, compensation or any other financial benefit of the Employee, unless it is applied in no greater percentage than the average reduction of all department heads, such action shall constitute a breach of this Agreement and will be regarded as a termination.

4. If the Employee resigns following an offer to accept resignation, whether formal or informal, by the Employer as representative of the majority of the governing body that the Employee resign, then the Employee may declare a termination as of the date of the suggestion.

5. Breach of contract declared by either party with a 30-day cure period for either Employee or Employer. Written notice of a breach of contract shall be provided in accordance with the provisions of Section 20.

6. In the event the Employee is terminated by the Employer during the six (6) months immediately following the seating and swearing-in of one or more new governing body members, and during such time that Employee is willing and able to perform his duties under this Agreement, then, Employer agrees to pay Severance in accordance with Section 10 plus salary and benefits in accordance with Section 10 for any portion of the six months not worked.

7. Upon the natural expiration of this Agreement.

8. Termination for Cause shall mean: dishonesty; theft, conviction of a crime (other than minor traffic violations) which is either a felony or a misdemeanor involving moral turpitude; unethical business conduct; gross or repeated negligence in carrying out Employee's duties. In all instances other than dishonesty, theft or conviction of a crime, written notice of the activity, negligence or violation shall be provided by Employer to Employee along with a reasonable period of time, which shall be not less than thirty (30) days, in which to correct the deficiency.

Section 10: Severance

Severance shall be paid to the Employee when employment is terminated as defined in Section 9.

A. If the Employee is terminated, the Employer shall provide a minimum severance payment equal to six (6) months' salary at the then current rate of pay. This severance shall be paid in a lump sum or in a continuation of salary on the existing biweekly basis, at the Employee's option,

B. The Employee shall also be compensated for all sick leave, vacation leave, and all paid holidays. The Employer agrees to make a contribution to the Employee's deferred compensation account on the value of this compensation calculated using the then current annual salary of Employee at the date of termination divided by two thousand and eighty (2080) hours. If the amount of the contribution under this Section exceeds the limit under the Code for a contribution to the Deferred Compensation plan, the remainder shall be paid to the Employee in a lump sum as taxable compensation.

C. For a minimum period of six months following termination, the Employer shall pay the cost to continue the following benefits:

1. Health insurance, disability and life insurance for the employee and all dependents as provided in Section 4A, after which time, Employee will be provided access to health insurance pursuant to the Consolidated Omnibus Budget Reconciliation Act ("COBRA");

2. Any other available benefits.

D. If the Employee is terminated because of a felony conviction, for cause or for breach of contract, then the Employer is not obligated to pay severance under this section.

E. The termination and severance of Employee shall not restrict or jeopardize the Employee's right to pension benefits earned during employment with the City and Employee will be able to make application and draw pension benefits from City on the same basis as other general employees of the City.

F. The termination and severance of Employee shall be in accordance with the "Separation Agreement" agreed to by Employer and Employee. A template for such agreement is provided by ICMA and is incorporated herein by reference.

Section 11: Resignation

In the event that the Employee voluntarily resigns his/ her position with the Employer, the Employee shall provide a minimum of 30 days' notice unless Employer and Employee agree otherwise and the Employer shall pay the Employee for all accrued and unused vacation and sick pay.

Section 12: Performance Evaluation

A. Employer shall annually review the performance of the Employee in June subject to a process, form, criteria, and format for the evaluation which shall be mutually agreed upon by the Employer and Employee.

The annual evaluation process, may include the opportunity for both parties to: (1) conduct a formulary session where the governing body and the Employee meet first to discuss goals and objectives of both the past twelve (12) month performance period as well as the upcoming twelve (12) month performance period, (2) following that formulary discussion, prepare a written evaluation of goals and objectives for the past and upcoming year, (3) next meet and discuss the written evaluation of these goals and objectives, and (4) present a written summary of the evaluation results to the Employee. The final written evaluation should be completed and delivered to the Employee within 30 days of the initial formulary evaluation meeting.

B. Unless the Employee expressly requests otherwise in writing, the evaluation of the Employee shall at all times be conducted in executive session of the governing body and shall be considered confidential to the extent permitted by law. Nothing herein shall prohibit the Employer or Employee from sharing the content of the Employee's evaluation with their respective legal counsel.

C. In the event the Employer deems the evaluation instrument, format and/or procedure is to be modified by the Employer and such modifications would require new or different performance expectations, then the Employee shall be provided a reasonable period of time to demonstrate such expected performance before being evaluated.

D. In the event the Employee is an ICMA Credentialed Manager, the multi-rater evaluation tool will be utilized at a minimum of every five years.

Section 13: Hours of Work

It is recognized that the Employee must devote a great deal of time outside the normal office hours on business for the Employer, and to that end Employee shall be allowed to establish an appropriate work schedule. The schedule shall be appropriate to the needs of the Employer and shall allow Employee to faithfully perform his or her assigned duties and responsibilities.

Section 14: Ethical Commitments

Employee will at all times uphold the tenets of the ICMA Code of Ethics, a copy of which is attached hereto and incorporated herein. Specifically, Employee shall not endorse candidates, make financial contributions, sign or circulate petitions, or participate in fundraising activities for individuals seeking or holding elected office, nor seek or accept any personal enrichment or profit derived from confidential information or misuse of public time. Employer shall support Employee in keeping these commitments by refraining from any order, direction or request that would require Employee to violate the ICMA Code of Ethics. Specifically, neither the governing body nor any individual member thereof shall request Employee to endorse any candidate, make any financial contribution, sign or circulate any petition, or participate in any fundraising activity for individuals seeking or holding elected office, nor to handle any matter of personnel on a basis other than fairness, impartiality and merit.

Section 15: Outside Activities

The employment provided for by this Agreement shall be the Employee's primary employment. Recognizing that certain outside consulting or teaching opportunities provide indirect benefits to the Employer and the community, the Employee may elect to accept limited teaching and, consulting opportunities with the understanding that such arrangements must neither constitute interference with nor a conflict of interest with his or her responsibilities under this Agreement. All other outside business activities are prohibited, unless specifically approved by a majority of the City Council.

Section 16: Education

Employee shall continue and diligently pursue continuing education opportunities, including remaining a credentialed City Manager pursuant to ICMA Guidelines.

Section 17: Indemnification

To the extent provided for under Federal, State or Local Law, Employer shall defend, save harmless and indemnify Employee against any obligation to pay money or perform or no perform action, including without limitation, any and all losses, damages, judgments, interests, settlements, penalties, fines, court costs and other reasonable costs and expenses of legal proceedings including attorney's fees, and any other liabilities arising from, related to, or connected with any tort, professional liability claim or demand or any other threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitative or investigation, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties as City Manager or resulting from the exercise of judgment or discretion in connection with the performance of program duties or responsibilities, unless the act or omission involved willful or wanton conduct. The Employee may request and the Employer shall not unreasonably refuse to provide independent legal representation at Employer's expense and Employer may not unreasonably withhold approval. Legal representation, provided by Employer for Employee, shall extend until a final determination of the legal action including any appeals brought by either party. The Employer shall indemnify Employee against any and all losses, damages, judgments, interest, settlements, penalties, fines, court costs and other reasonable costs and expenses of legal proceedings including attorney's fees, and any other liabilities incurred by, imposed upon, or suffered by such Employee in connection with or resulting from any claim, action, suit, or proceeding, actual or threatened, arising out of or in connection with the performance of his or her duties. Any settlement of any claim must be made with prior approval of the Employer in order for indemnification, as provided in this Section, to be available. Employee recognizes that Employer shall have the right to compromise and unless the Employee is a party to the suit which Employee shall have a veto authority over the settlement, settle any claim or suit; unless, said compromise or settlement is of a personal nature to Employee. Further, Employer agrees to pay all reasonable litigation expenses of Employee throughout the pendency of any litigation to which the Employee is a party, witness or advisor to the Employer. Such expense payments shall continue beyond Employee's service to the Employer as long as litigation is pending. Further, Employer agrees to pay Employee reasonable consulting fees and travel expenses when Employee serves as a witness, advisor or consultant to Employer regarding pending litigation.

Section 18: Bonding

Employer shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

Section 19: Other Terms and Conditions of Employment

A. The Employer, only upon agreement with Employee, shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of the Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the City of Cartersville Charter, local ordinances or any other law.

B. Except as otherwise provided in this Agreement, the Employee shall be entitled, at a minimum, to the highest level of benefits that are enjoyed by or offered to other employees of the Employer as provided in the Charter, Code, Personnel Rules and Regulations or by practice.

Section 20: Notices

Notice pursuant to this Agreement shall be given by depositing in the custody of the United States Postal Service, postage prepaid, and addressed as follows:

- (a) EMPLOYER: City of Cartersville
PO Box 1390
1 North Erwin Street
Cartersville, GA 30120
- (b) EMPLOYEE: Daniel T. Porta
13 Encore Lane
Cartersville, GA 30120

Notice shall be deemed given as of the date of personal service or as the date of deposit of such written notice in the course of transmission in the United States Postal Service.

Section 21: General Provisions

A. **Integration.** This Agreement sets forth and establishes the entire understanding between the Employer and the Employee relating to the employment of the Employee by the Employer. Any prior discussions or representations by or between the Employer and Employee are merged into and rendered null and void by this Agreement. The Employer and Employee by mutual written agreement may amend any provision of this Agreement during the life of the Agreement. Such amendments shall be incorporated and made a part of this Agreement.

B. **Binding Effect.** This Agreement shall be binding on the Employer and the Employee as well as their heirs, assigns, executors, personal representatives and successors in interest.

C. **Effective Date.** This Agreement shall become effective on the January 6, 2022.

D. **Severability.** The invalidity or partial invalidity of any portion of this Agreement will not affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they have been executed by both Employer and Employee subsequent to the expungement or judicial modification of the invalid provision.

E. **Precedence.** In the event of any conflict between the terms, conditions and provisions of this Agreement and the provisions of Council's policies, or Employer's ordinance or Employer's rules and regulations, or any permissive state or federal law, then, unless otherwise prohibited by law, the terms of this Agreement shall take precedence over contrary provisions of Council's policies, or Employer's ordinances, or Employer's rules and regulations or any such permissive law during the term of this Agreement.

F. **Jurisdiction.** The parties agree that it is their intention that this Agreement and its performance, and all suits and special proceedings pursuant to this Agreement be construed in accordance with the laws of the State of Georgia and that in any action, special proceeding, or other proceeding that may be brought arising out of, in connection with, or by reason of this Agreement, the laws of the State of Georgia shall be applicable and shall govern to the exclusion of the law of any other forum, without regard to the jurisdiction in which any action or special proceeding may be instituted.

G. **Venue.** This Agreement shall be governed by the laws of the State of Georgia, and the Bartow County Superior Court shall have exclusive jurisdiction and venue of any disputes arising under this Agreement.

SIGNATURES ON NEXT PAGE

IN WITNESS WHEREOF, the parties have executed this Agreement as of the respective dates set forth below and each hereby acknowledge receipt of an executed copy of this Agreement.

Executed this the ____ day of January, 2022.

NAME OF EMPLOYER:

CITY OF CARTERSVILLE,
a Municipal Corporation of the State of Georgia

By: _____
Matthew J. Santini, Mayor

Attested to by:

Julia Drake, City Clerk

Executed this the ____ day of January, 2022.

EMPLOYEE:

Daniel T. Porta

Appendix 1

SEPARATION OF EMPLOYMENT AND GENERAL RELEASE

This Separation of Employment and General Release Agreement (“Agreement”) is made by and between the City of Cartersville, Georgia (“Employer”) and Daniel T. Porta (“Employee”).

WHEREAS, Employer has employed Employee as its City Manager; however, the parties wish to enter into a voluntary agreement to terminate their employment relationship and to resolve any actual or potential claims that either party may have against the other by reason of Employee’s employment or termination thereof.

WHEREAS, the parties desire to set forth the terms and conditions governing Employee’s separation of employment and to provide for the settlement and release of any and all disputes or controversies that have arisen, or which may hereafter arise, between Employer and Employee, including without limitation, any and all claims arising out of or in any way related to Employee’s employment with or separation from the Employer.

NOW THEREFORE, in consideration of the mutual covenants herein contained and the mutual benefits to be derived therefrom, the sufficiency of which consideration is hereby acknowledged by the undersigned, Employer and Employee agree and state:

1. **TERMINATION OF EMPLOYMENT.** Upon their mutual agreement, Employee’s employment _____ shall terminate on____, 20, which shall be Employee’s final date of employment.

2. **NO ADMISSION OF LIABILITY.** This Agreement is not an admission by Employee or Employer of any wrongful conduct whatsoever. Both parties deny and disclaim any liability to or wrongful conduct against the other or any third party.

3. **PAYMENT AND BENEFITS.** Employee shall receive his/her regular paycheck for the pay period ending _____, 20 on or before_____, 20 . Employee shall receive on or before_____, 20 an additional payment to compensate for his accumulated leaves (vacation, sick and floating holidays) and comp time, subject to customary payroll deductions.

As consideration for this Agreement and the release contained within, and in full and complete satisfaction of all obligations due and owing Employee, Employer shall:

a. Pay Employee an amount equal to_____() months of his current salary, subject to customary payroll deductions—to include Employee’s portion of health, dental and vision insurance premiums for____() months.

b. Continue, and pay for, Employer's current health, dental and vision insurance coverages for ____ () months, ending on _____, 20__.

[C. INCLUDE ANY OTHER CONSIDERATION, SUCH AS AGREEING NOT TO CONTEST UNEMPLOYMENT, ALLOWING THE EMPLOYEE TO PURCHASE HIS WORK LAPTOP, ETC.]

3. **SURRENDER AND VACATION OF EMPLOYER'S PROPERTY.** Upon execution of this Agreement, Employee shall deliver all Employer's property in his/her possession except those items as listed in Section 8F of City Manager Employment Agreement and further, shall vacate Employer's property.

4. **RELEASE AND WAIVER OF CLAIMS.** In consideration of the benefits to be provided to Employee pursuant to this Agreement, Employee including his heirs and assigns hereby irrevocably and unconditionally releases, acquits and discharges Employer and each of its past, present and future elected officials, department heads, officers, employees, agents, representatives and attorneys from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and expenses (including attorneys' fees and costs actually incurred), of any nature whatsoever, whether known or unknown, arising out of any act, omission, or event from the beginning of time up to the execution of this Agreement. Employee specifically acknowledges and agrees that he is releasing and giving up any right that he may now have under federal or state law or political subdivision thereof and any claims that he may now have or could have asserted against Employer.

Employee specifically agrees to release all claims that against Employer under many different laws, including but not limited to: *the Age Discrimination in Employment Act, the Older Workers Benefit Protection Act, and Executive Order 11141, which prohibit age discrimination in employment*; Title VII of the Civil Rights Act of 1964, Section 1981 of the Civil Rights Act of 1866, and Executive Order 11246, which prohibit discrimination based on race, color, national origin, religion, or sex; the Americans with Disabilities Act and Sections 503 and 504 of the Rehabilitation Act of 1973, which prohibit discrimination based on disability; any other federal, state, or local laws prohibiting employment or wage discrimination; the Fair Labor Standards Act of 1938 and state laws that regulate wage and hour matters; the Family and Medical Leave Act of 1993; the Employee Retirement Income Security Act of 1974; any federal, state, or local laws providing workers' compensation benefits, prohibiting retaliatory or wrongful discharge, otherwise restricting an employer's right to terminate employees, or otherwise regulating employment; claims for breach of contract, promissory estoppel, defamation, slander, or libel; claims for termination pay, severance, or other benefits; and any other federal, state, or local tort or contract claim. Employee expressly waives all rights that he might have under any law that is intended to protect him from waiving unknown claims.

Employer hereby irrevocably and unconditionally releases, acquits and discharges Employee from any and all from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and expenses (including attorneys' fees and costs actually incurred), of any nature whatsoever, whether known or unknown, arising out of any act, omission, or event from the beginning of time up to the execution of this Agreement.

5. **REFERENCES AND NON-DISPARAGEMENT.** If it is necessary for Employer to provide a reference to a prospective employer, Employee agrees that he will direct the prospective employer to contact _____. Additionally, Employee and the elected officials agree that they shall not disparage or make negative comments about each other; provided that this Section shall not apply to comments made to any other governmental entity or as required by law.

6. **REPRESENTATIONS AND WARRANTIES.** The undersigned parties hereby represent and warrant the following to the other:

a. Employee represents and warrants that: he/ she is legally and mentally competent to sign this Agreement; he/she is the sole owner of any claims against the Employer; he/she has the requisite capacity and authority to make this Agreement, and no portion of any existing or potential claims has been sold, assigned or pledged to any third party; and he/she presently possesses the exclusive right to receive all of the consideration paid in exchange for this Agreement.

b. Employee represents and warrants that he/she has not and will not file any complaints, charges or lawsuits against Employer or any of its past, present and future elected officials, department heads, officers, employees, agents, representatives or attorneys with any governmental agency or any court, including without limitation, any claim or matter of any nature whatsoever related to or arising out of his employment with or separation of his/her employment, except Employee expressly reserves the right to file a claim for unemployment benefits. Employee further agrees to indemnify and hold Employer harmless from any and all loss, costs, damages or expenses, including reasonable attorney fees incurred by Employer, arising out of any claim concerning the separation of employment that may hereafter be made by the Employee or any other party.

c. Employer represents and warrants that it has not and will not file any complaints, charges or lawsuits against Employee with any governmental agency or any court, including without limitation, any claim or matter of any nature whatsoever relating to or arising out of Employee's employment with Employer or the separation of his employment from Employer. Employer further agrees to indemnify and hold the Employee harmless from any and all loss, costs, damages or expenses, including reasonable attorney fees incurred by Employee, arising out of any claim arising from the separation of his employment that may hereafter be made by Employer or any other party.

d. Each party is fully aware of the contents of this Agreement and of its legal effect and understands that it should obtain legal advice regarding this Agreement as they deem appropriate. The parties hereto and each of them, have carefully read this Agreement and know the contents thereof, and they signed the same freely and voluntarily.

e. This Agreement sets forth the entire agreement between the parties and supersedes any and all prior agreements or understandings between the parties pertaining to the subject matter herein. No waiver of a breach of any provision of this Agreement shall be construed to be a waiver of any breach of any other provision of this Agreement or of any succeeding breach of the same provision. No delay in acting with regard to any breach of any provision of this Agreement shall be construed to be a waiver of such breach. If any provision in this Agreement is found to be unenforceable, all other provisions will remain fully enforceable.

f. No promise or inducement has been made or offered, except as herein expressly set forth, and this Agreement is executed without reliance upon any statement or representation by any of the released parties or their representatives.

g. The language of all parts of this Agreement shall, in all cases, be construed as a whole, according to its fair meaning, and not strictly for or against either party.

h. This Agreement and any amendments hereto may be executed in multiple counterparts by the parties. Each counterpart shall be deemed an original but all counterparts together shall constitute one and the same instrument.

7. **JURISDICTION.** This Agreement shall be governed by the laws of the State of Georgia, and the Bartow County Superior Court shall have exclusive jurisdiction and venue of any disputes arising under this Agreement.

8. **BINDING EFFECT.** This Agreement shall be binding upon and shall accrue to the benefit of the parties hereto, their respective personal representatives, successors in interest and assigns.

9. **REVIEW & REVOCATION.** The parties acknowledge that Employee may revoke his/her acceptance and execution of this Agreement at any time within seven (7) days of the date of his/her execution of it. Any revocation shall be in writing and shall be effective upon timely receipt by the Employer's Attorney.

If the revocation is submitted by mail, the revocation must be postmarked before the expiration of the seven (7)-day revocation period, and must be sent by overnight mail or other method so that it is received at the above address no later than the next business day immediately following the expiration of the seven (7)-day period. Further, Employee represents that, before accepting and executing this Agreement, he/she was given a review period of twenty-one (21) days in which to consider it. Employee further represents that he/she: (a) took advantage of as much of this period as

required to consider this Agreement before signing it; (b) carefully read the Agreement and the Release included herein; (c) fully understands it; and (d) is entering into it voluntarily. Employee represents that Employer encouraged him/her to discuss this Agreement with an attorney of choice before signing it. This Agreement shall not become effective or enforceable until the seven-day revocation period has expired without Employee having revoked acceptance of it.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the respective dates set forth below and each hereby acknowledge receipt of an executed copy of this Agreement.

Executed this the ____ day of _____,
2020.

NAME OF EMPLOYER:

CITY OF CARTERSVILLE,
a Municipal Corporation of the State of Georgia

By: _____
Matthew J. Santini, Mayor

Attested to by:

Julia Drake, City Clerk

Executed this the ____ day of _____,
2020.

EMPLOYEE:

Daniel T. Porta