

**STAFF REPORT**

TO: Mayor and Council Members  
FROM: Administrative Services Director  
DATE: March 15, 2016  
SUBJECT: Authorize Employment Contract with Public Works Director/Engineer

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**Background and Analysis:**

The City has been operating without a Public Works Director since the FY 15/16 Budget was adopted September 15, 2015. Staff has been actively recruiting since that time to locate the appropriate qualified candidate. The recruitment process is complete and Amer Jakher has been selected. He has over twenty years of service in the public sector, with fourteen years as a department head. Amer holds a Master in Public Administration and is a Certified Professional Engineer.

As the City has restructured and reorganized, executive staff will be transitioning to employment contracts. It is common practice in other government entities for Executive or Department Head level positions to have employment agreements or contracts. Such agreements or contracts explain the employee serves at the will and pleasure of the City Manager. The Interim City Manager negotiated the terms and conditions and the City Attorney has reviewed and approved the language in the contract. Attached is the employment contract for your review.

**Fiscal Impact:**

Contract provides for an annual fully loaded fiscal impact of \$212,000 to be paid out of the budget of the Public Works Department 3250 personnel cost accounts.

Finance Director Review: 

**Recommendation:**

Approve Employment Contract with Amer Jakher and authorize the mayor to sign the agreement.

**Attachments:**

- 1) Employment Agreement
- 2) City Application

City Manager Review: 

## **PUBLIC WORKS DIRECTOR/CITY ENGINEER EMPLOYMENT AGREEMENT**

This PUBLIC WORKS DIRECTOR/CITY ENGINEER EMPLOYMENT AGREEMENT (hereinafter referred to as the "AGREEMENT") is entered into and made effective the 15th day of March 2016, by and between the CITY OF BEAUMONT, (hereinafter referred to as the "CITY"), and AMER JAKHER, an individual (hereinafter referred to as "EMPLOYEE"). For purposes of this AGREEMENT, CITY and EMPLOYEE may be collectively referred to as the "Parties" or individually as a "Party."

### **RECITALS**

#### **PUBLIC WORKS DIRECTOR**

**WHEREAS**, based on EMPLOYEE's executive and administrative qualifications and ability, the City Manager desires to appoint EMPLOYEE to serve as the PUBLIC WORKS DIRECTOR/CITY ENGINEER for CITY; and

**WHEREAS**, EMPLOYEE desires to perform and assume responsibility for the provision of PUBLIC WORKS DIRECTOR/CITY ENGINEER services to CITY; and

**WHEREAS**, EMPLOYEE and CITY acknowledge and agree that this Agreement shall supersede the Memorandum of Understanding between City of Beaumont and Managers as Individuals Effective January 1, 2016 ("MOU"), as may be amended from time to time; and

**WHEREAS**, the Parties wish to establish the terms and conditions of EMPLOYEE's provision of professional services to CITY through this AGREEMENT.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, CITY and EMPLOYEE hereby agree as follows:

#### **1. POSITION, DUTIES AND TERM.**

1.1 Position. EMPLOYEE accepts employment with CITY as its PUBLIC WORKS DIRECTOR/CITY ENGINEER and shall perform all functions, duties and services set forth in Section 1.4 (Duties) of this Agreement.

1.2 Effective Date of Agreement/Term. The effective date of this Agreement shall be March 15, 2016 (hereinafter, the "Effective Date"). This Agreement shall have a term of TWELVE (12) MONTHS commencing from the Effective Date (hereinafter referred to by the capitalized word "Term"). Upon the expiration of the Term, this Agreement shall continue on a month-to-month basis, subject to all of the terms and conditions set forth in this Agreement, until such time as CITY either executes a new agreement with EMPLOYEE or CITY terminates EMPLOYEE's employment with CITY.

1.3 Employment with CITY "At-Will".

(a) EMPLOYEE's employment status with CITY shall be at-will and EMPLOYEE shall serve at the pleasure of the City Manager as provided under the City of Beaumont Municipal Code Section 2.12.060.D. EMPLOYEE acknowledges, understands and agrees that EMPLOYEE may not avail himself/herself of any procedures, provisions or protections set forth under CITY's Employment Policies, as defined herein, in so far as such procedures, provisions or protections limit, restrict, modify, prohibit or regulate EMPLOYEE's status as an "at-will" employee of CITY or the ability of the City Manager to terminate EMPLOYEE's employment at any time for cause or for convenience and without cause. For purposes of this Agreement, the capitalized term "Employment Policies" means and refers to any ordinance, resolution, regulation, rule, memorandum of understanding, or other written policy of CITY as the same may be amended, modified or supplemented from time-to-time, and any written employment manual of the CITY which governs, regulates or otherwise relates to employment with CITY. CITY's Employment Policies shall not apply to EMPLOYEE in so far as such Employment Policies limit, restrict, modify or regulate (or may be interpreted to limit, restrict, modify or regulate) EMPLOYEE's status as an "at-will" employee of CITY.

(b) Except as otherwise provided under Section 6 (Termination) of this Agreement, EMPLOYEE shall not be entitled to any pre-termination hearing or other similar proceeding or appeal proceeding as a precondition to any decision or action by the City Manager to terminate EMPLOYEE's employment whether for cause or for convenience and without cause.

(c) Nothing in this Agreement shall confer upon EMPLOYEE any right to any property interest in continued employment with CITY.

1.4. Duties. EMPLOYEE shall serve as the PUBLIC WORKS DIRECTOR/CITY ENGINEER and shall be vested with the powers, duties and responsibilities of the PUBLIC WORKS DIRECTOR/CITY ENGINEER as set forth in the Beaumont Municipal Code, as the same may be amended or modified from time-to-time by the City Council, the California Code, and CITY's policies and procedures approved by the City Council, as may be provided from time to time. EMPLOYEE's performance of EMPLOYEE's duties shall be subject to the direction of the City Manager. It is the intent of the Parties that the PUBLIC WORKS DIRECTOR/CITY ENGINEER shall use all reasonable efforts to keep the City Manager fully informed of all significant operations or major undertakings of the Department. EMPLOYEE shall provide the City Manager with regular status reports on the operations and activities of CITY. EMPLOYEE shall perform such duties as are customary and appropriate to the position of PUBLIC WORKS DIRECTOR/CITY ENGINEER as well as such special duties as may be assigned to PUBLIC WORKS DIRECTOR/CITY ENGINEER from time to time by the City Manager. Notwithstanding EMPLOYEE's duties as PUBLIC WORKS DIRECTOR/CITY ENGINEER, nothing in this Agreement shall be construed to prohibit direct communications between the City Manager and employees of CITY in a manner consistent with CITY's Employment Policies and the laws of the State of California. EMPLOYEE shall attend all City Council meetings, unless excused or directed otherwise by the City Manager.

1.5. Work Hours. The position of PUBLIC WORKS DIRECTOR/CITY ENGINEER is an exempt position under state and federal wage and hour laws. EMPLOYEE's compensation (whether salary or benefits or other allowances) is not based on hours worked and EMPLOYEE shall not be entitled to any compensation for overtime. EMPLOYEE is expected to engage in those hours of work that are necessary to fulfill the obligations of the PUBLIC WORKS DIRECTOR/CITY ENGINEER's position. The PUBLIC WORKS DIRECTOR/CITY ENGINEER does not have set hours of work as the PUBLIC WORKS DIRECTOR/CITY ENGINEER is expected to be available at all reasonable and relevant times.

1.6. Regional and Professional Activities. CITY desires that EMPLOYEE be reasonably active in professional organizations that will promote the standing of CITY and advance CITY's goals, interests and policy objectives while also providing EMPLOYEE with opportunities for the type of professional development that will enhance EMPLOYEE'S ability to serve CITY and perform EMPLOYEE'S duties as PUBLIC WORKS DIRECTOR/CITY ENGINEER. Toward this end, EMPLOYEE may, upon reasonable notice and approval by the City Manager, join professional organizations and participate in the activities of such organizations in so far as such participation promotes the interests of CITY and does not unduly interfere with the performance of EMPLOYEE's duties as PUBLIC WORKS DIRECTOR/CITY ENGINEER. CITY agrees to budget and, consistent with that budget, pay for the dues, conference and travel fees, and subscriptions of the PUBLIC WORKS DIRECTOR/CITY ENGINEER necessary for EMPLOYEE'S participation in national, statewide, regional or professional organizations.

1.7. Non-CITY Activities. In accordance with Government Code Section 1126, during the period of EMPLOYEE'S employment, EMPLOYEE shall not accept, without the express prior written consent of the City Manager, any other employment or engage, directly or indirectly, in any other business, commercial, or professional activity (except as permitted under Section 1.6 (Regional and Professional Activity)), whether or not to pecuniary advantage, that is or may be competitive with CITY, that might cause a conflict-of-interest with CITY, or that otherwise might interfere with the business or operation of CITY or the satisfactory performance of EMPLOYEE's duties as PUBLIC WORKS DIRECTOR/CITY ENGINEER.

1.8. Reimbursement. CITY shall reimburse EMPLOYEE for reasonable and necessary travel, subsistence and other business expenses incurred by EMPLOYEE in the performance of EMPLOYEE'S duties or in connection with EMPLOYEE's participation in those authorized activities referenced under Section 1.6, above. All reimbursements shall be subject to and in accordance with any limitations or restrictions set forth under the laws of the State of California or any CITY-adopted reimbursement policies.

## **2. COMPENSATION.**

2.1 Base Salary. Commencing March 15, 2016, or official start date thereafter EMPLOYEE shall receive a base annual salary of One Hundred Fifty Eight Thousand Eight Hundred Eight Dollars (\$158,808.00) per year, (hereinafter, the "Base Salary"). The Parties understand and agree that the amount of the Base Salary, as preliminarily established for the year 2016, the salary may also be adjusted from time-to-time by the City Manager following a

performance evaluation, as provided for in Section 2.2 (below). In no event shall EMPLOYEE's base salary adjust automatically pursuant to any mechanism, and in no event shall EMPLOYEE's base salary exceed the maximum amount approved by the City Council, including in the CITY's Salary Chart or any other salary table or other document that may be adopted by the City Council in the future. The Base Salary shall be payable in monthly or bi-weekly installments at the same time and in the same manner as other management employees of CITY. EMPLOYEE's salary shall be subject to customary withholding for taxes and other required deductions.

2.2 Performance Review. On or before the anniversary date of execution of this Agreement, the City Manager will undertake a job performance review of EMPLOYEE. By the anniversary date of execution of this Agreement of each succeeding calendar year, the City Manager will undertake an annual job performance review of EMPLOYEE. In connection with such performance review, the City Manager may consider any adjustments in EMPLOYEE's compensation consistent with the CITY's Salary Chart. The failure of CITY to undertake a performance evaluation shall not limit CITY's ability to terminate this Agreement pursuant to Section 6 (Termination).

2.3 Benefits. In addition to Base Salary, CITY shall also provide EMPLOYEE with the following benefits:

(a) Cafeteria Plan. CITY shall contribute One-Thousand Three Hundred Ninety Dollars (\$1,390) per month to EMPLOYEE for the cafeteria benefit plan detailed in this section.

(i) Said contribution shall be used to provide for health insurance for EMPLOYEE. EMPLOYEE shall be covered by health insurance with a CITY approved health plan unless EMPLOYEE provides proof to CITY that EMPLOYEE is covered by another acceptable health plan as determined by CITY's Human Resource Department.

(ii) The balance of the cafeteria plan contribution may be used for any of the following or any combination thereof:

(1) Health Insurance for EMPLOYEE's spouse and/or dependents;

(2) Dental Insurance for EMPLOYEE's, spouse and/or dependents;

(3) Eye care plan for EMPLOYEE, spouse and/or dependents;

(4) Supplemental Insurance Options.

(iii) There is no cash-back of the remaining contributions amount, if any, to EMPLOYEE after payment of the selected premiums(s). EMPLOYEE shall be responsible for the remaining payments(s) through payroll deduction, of any premiums selected which are in excess of the monthly contribution amount.

(iv) If EMPLOYEE elects to not participate in the cafeteria plan and can show adequate proof of an approved health plan, as determined by CITY's Human Resource

Department, EMPLOYEE shall have the option to have an amount equal to the most current Kaiser employee only (single) monthly premium rate [as of January 1, 2016 the single rate is \$457.75] paid to EMPLOYEE, or deposited by CITY into EMPLOYEE's Deferred Compensation Plan each month. If taken as cash payment, the amount is not to be considered as pensionable compensation for the purposes of CalPERS. Such alternative health plan coverage must be verified initially and thereafter on an annual basis through presentation of a valid medical insurance card, or other reasonable means of verification as approved by the City Manager. Alternative health plan coverage must be maintained until the next available CITY open enrollment period.

(b) Dependent Care Flexible Spending Account. CITY agrees to provide EMPLOYEE a Dependent Care Flexible Spending Account. A Dependant Care Flexible Spending account will permit EMPLOYEE to set aside a portion of EMPLOYEE'S paycheck tax free (up to IRS Limits) to pay for dependent care in conformance with IRS Tax Law requirements.

(c) Term Life Insurance. CITY agrees that during the period of employment it will provide EMPLOYEE with, and pay the annual premiums for, a term life insurance policy in an amount equal to Fifty Thousand Dollars and No Cents (\$50,000). If available, additional coverage may be purchased at EMPLOYEE's expense and cost. EMPLOYEE shall nominate the beneficiary under such term life insurance policy.

2.4 Vehicle Allowance. EMPLOYEE shall be provided, during the term of this Agreement and in addition to other salary and benefits herein provided, the sum of Three Hundred Fifty Dollars a month, as a vehicle allowance to be used to purchase, lease or own, operate and maintain a vehicle. EMPLOYEE shall be responsible for paying for liability, property damage and comprehensive insurance coverage upon such vehicle and shall further be responsible for all expenses attendant to the purchase, operation, maintenance, repair and regular replacement of said vehicle

2.5 Jury Duty. EMPLOYEE will receive Base Salary and benefits while responding to a jury summons or serving on a jury, up to a maximum of fourteen (14) business days. Any compensation for such jury duty (except travel pay) shall be remitted to CITY.

2.6 Business Related Equipment. CITY shall also provide EMPLOYEE a smart phone and personal computer (at work) for use in connection with CITY business. CITY shall be responsible for maintenance of said items.

2.7 Participation in Additional CITY Programs. EMPLOYEE shall be eligible to participate in any other CITY programs/employment benefits to the extent they are offered to non-represented CITY management employees, including but not limited to, the bilingual program or deferred compensation plan.

### **3. ILLNESS OR INJURY; DISABILITY AND DEATH.**

3.1 Cessation of Work Due to Injury or Disability. In addition to any right of termination set forth under Section 1.3 (Employment With CITY "At-Will"), above, CITY also reserves the right to terminate EMPLOYEE's employment along with this Agreement if EMPLOYEE ceases to work as a result of injury or disability which results in Employee being unable to perform the essential duties of the PUBLIC WORKS DIRECTOR/CITY ENGINEER position, with or without accommodation, for a period of six (6) consecutive months or more, as documented by a healthcare provider. The foregoing notwithstanding, CITY may terminate EMPLOYEE if the disability poses a direct threat to CITY, EMPLOYEE or any other employees working for CITY and any reasonable accommodation attempted by CITY would not mitigate or eliminate such a threat. CITY will not provide a severance payment if EMPLOYEE is terminated under this Section of this Agreement.

3.2 Compensation for Work-Related Illness or Injury. In the event EMPLOYEE suffers a physical or mental illness or disability arising out of the course of employment, EMPLOYEE's exclusive remedy or remedies against CITY for such illness, injury or disability shall be those legally required under the workers' compensation laws of the State of California.

3.3 Medical Examination. EMPLOYEE agrees to submit to a medical and/or psychological examination by a qualified physician or psychiatrist selected by CITY, in the event a decision must be made under Sections 3.1 through 3.3. CITY and EMPLOYEE shall receive a copy of all medical reports related to the examination.

3.4 Death of Employee. This Agreement along with EMPLOYEE's employment shall terminate automatically upon EMPLOYEE's death.

3.5 Compensation Upon Termination. Except as otherwise provided under this Agreement, if EMPLOYEE's employment is terminated pursuant to this Section 3 (Illness or Injury; Disability and Death), CITY shall pay EMPLOYEE all Base Salary, benefits, and compensation due and owing EMPLOYEE through the last day actually worked. If termination is caused by EMPLOYEE's death, CITY shall provide the compensation and benefits otherwise due EMPLOYEE to EMPLOYEE's executor, administrator, heirs, personal representatives, successors, and assigns. CITY will not provide for severance pay if EMPLOYEE is terminated under the provisions of Section 3.1 through 3.5, above.

### **4. VACATION AND OTHER LEAVE.**

4.1 Vacation Accrual. As of the Effective Date of this Agreement, EMPLOYEE shall be entitled to one hundred twenty (120) hours of vacation leave annually and accrue vacation at a rate 4.615 hours per pay period, for a maximum accrual of two hundred forty (240) hours per year.

Hire date - Three (3) years	two (2) weeks per year	3.077 hours per pay period
Three (3) years 1 day - Seven (7) years	three (3) weeks per year	4.615 hours per pay period
Seven (7) years 1 day - Nineteen (19) years	four (4) weeks per year	6.153 hours per pay period
Nineteen (19) years 1 day	five (5) weeks per year	7.692 hours per pay period

Total vacation accrual for EMPLOYEE shall not exceed the equivalent of two (2) years' accrual at the current accrual rate for EMPLOYEE.

4.2 Holidays. EMPLOYEE shall receive paid holidays in accordance with CITY's current practices as such practices may be amended or modified from time to time by CITY by action of the City Council. Paid holidays will be those approved by CITY by action of the City Council. Unused holiday leave time shall be accumulated and paid to EMPLOYEE in the last pay check in June of each fiscal year.

4.3 Administrative/Personal Leave. EMPLOYEE shall be allocated a maximum of eighty (80) hours of administrative/personal leave on July 1st of each CITY fiscal year. The maximum amount of administrative/personal leave that EMPLOYEE may accrue at any given time may not exceed eighty (80) hours total. Accrued but unused administrative/personal leave may not be rolled over to the next CITY fiscal year and may not be sold back to CITY.

4.4 Sick Leave.

- (a) Sick leave shall accrue at the rate of 3.69 hours per bi-weekly pay period.
- (b) CITY and EMPLOYEE agree to a one thousand (1,000) hour sick leave accumulation cap.
- (c) CITY agrees to a service credit of unused sick leave for PERS retirement when EMPLOYEE retires from CITY employment or a lump sum payment of the value of the unused sick leave, as requested by EMPLOYEE.
- (d) EMPLOYEE may use accrued paid sick leave for the purposes set forth in Labor Code section 246.5(a).
- (e) Accrued paid sick leave shall carry over to the following year, but no additional paid sick pay will accrue until the EMPLOYEE's accrued paid sick leave falls below the one thousand (1,000) hour cap.
- (f) CITY will provide EMPLOYEE with written notice of the amount of paid sick leave available. The notice will be provided on the designated pay date with EMPLOYEE's payment of wages. Sick leave pay will be paid at EMPLOYEE's hourly rate of pay when sick



leave is taken. Sick leave pay will be paid by the payday for the next regular payroll period after the sick leave is taken.

## 5. RETIREMENT.

5.1 Public Employees Retirement System (PERS). CITY shall provide EMPLOYEE with retirement benefits through the California Public Employees Retirement System (CalPERS). Such benefits are subject to applicable law and regulations, including but not limited to the Public Employees' Retirement Law (PERL), the Public Employees' Pension Reform Act (PEPRA) of 2013, and CalPERS rules. For the purpose of CalPERS retirement benefits, EMPLOYEE shall be  a "Classic Member"  a "New Member".

(a) Classic Member. A Classic Member is any employee-excluding transit employees\* - hired by CITY prior to January 1, 2013; or any employee previously employed by a CalPERS participating public agency, hired by that agency prior to January 1, 2013, and who becomes employed by CITY with less than a six (6) month break in service; or any transit employee hired by CITY prior to December 29, 2014; or any employee, regardless of hire date, who is eligible for reciprocity with another California public retirement system.

(b) New Member. Any employee - excluding transit employees\* - hired by the City or any other CalPERS participating public agency, on or after January 1, 2013; or any employee previously employed by a CalPERS participating public agency who becomes employed by the City after a break in service of greater than six (6) months; or any transit employee hired by the City on or after December 30, 2014; or any employee, regardless of hire date, who is ineligible for reciprocity with another California public retirement system.

(c) Formulas and Calculations. The retirement formula and calculations are based upon a combination of the employee's age, years of service, and annual pensionable compensation.

(1) For a Classic Member, the formula and calculations are "3% at 60" and single highest year. No cap on annual salary that can be used to calculate final compensation.

(2) For a New Member, the formula and calculations are "2% at 62" and three year average. Pensionable compensation cap on annual salary used to calculate final compensation.

(d) Rates of Contributions.

(1) "Classic" Members: Effective February 1, 2016, CITY shall pay one hundred percent (100%) of the CITY's obligation and five percent (5%) of the employee's contribution, also known as Employer Paid Member Contribution (EPMC). The EPMC is currently eight percent (8%) for miscellaneous (non-public safety) employees. The employee shall pay the remaining three percent (3%) of the EMPC.

(2) "Classic" Members: Effective January 1, 2017, the CITY shall pay one hundred percent (100%) of the employer's obligation and two percent (2%) of the

employee's contribution, also known as Employer Paid Member Contribution (EPMC). The EPMC is currently eight percent (8%) for miscellaneous (non-public safety) employees. The employee shall pay the remaining six percent (6%) of the EMPC.

(3) "New" Members: CITY and employee will participate in equal sharing of normal costs, with the employee paying fifty percent (50%) of normal costs.

## 6. TERMINATION.

### 6.1 Termination by CITY for Convenience and Without Cause.

(a) Except as otherwise provided under Subsection (b) of this Section below, CITY may terminate EMPLOYEE at any time for convenience and without cause, by providing EMPLOYEE thirty (30) days prior written notice and the reason(s) thereof together with the applicable "severance payment" provided for below, and an opportunity for an administrative appeal to the City Council.

(b) In lieu of providing thirty (30) days prior written notice of termination, CITY may place EMPLOYEE on paid administrative leave status during the thirty (30) day notice period or any portion thereof. CITY may dismiss EMPLOYEE notwithstanding anything to the contrary contained in or arising from any Employment Policies or past CITY practices relating to the employment, discipline, or termination of its employees. The "severance payment" shall be an amount equal to six (6) months base salary, less any and all applicable or legally required deductions. EMPLOYEE shall also receive all applicable accrued vacation and/or sick leave and administrative/personal leave as provided herein together with any extension of benefits required under California law. The foregoing notwithstanding, in no event shall the "severance payment" include the payment of any sums prohibited pursuant to Government Code Section 53260 and any such sums shall be deducted from the "severance payment."

6.2 Termination by Employee. EMPLOYEE may terminate EMPLOYEE'S employment for any reason, and at any time, with or without cause, by providing CITY with no less than thirty (30) days prior written notice. In such event, CITY shall have the option, in its complete discretion, to make EMPLOYEE'S termination effective upon any date preceding the 30-day notice period, provided CITY pays EMPLOYEE all compensation due and owing EMPLOYEE through the last day actually worked, plus an amount equal to the Base Salary EMPLOYEE would have earned through the balance of the thirty (30) day notice period. EMPLOYEE shall not receive a "severance payment" in the event EMPLOYEE terminates his/her employment with CITY pursuant to this Section 6.2.

6.3 Termination for Cause by CITY. CITY may immediately terminate EMPLOYEE'S employment with CITY and this Agreement at any time by providing EMPLOYEE written notice of EMPLOYEE'S termination for cause and the reason(s) for the termination, and an opportunity for an administrative appeal to the City Couil. No "severance payment" shall be paid in the event EMPLOYEE'S employment is terminated for cause, except that CITY shall pay EMPLOYEE for EMPLOYEE'S accrued and unused vacation, sick and

administrative leave, as provided for in this Agreement. The term "cause" shall be defined to include any misconduct materially related to performance of official duties, including but not be limited to any of the following: 1) breach of this AGREEMENT, 2) willful or persistent breach of duties, 3) resume fraud or other acts of material dishonesty, 4) unauthorized absence or leave not otherwise supported by valid documentation from a healthcare provider, 5) conviction of a misdemeanor involving moral turpitude (i.e., offenses contrary to justice, honesty, or morality), conviction of a misdemeanor DUI, or conviction of a felony under California law (the CITY may, in its discretion, place EMPLOYEE on paid or unpaid administrative leave until resolution of charges brought against EMPLOYEE), 6) violation of the CITY's anti-harassment policies and/or a finding that legally prohibited personal acts of harassment against a CITY official or employee or legally prohibited personal acts of discrimination or retaliation against a CITY official or employee has occurred, 7) violation of the CITY's Municipal Code, ordinances, rules or regulations, including but not limited to the CITY's Rules and Regulations and Administrative Policies, 8) use or possession of illegal drugs, 9) engaging in conduct tending to bring embarrassment or disrepute to the CITY, 10) any illegal or unethical act involving personal gain, 11) pattern of repeated, willful and intentional failure to carry out materially significant and legally constituted directions or policy decisions of the City Council or City Manager, and 12) gross misfeasance or gross malfeasance. If the CITY terminates for cause this AGREEMENT and the services of EMPLOYEE hereunder, EMPLOYEE shall not be entitled to assume any further position or employment with the CITY.

6.4 Termination Obligation. EMPLOYEE agrees that all property, including without limitation, all equipment, tangible, Proprietary Information (as defined below), documents, records, notes, contracts, and computer-generated materials furnished to or prepared by EMPLOYEE incident to EMPLOYEE'S employment are the property of CITY and shall be returned promptly to CITY upon termination of EMPLOYEE's employment. EMPLOYEE's obligations under this subsection shall survive the termination of EMPLOYEE'S employment and the expiration or early termination of this Agreement.

6.5 Benefits Upon Termination. All benefits to which EMPLOYEE is entitled under this Agreement shall cease upon EMPLOYEE's termination in accordance with this Section 6 (Termination), unless expressly continued under this Agreement, under any specific written policy or benefit plan applicable to EMPLOYEE, or unless otherwise required by law.

## 7. CONFLICT OF INTEREST.

7.1 EMPLOYEE shall not, during the term of this Agreement, individually, as a partner, joint venture, officer or shareholder, invest or participate in any business venture conducting business in the corporate limits of CITY, except for stock ownership in any company whose capital stock is publicly held and regularly traded, without prior approval of the City Manager and City Council. EMPLOYEE shall also be subject to the conflict of interest provisions of the Government Code of the State of California, the CITY's Municipal Code, and any other conflict of interest regulations applicable to EMPLOYEE's employment with CITY. For and during the Term of this Agreement and any extension term, EMPLOYEE further agrees that except for a personal residence or residential property acquired or held for future use as

EMPLOYEE'S personal residence, EMPLOYEE will not invest in any other real estate or property improvements within the corporate limits of CITY without the prior consent of the City Manager and City Council.

**8. GENERAL PROVISIONS.**

8.1 Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be effective upon delivery by hand or three (3) business days after deposit in the United States mail, postage prepaid, certified or registered, and addressed to CITY at the address below or at the last known address maintained in EMPLOYEE personnel file. EMPLOYEE agrees to notify CITY in writing of any change in EMPLOYEE'S address during EMPLOYEE'S employment with CITY. Notice of change of address shall be effective only when accomplished in accordance with this Section.

CITY's Notice Address:

City of Beaumont  
550 East Sixth Street  
Beaumont, CA 92223  
Attn: City Manager

PUBLIC WORKS DIRECTOR/CITY ENGINEER's Notice Address:

AMER JAKHER  
(Last listed address  
In employee's personnel file)

8.2 Indemnification. Subject to, in accordance with, and to the extent provided by the California Tort Claims Act (Government Code Section 810 et seq.) CITY will indemnify, defend, and hold EMPLOYEE harmless from and against any action, demand, suit, monetary judgment or other legal or administrative proceeding, and any liability, injury, loss or other damages, arising out of any negligent act or omission occurring during the Term of this Agreement or any extension term. CITY shall have the discretion to compromise or settle any such claim, demand or action and pay the amount of any settlement or judgment rendered thereon. Notwithstanding the foregoing, CITY shall have no duty to indemnify, defend, or hold EMPLOYEE harmless from any criminal proceeding, or with regard to any civil, criminal or administrative proceeding initiated by EMPLOYEE.

8.3 Bonding. CITY shall bear the full cost of any fidelity or other bonds required of the PUBLIC WORKS DIRECTOR/CITY ENGINEER under any laws or ordinance.

8.4 Entire Agreement. This Agreement is intended to be the final, complete, and exclusive statement of the terms of EMPLOYEE's employment by CITY. This Agreement supersedes all other prior and contemporaneous agreements and statements, whether written or oral, express or implied, pertaining in any manner to the employment of EMPLOYEE, and it may not be contradicted by evidence of any prior or contemporaneous statements or agreements.

To the extent that the practices, policies, or procedures of CITY, now or in the future, apply to EMPLOYEE and are inconsistent with the terms of this Agreement, the provisions of this Agreement shall control. However, as noted in Section 2.7 above, EMPLOYEE shall be eligible to participate in any other CITY programs/employment benefits to the extent they are offered to non-represented CITY employees.

8.5 Amendments. This Agreement may not be amended except in a written document signed by EMPLOYEE, approved by CITY and signed by the City Attorney.

8.6 Waiver. Failure to exercise any right under this Agreement shall not constitute a waiver of such right.

8.7 Assignment. EMPLOYEE shall not assign any rights or obligations under this Agreement. CITY may, upon prior written notice to EMPLOYEE, assign its rights and obligations hereunder.

8.8 Severability. If any court of competent jurisdiction holds any provision of this Agreement to be invalid, unenforceable, or void, the remainder of this Agreement shall remain in full force and effect.

8.9 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California and the Parties agree that venue shall be in Riverside County, California.

8.10 Interpretation. This Agreement shall be construed as a whole, according to its fair meaning, and not in favor of or against any party. By way of example and not in limitation, this Agreement shall not be construed in favor of the party receiving a benefit or against the party responsible for any particular language in this Agreement. Captions are used for reference purposes only and should be ignored in the interpretation of the Agreement. This Agreement may be altered, amended or modified only by an instrument in writing; executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest, or assert that this Agreement was modified, cancelled superseded or changed by any oral agreement, course of conduct, waiver or estoppel.

8.11 Statutory Obligations; Abuse of Office or Position. Pursuant to California Government Code Sections 53243, 53243.1 and 53243.2, which became effective on January 1, 2012, if EMPLOYEE is convicted of a crime involving an abuse of EMPLOYEE'S office or position, all of the following shall apply: (1) if EMPLOYEE is provided with an administrative leave pay pending an investigation, EMPLOYEE shall be required to fully reimburse such amounts paid by CITY; (2) if CITY pays for the criminal legal defense of EMPLOYEE (which would be in its sole discretion, as CITY is generally not obligated to pay for a criminal defense), EMPLOYEE shall be required to fully reimburse such amounts paid by CITY; and (3) if this Agreement is terminated, any cash settlement related to the termination of EMPLOYEE by CITY, said amount shall be fully reimbursed to CITY or shall be void if not yet paid to EMPLOYEE. For this Section, abuse of office or position means either: (1) an abuse of public authority, including waste, fraud, and violation of the law under the color of authority; or (2) a

crime against public justice, including a crime described in Title 7 commencing with section 92 of the California Penal Code.

8.12 Incorporation of Recitals. The Parties repeat and incorporate the recitals set forth above as if fully set forth herein.

8.13 Acknowledgment. EMPLOYEE acknowledges that EMPLOYEE has had the opportunity to consult legal counsel in regard to this Agreement, that EMPLOYEE has read and understands this Agreement, that EMPLOYEE is fully aware of its legal effect, and that EMPLOYEE has entered into it freely and voluntarily and based on EMPLOYEE'S own judgment and not on any representations or promises other than those contained in this Agreement.

**"CITY"**

CITY OF BEAUMONT

By: \_\_\_\_\_  
Mike Lara, Mayor

**"EMPLOYEE"**

AMER JAKHER

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

**ATTEST:**

By: \_\_\_\_\_  
Julio Martinez, City Clerk

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
John O. Pinkney, City Attorney

**PUBLIC WORKS DIRECTOR/CITY ENGINEER EMPLOYMENT AGREEMENT**

**Exhibit "A"**

**Job Description**

DRAFT

Exhibit "A"