

EMPLOYMENT AGREEMENT

This employment agreement is made and entered into this 20 th day of May, 2011, by and between **Marcus Smith**, hereinafter referred to as the “Employee,” and City of Wilmer, hereinafter referred to as the “Company,” who agree as follows:

1. Position and Duties. The Company hires the Employee for the position of City Secretary. The duties and job description of the Employee shall be as follows: All duties as prescribed by Texas Local Government Code and the Mayor of Wilmer.

The Employee also agrees to perform further duties incidental to the job description. The Employee’s duties and job description may be reasonably modified at the Company’s discretion from time to time. This is considered a full-time position.

2. Term of Employment. The Company agrees to hire the Employee for a term commencing on the effective date and ending one year from the effective date or the discretion of the Mayor of the City, or unless terminated sooner as specified in this agreement.

3. Compensation. The Company will pay Employee \$ 47,271.37 USD per year, payable in accordance with the Company’s normal payroll practices.

4. Vacation. The Employee will be entitled to a yearly vacation as determined by City of Wilmer employee benefits policy.

5. Additional Benefits. The Company will provide the following additional benefits to the Employee: All benefits that are offered to full time employees of the City of Wilmer.

6. Policies. The Employee agrees to abide by all City policies and decisions now or hereinafter existing.



7. Contracts and Commitments. The Employee shall not have the power to make any contracts or other commitments for or on behalf of the City.

8. Termination of Agreement.

8.1 This agreement may be terminated upon the occurrence of any of the following:

- a) The expiration of this agreement without renewal
- b) Substantial and repeated failure by the Employee to perform duties of his or her position as reasonably directed by the City via the Mayor not cured within ten (10) business days after written notice thereof
- c) Substantial and repeated poor performance by the Employee of his or her duties as specified in written notice from the City via the Mayor specifying such deficiencies and the required actions needed to cure such poor performance, and not cured within ten (10) business days after written notice thereof
- d) Any material breach of this agreement by the Employee not cured within ten (10) business days after written notice thereof from the City via the Mayor.
- e) The Employee's conviction of a felony or a crime involving moral turpitude
- f) Illegal, fraudulent, dishonest or unethical business conduct by the Employee
- g) Death of the Employee
- h) Incapacitation of the Employee for over 180 days in any one year
- i) The City's failure to carry out its obligations under the terms of this agreement not cured within ten (10) business days after written notice delivered to the Mayor thereof from the Employee.



8.2 In the event Employee is terminated by the Council during the Term of this Agreement and Employee is then willing and able to perform all the duties of Employee under this Agreement, then, in that event, the City agrees to pay the Employee a lump sum cash payment equal to three months full salary and benefits, plus the value of all sick and vacation leave, holidays and other benefits accrued by, or credited to, the Employee prior to the termination; provided that, if the Employee is terminated because of a conviction for a misdemeanor involving moral turpitude or personal gain, or any felony,

then, in that event, the City shall have no obligation to pay the **severance** payments designated in this Agreement.

8.3 **Reductions.** In the event the Council during the Term of this Agreement reduces the authority of the Employee, or reduces the salary or other financial benefits of Employee in a greater percentage than an applicable across-the-board reduction for all employees of the City, or in the event the City refuses, following written notice, to comply with any other provision benefiting the Employee herein, or the Employee resigns following a suggestion, whether formal or informal, by the Council that the Employee resign, then in that event, the Employee may, at the Employee's option, be deemed to have been terminated as of the date of such reduction, or as of the date the Employee resigns at the Council's suggestion; provided that, notice having first been given, the suspension of the Employee with pay pending the resolution of any criminal charge filed against the Employee shall not constitute a termination, or a reduction under this Section. The Council shall be deemed to have suggested the resignation of the Employee at any time when a majority of the members of the Council shall at a Council meeting, or in writing, suggest that the Employee resign.

8.4 **Resignation.** If the Employee terminates this Agreement by voluntary resignation of the position of Employee, the Employee shall give 30 days notice in advance unless the Council agrees otherwise.

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9. Governing Law. The formation, construction and interpretation of this agreement shall at all times and in all respects be governed by the laws of the State of Texas and Dallas County.

10. Severable Provisions. The provisions of this agreement are severable, and if any provision of this agreement is adjudged invalid or unenforceable, in whole or in part, any invalidity or unenforceability shall affect only that provision and shall not make any other provision of this agreement invalid or unenforceable.

agreements between the parties. This agreement may not be modified except in writing signed by both parties.

12. Effective Date. This Agreement shall be and become in full force and effect as of the date above first written upon the adoption and approval of the Council, and the execution and delivery hereof by the Mayor of the City and the Employee.

Signature of City Representative: Jeffery R Steele

Printed Name of Representative: Jeffery R Steele

Title: Mayor

Signature of Employee: Mar SA

