

STATE OF GEORGIA,

COUNTY OF SPALDING.

**EMPLOYMENT CONTRACT  
BETWEEN  
THE BOARD OF COMMISSIONERS OF  
THE CITY OF GRIFFIN, GEORGIA  
AND  
KENNY L. SMITH  
AS CITY MANAGER**

THIS AGREEMENT, made and entered into this \_\_\_\_ day of January, 2016, by and between the Board of Commissioners, City of Griffin, Georgia, hereafter called "Employer", and Kenny L. Smith, hereinafter called "Employee":

WITNESSETH

WHEREAS, Employer desires to retain the services of said Kenny L. Smith as City Manager of the City of Griffin, Georgia, to perform all duties thereof as provided by the Charter of said municipal corporation, under its Code and ordinances, and as assigned by the Employer from time to time, and

WHEREAS, it is the desire of the Employer, to provide for the Employee's compensation, term, certain employment benefits, and to establish the working conditions of said Employee; and

WHEREAS, it is the desire of the Employer to (1) secure and retain the services of Employee and to provide inducement for him to remain in such employment, (2) to make possible full work productivity by assuring Employee's morale and peace of mind with respect to future security, (3) to act as a deterrent against malfeasance or dishonesty for personal gain on the part of Employee, and (4) to provide a just means for terminating Employee's service at such time when Employer may desire to terminate his employment;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

**SECTION 1. DUTIES**

- A. Employee is hereby appointed to the public office of City Manager of the City of Griffin, and shall assume and perform all functions and duties thereof as set forth in the Charter of the City of Griffin, general laws of Georgia, the Code of Griffin, Georgia, and such other duties and responsibilities as may be from time to time be specified by Ordinance or Resolution of the Employer. Employee shall commence employment under this Agreement no later than its date of final execution and, upon satisfactory performance in office, serve through and to include Midnight, December 31, 2017; thereafter, Employee shall be employed for an "indefinite" term and shall at all times be an "at-will" employee of the Board of Commissioners, serving at the pleasure of a majority thereof, unless a subsequent contract is entered with the Board of Commissioners in office on January 1, 2018; provided, however, if no subsequent contract has been entered by February 1, 2018, Employee may elect to resign and be entitled to a lump sum payment equivalent to six (6) months salary, retirement, insurance and other benefits, as deferred compensation under this Agreement. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the Employer to terminate the employment of Employee, with or without cause, at any time, but subject to the provisions set forth

in Section 3, Paragraphs "A" and "B" of this agreement.

- B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Employee to resign at any time from his position with Employer, subject only to the provisions set forth in Section 3, Paragraph "D" of this Agreement
- C. Employee acknowledges serving as City Manager shall be his exclusive, full-time employment and agrees not to accept other employment or become self-employed unless said outside employment is approved by written consent of the Employer. The term "employed" shall not be considered to include occasional lecturing, speaking, writing or consulting activities performed during the Employee's time off so long as such activities do not conflict, or substantially appear to conflict, with his duties and functions as City Manager.

## SECTION 2. PERFORMANCE REVIEW

Employer shall review and evaluate the performance of the Employee at its first regular meeting in December 2016 and at least annually thereafter, upon written notice given not less than three (3) business days prior thereto. Any review and evaluation shall be conducted in accordance with specific criteria contained in the notice. To the extent allowed by law, any evaluation or review of the Employee's performance shall be considered and discussed with the Employee in a meeting of the Board of Commissioners, closed to the public under O.C.G.A. Sec. 50-14-3(6) and shall remain confidential. The Employee shall be provided, in writing, any negative or adverse statement or charge of the Employer, or any of its members, and provided an adequate opportunity to discuss and respond thereto. Any written evaluation or finding concerning the Employee's performance shall be confidential until placed in the Employee's personnel file along with any written response by the Employee.

## SECTION 3. TERMINATION

- A. Upon termination of Employee for "just cause" as hereinafter defined, his compensation and benefits shall cease as of the 30<sup>th</sup> day following the date of termination, provided, however, that in the event that Employer shall terminate Employee's services without "just cause" at any time during the term of this agreement, Employer agrees to continue Employee's compensation and benefits, in weekly payments, for twenty-six (26) weeks following the date of termination, based upon his current salary, benefits and deferred compensation; up to six (6) months for Employee's cost of COBRA insurance continuation, should Employee not secure comparable health insurance coverage during this period; and Employee will be paid for accumulated, unused Annual Leave at his current rate of pay.
- B. For purposes of this Agreement, the term "just cause" shall mean conduct which is detrimental to and seriously affects the Employee's performance of his duties and functions as City Manager, including, but not limited to, arrest for any felony or a misdemeanor involving moral turpitude; conduct which knowingly violates any laws (other than minor traffic and parking offenses), ordinances of the City of Griffin, Georgia (other than minor traffic, parking, and similar de minimus infractions) or policies of the Employer, including performance standards, goals and objectives which have been clearly made known to Employee by Employer, in writing; any act by Employee which constitutes dishonestly in the use of, benefits of, or dealings with officers and property of the City of Griffin, Georgia; Employee's substantial failure or refusal, after having received reasonable notice and opportunity to correct performance, involving his actions, behavior or conduct; Employee's willful disregard for ethical standards of behavior, including apparent conflicts of interest; or any other act by Employee relating to his performance as City Manager which constitutes reasonable justification for dismissal from employment.
- C. Upon reasonable suspicion of just cause for dismissal in accordance with Paragraph "B" above, Employer may place Employee on Administrative Leave, with full pay and benefits, at any time during the term of this Agreement, upon the vote of a majority of the Board of Commissioners, while conducting an investigation into such cause. In the event Employee resigns following a majority vote of the Board placing Employee on Administrative Leave, while under investigation for cause

(the nature of which has been made known to Employee in writing), Employee shall be deemed terminated "for cause" under Paragraph "A" and otherwise entitled to thirty (30) day's severance only.

- D. In the event Employee voluntarily resigns his position with Employer before expiration of the aforesaid term of his employment, then Employee shall give Employer sixty (60) days written notice in advance, unless the parties otherwise agree, in writing, to an earlier effective date of resignation. Employee's voluntary resignation shall not obligate Employer to provide any severance pay described in this section.
- E. If the Employee is terminated for stated "just cause", within thirty (30) days of the date of termination, Employee shall be entitled to place in his permanent personnel file with the City a written statement containing any facts or other evidence he wishes to be made a part of the official records of the City, such records being open to the public and available for inspection and copying.

#### SECTION 4. SALARY

Employer agrees to compensate Employee for all services rendered pursuant hereto an annual base salary of \$135,000, payable in bi-weekly installments, commencing with date of employment and continuing through and to include December 31, 2016; thereafter, upon satisfactory performance review by the Employer in December 2016, Employee's base salary shall be not less than \$135,000 for calendar year 2017, payable in bi-weekly installments.

#### SECTION 5. HOURS OF WORK

- A. Employee shall be expected to attend all regular and called meetings of the Board of Commissioners and otherwise be accessible at City Hall on Monday through Friday during the hours of 8:00 a.m. and 5:00 p.m., except on legal holidays. Employee's hours, however, are not "fixed" and Employee shall devote his full time and attention, as needed, to performance of the job. During those times when it is reasonably anticipated Employee shall not be accessible at City Hall, Employee shall delegate to a responsible subordinate or the Assistant City Manager, if such position exists, such duties as he, with consent of the Employer, deem appropriate. For purposes hereof, "accessible" shall include Employee being reachable by telephone or radio.
- B. For FLSA purposes, Employee is an "exempt" employee, who is expected to engage all those hours of work necessary to fulfill the obligations of his position of employment. Employee does not have pre-established hours as he is expected to be available at all times, except during periods of approved leave. Employee acknowledges his employment is primary to all other activities and ventures he may pursue or engage in for profit. Employee shall not be entitled to any accrual of compensatory time.

#### SECTION 6. LEAVE POLICY.

- A. Employee shall be entitled to fifteen (15) business days of annual leave, plus any unused annual leave remaining from prior service. When annual leave is scheduled for 3 or more consecutive business days, Employee shall notify Employer of the dates as far in advance as reasonable. In addition, Employee shall be entitled to observe all holidays recognized by general personnel policies for City employees. Where any provision of such policies conflict with this Agreement it is the intention of the parties that the terms of this Agreement shall control.
- B. Employee shall be entitled to five (5) business days of sick leave commencing upon date of employment. Thereafter, employee shall earn one (1) day of sick leave for every month of continuous employment. Sick leave shall be applied in at least one-half (1/2) day increments when used.

## SECTION 7. VEHICLE USE POLICY.

Employee's duties require that he have access at all times to a suitable vehicle, provided by Employer. Employee shall, at his own expense, maintain a current Georgia motor vehicle operator's license at all times. Employer agrees to provide or be responsible for all costs and expenses for the repair, maintenance, operation, liability insurance (including uninsured motorist coverage) in at least the minimum coverage required by law, tax and tag registration, and other expenses associated with such vehicle. Employee shall use such vehicle for all official business and personal use involving local travel within a 50 mile radius of the City of Griffin, Georgia, and any official business travel beyond that radius as approved by the Chairman of the Board of Commissioners; provided, however, Employee shall be the primary driver of such vehicle at all times. While used for official business within the City of Griffin, Employee shall display on the vehicle magnetic door signs identifying the vehicle as property of the City. Employee shall be solely liable for the payment of any fines or fees upon conviction of any violation of any traffic law or traffic ordinance and shall hold the City of Griffin harmless from liability therefor. Employee, for himself and on behalf of his heirs and assigns, acknowledges that in the event of any injury or death arising from use of this vehicle he shall look solely to worker's compensation insurance coverage, including death benefits or medical coverage, for recovery, and waives any claim or right of action against the Employer or City of Griffin, Georgia, its officers, employees and agents.

## SECTION 8 GENERAL EXPENSES

Employer recognizes that from time to time certain reasonable expenses of a non-personal and generally job-affiliated nature will be incurred by Employee for the benefit of Employer and hereby agrees to reimburse Employee upon presentation of receipts in proper form.

## SECTION 9. HEALTH CARE BENEFITS AND INSURANCE

Employee and his dependents shall be eligible to participate in all Health Care, Life Insurance and Disability Insurance benefits offered to City employees as a group, subject to its payroll deduction plan. As additional compensation, Employer agrees to pay any required cost of participation by Employee and his dependents.

## SECTION 10. RETIREMENT

The Employer participates in the Georgia Municipal Employees Benefit System (GMEBS) Retirement Fund and Employee shall be included as a member of the employer's defined benefit pension plan the same as all other covered employees. As additional deferred compensation, Employer agrees to pay 9.5% of Employee's base salary to the GMA Citistreets Deferred Compensation Program or other similar plan. All payments by the City will be made in accordance with the rules and regulations governing employer contributions promulgated by the Internal Revenue Services of the United States of America, and Employee shall be responsible for any and all income tax liability, both federal or state, if any, in respect to same.

## SECTION 11. MEMBERSHIP DUES AND SUBSCRIPTIONS

Employer agrees to budget annually and pay for the reasonable professional dues, subscriptions and memberships of Employee necessary for his continuation and full participation in national, regional, state and local associations and organizations necessary and desirable for his continued professional participation, growth and advancement and for the good of Employer, including but not limited to the International City Managers Association, the Georgia Municipal Association, and the Georgia City-County Managers Association. The Employer will also pay for initial membership fees and monthly dues in one (1) local civic club of Employee's choosing (all costs beyond basic membership not included).

## SECTION 12. PROFESSIONAL DEVELOPMENT

- A. Employer hereby agrees to budget and pay for the reasonable travel and subsistence expenses of Employee for approved professional and official travel, meetings and occasions adequate to continue the professional development of Employee and to adequately pursue necessary official and other functions for Employer, including but not limited to the International City/County Management Association, National League of Cities, Georgia City/County Managers Association, Georgia Municipal Association and such other national, regional, state and local government groups and committees thereof on which Employee serves as a member. Said expenses shall be subject to budget limitations and City travel policies, as from time to time established by Employer.
- B. Employer also agrees to budget and pay for the reasonable travel and subsistence expenses of Employee for courses, training and seminars necessary for his professional development as a City Manager and for the good of Employer. Said expenses shall be subject to budget limitations and City travel policies, as from time to time established by Employer.
- C. Inasmuch as Employee is presently certified as a law enforcement officer by the Georgia Peace Officers Standards and Training Council and in his capacity as City Manager will administratively function as Chief Executive Officer over the police and fire departments of the City, Employer agrees to pay the cost of Employee maintaining his executive certification from POST. In accordance herewith, Employee shall be issued a badge and department-issued weapon.

#### SECTION 13. BONDING

Employer agrees to bear the full cost of any fidelity or other bonds required of Employee under the City's Charter, any law or ordinance.

#### SECTION 14. INDEMNIFICATION

Employer agrees to fully indemnify and defend Employee, through liability insurance or participation in an interlocal risk management agency or otherwise, against any tort, professional liability, claim, or demand, and otherwise satisfy any legal obligation within the scope of his employment and public office, arising out of any alleged act or omission occurring in the performance of Employee's duties. Employer or its insurer may litigate, compromise, and/or settle any such claim, suit, or demand and pay the amount of any settlement or judgment rendered thereon, without the Employee's consent.

#### SECTION 15. SPECIAL CONDITIONS:

- A. Employee shall have the discretion to promote, transfer, or hire his own choice of Administrative Secretary, within budgetary constraints approved by Employer.
- B. Employer shall furnish and make available for use by Employee all essential office space, equipment and supplies, including but not limited to a cellular telephone or intergovernment radio (Nextel or Southern Linc), laptop computer, with modem and required software, and personal digital assistant or similar handheld computer.

#### SECTION 16. NOTICES

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

- (1) Employer: Chairperson  
Board of Commissioners  
City of Griffin  
P.O. Box T  
Griffin, Georgia 30224
- (2) Employee: Kenny L. Smith

P.O. Box 2012  
1430 Southworth Drive  
Griffin, Georgia 30224

(Employee to notify Employer upon change in current address.)

Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service.

#### SECTION 17. ASSIGNMENT

This Agreement shall be binding upon the Employer, City of Griffin, Georgia, and any successor government into which the City may hereafter be merged, unified or consolidated. Performance by the Employee is not assignable.

#### SECTION 18. GENERAL PROVISIONS

- A. The text herein shall constitute the entire Agreement between the parties. This writing shall constitute the full understanding and agreement of the parties and supersede any prior negotiation, term or agreement.
- B. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of Employee.
- C. If any provision, or portion thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected and shall remain in full force and effect.
- D. This Agreement shall be interpreted, construed and enforced in accordance with the laws of Georgia. Any amendment or modification hereto, to be enforceable, shall be in writing and executed by the proper parties. A copy of this agreement and any future modifications thereto shall be spread upon the Official Minutes of the City of Griffin.
- E. This agreement supersedes all prior contracts, agreements and negotiations concerning the terms and conditions of the Employee's employment as City Manager of the City of Griffin and shall be deemed the sole governing agreement as relates thereto.

IN WITNESS WHEREOF, Employer has caused this Agreement to be signed and executed in its behalf by its Chairperson and duly attested by its Assistant Secretary, with seal affixed, and Employee has signed and sealed this Agreement, in duplicate originals, the date and year first above written.

[Signatures on following page.]

BOARD OF COMMISSIONERS OF THE  
CITY OF GRIFFIN, GEORGIA (Seal)

EMPLOYEE:

By: \_\_\_\_\_  
Chairperson

By: \_\_\_\_\_  
Kenny L. Smith (Seal)

Attest: \_\_\_\_\_  
Assistant Secretary

(SEAL)

Approved as to form:

\_\_\_\_\_  
Andrew J. Whalen, III  
City Attorney