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LAW OFFICES OF
GRANOWITZ, WHITE AND WEBER

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* A PROFESSIONAL CORPORATION

October 2, 2015

Via US mail and email to pinkney@sbemp.com
John Pinkney
Slovak Baron Empey Murphy & Pinkney LLP
1800 East Tahquitz Canyon Way
Palm Springs, California 92262

Re: *City of Beaumont v. Alan Kapanicas*

Dear Mr. Pinkney

Enclosed along with this letter is a proposed Separation and Settlement Agreement pursuant to which my client is willing to terminate his employment contract and his employment with the City of Beaumont. As we have discussed previously, it is our position that no valid grounds exist for the termination of the employment agreement and any involuntary termination of Mr. Kapanicas's employment would constitute a breach of that agreement.

This proposed agreement is being submitted for consideration by the City at its upcoming City Council meeting. In order to ensure full compliance with the Brown Act, we have no objection to including the proposed agreement, itself, in the agenda packet for the meeting. I also do not object to including this letter, as well.

As I am sure you are aware, my client's employment agreement includes a specification as to his salary, benefits, and various other items. Section 2.5 of the agreement also addresses \$214,100.00 owed at the time the agreement was made.

As we have advised the City previously, should the City dismiss Mr. Kapanicas and terminate the employment agreement, my client would be entitled to the immediate payment of his outstanding salary and other compensation through the last date of his employment, as well as compensation for his accrued benefit time which has an estimated value exceeding \$200,000.00. My client would also expect prompt payment of the \$214,100.00 referred to hereinabove.

If the employment agreement is prematurely terminated, my client intends to institute formal legal proceedings to recover any and all relief to which he may be entitled including, without limitation, his salary,

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John Pinkney
Re: *City of Beaumont v. Kapanicas*
October 2, 2015
Page 2

deferred compensation, and other benefits through the contractual end date. Such sums are estimated to exceed \$500,000.00. In addition, my client would seek compensation for the loss of his retirement benefits which are estimated to be no less than \$700,000.00, and may be well over \$1 million. In addition to the foregoing, my client would seek general damages, as well as his legal expenses.

It is respectfully submitted that it would be the interest of all parties concerned to resolve this matter amicably. We believe the proposed Separation and Settlement Agreement is a fair and reasonable compromise. Not only will the City be relieved of the requirement to make a very substantial monetary outlay immediately upon the termination of my client's employment, by resolving this matter in the manner proposed, the City will avoid incurring very substantial legal fees and eliminate any risk of a substantial adverse judgment should this matter be resolved through litigation.

Should the City require any additional information to assist in making its decision regarding this matter, please let me know.

I look forward to resolving this matter.

Very truly yours,

GRANOWITZ, WHITE AND WEBER


STEVEN R. WEBER

SRW/ca
cc: Mr. Kapanicas
Enclosure

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SEPARATION AND SETTLEMENT AGREEMENT

This Separation and Settlement Agreement (Agreement) is made by and between the City of Beaumont (City), on the one hand, and Alan Kapanicas (Kapanicas), on the other hand.

RECITALS

- A. Kapanicas is presently employed by City as its City Manager, which position includes, among other things, the Beaumont Redevelopment Agency Executive Director; Utility Authority Executive Director; Finance Authority Executive Director; and Special Districts Administrator (said positions and others held by Kapanicas are collectively referred to as "City Manager"). Such employment is pursuant to a written employment agreement dated June 21, 2011. The employment agreement is for a period of six years commencing June 21, 2011 and ending June 20, 2017. A true and correct copy of the employment agreement, entitled "City of Beaumont Employment Agreement for the Position of City Manager," is attached hereto for reference purposes as **Exhibit A**.
- B. Prior to the execution of the employment agreement, Kapanicas had served as City Manager for a number of years pursuant to a contract between the City and GGMS, Inc.
- C. A dispute has arisen between City and Kapanicas regarding the performance of his duties and obligations as City Manager. City has asserted that grounds may exist to terminate the employment agreement for cause. Kapanicas disputes and denies City's contentions and further asserts that to terminate the employment relationship would constitute a breach of contract and the wrongful termination of his employment, giving rise to civil claims for substantial damages.
- D. To resolve the ongoing dispute and to avoid the expense and uncertainties of litigation, City and Kapanicas hereby agree to sever the employment relationship and to terminate the employment agreement on the terms set forth hereinbelow.

TERMS OF SETTLEMENT

1. **Administrative Leave.** Kapanicas will remain on administrative leave through November 15, 2015. During that period, Kapanicas will continue to receive his full pay and benefits pursuant to his employment agreement including, without limitation, the accrual of benefit time such as sick, vacation, and holiday time, as well as all PERS contributions per his employment agreement.
2. **Terminal Leave.** From and after November 16, 2015, Kapanicas will be on "terminal leave" until all of his benefit time is exhausted. The parties agree that Kapanicas has an accrued balance of 1935.91 hours of benefit time (sick leave, 509.28 hours; holiday, 408.22 hours; vacation, 1018.41 hours) accrued as of October 2 2015. While on terminal leave, Kapanicas will first use his accrued sick time, then holiday time, then accrued vacation.

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3. **Compensation While on Terminal Leave.** While on terminal leave, Kapanicas shall not receive deferred compensation and there will be no further accruals of benefit time including vacation, holiday, and sick time. While on terminal leave Kapanicas will be paid by City based on his usage of his accrued sick, holiday, and vacation, time (40 hours per week), computed based on his contractual salary. During the terminal leave period, City will pay Kapanicas from his accrued benefit balance on its regularly scheduled pay dates and will continue to make PERS contributions under the same terms as other City management employees at a rate no less than now in effect. While on terminal leave, the City will not pay for medical insurance for Kapanicas or his family; however, Kapanicas may arrange to have his premiums paid by payroll deduction.
4. **Separation From Employment.** City and Kapanicas agree that upon the exhaustion of all accrued sick, holiday, and vacation time, the employment agreement will be terminated and Kapanicas will no longer be considered an employee of City. Kapanicas waives all remaining time under the employment agreement as of the date of his separation from his employment by City.
5. **Waiver of Other Obligations and Severance Pay.** Kapanicas hereby waives the \$214,100.00 due to him under section 2.5 of the employment agreement and further waives statutory severance pay.
6. **Waiver of Costs and Attorney's Fees.** Except as otherwise stated herein, it is agreed that all parties to this Agreement will assume and bear their own costs and attorney's fees incurred as a result of or in connection with the above-described matters, this Agreement and all matters pertaining and relating hereto.
7. **No Admission of Liability or Non-Liability.** The parties hereto expressly agree that nothing in this Agreement shall be construed as an admission of liability by the parties, or an admission of a lack of liability by the parties. The parties hereto agree and acknowledge that this Agreement is entered into in settlement and compromise of disputed claims.
8. **Release.** The parties hereto, in consideration of this Agreement, hereby release and discharge all of the other adverse parties hereto, and any and all of their employees, agents, servants, owners, shareholders, directors, officers, managers, representatives, officials, attorneys, predecessors, assigns, heirs, devisees, and successors in interest, jointly and severally, from any and all claims, demands, and/or causes of action, known, unknown, suspected or unsuspected, from the beginning of time to the date hereof, arising out of or related to the incidents referred to in the recitals above, the action, or otherwise related to or arising from the parties' relationship with one another, except only those obligations and liabilities created and preserved by this Agreement.
9. To the fullest extent permitted by law, Kapanicas on his own behalf and on behalf of any entities he may own, including but not limited to GGMS, Inc. and on behalf of his heirs, successors and assigns, hereby waives, releases and hereby forever discharges the City of Beaumont, the Beaumont Redevelopment Agency and its successors agency; the

Beaumont Utility Authority; the Beaumont Finance Authority; and Beaumont authorities and related entities and their past and present councils, elected and appointed officials, administrators, officers, directors, subsidiaries, parent entities, affiliated entities, employers, employees, agents, representatives, successors, assigns, attorneys and affiliates from any and all asserted and unasserted claims, demands, liabilities, rights, duties, obligations, causes of action, claims for relief, costs, expenses, consultant and expert witness fees, damages, injuries, rights, claims or obligations of any type or nature whatsoever, whether or not described herein, whether arising in law, equity or otherwise, whether known or unknown, including but not limited to the Fair Labor Standards Act, the Portal-to-Portal Act, the Equal Pay Act, the Lilly Ledbetter Fair Pay Act of 2009, the California Labor Code, California Government Code (including but not limited to the Tort Claims Act), the orders of the California Industrial Welfare Commission, the California Civil Code, the California Penal Code, the Fair Employment & Housing Act, the Americans with Disabilities Act, the Labor Code Private Attorneys' General Act of 2004, breach of contract, violations of the California Unfair Competition Law [Cal Bus. & Prof. Code § 17200 et seq.], Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, claims for retaliation, claims arising under Cal. Lab. Code § 132a, claims for civil rights violations, claims for assault or battery, claims under Cal. Lab. Code § 51.7, claims relating to any alleged loss of meal and rest periods, claims for discrimination under any state or federal law, or claims for relief arising under any other state or federal law, rule, regulation, or ordinance (hereinafter collectively referred to as "Claims"). Kapanicas' waiver and release of all Claims specifically includes any claims arising from his employment and/or other involvement with or at City, including any claims for damages of any type or nature, unpaid or lost wages, unpaid vacation pay, penalties (including waiting-time penalties and Labor Code § 226 penalties), reinstatement, retaliation, failure to accommodate, civil rights violations, discrimination, harassment or wrongful termination, improper deductions from wages, and wrongful constructive termination, whether the Claims arise under federal, state or local laws, ordinances, codes, regulations or statutes. Nothing in this Agreement shall be construed to waive or release any claim that cannot be lawfully waived or released.

10. **Waiver of Civil Code Section 1542.** The foregoing general releases include a waiver of the provisions of California Civil Code Section 1542, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

The parties hereto acknowledge that this waiver of the foregoing provisions of Section 1542 of the California Civil Code was separately bargained for. They agree and expressly consent that this Agreement shall be given full force and effect in accordance with each and all of its express terms and provisions, including those terms and provisions relating to unknown or unsuspected claims, demands, and causes of action, if any, to the same effect as are those terms and provisions relating to any other claims, demands, and causes of action hereinabove

specified. The parties hereto further acknowledge and understand that the significance and consequence of this waiver of California Civil Code Section 1542 is that, even if they should eventually suffer any damages arising out of their relationship and dealings with the other parties hereto, they will not be able to make any claims against each other for those damages. Furthermore, the parties hereto hereby acknowledge that these consequences were consciously intended even as to claims for damages that may exist as of the date of this Agreement which are unknown, and which if known would materially affect their decision to execute this Agreement, regardless of whether that lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

11. **Complete and Integrated Agreement.** This Agreement represents the entire Agreement and understanding of the subject matter hereof among the parties, and supersedes and replaces all prior agreements, negotiations and/or proposed agreements whether written or oral. Neither any party, nor any attorney for any party, has made any promise, representation, or warranty, whatsoever, express or implied, concerning the subject matter hereof, to induce any party to execute this Agreement, and each party acknowledges that no party hereto has executed this Agreement in reliance on any such promise, representation, or warranty not covered herein.
12. **Governing Law.** This Agreement shall in all respects be interpreted, enforced, and governed, under and pursuant to the laws of the State of California.
13. **Counterparts.** This Agreement may be executed in counterparts. All such counterparts so executed shall constitute one Agreement, which shall be binding on all the parties hereto, notwithstanding that all the parties are not signators to the original, or the same counterparts. Facsimile or electronic copies of this Agreement, or counterparts showing execution of same by all parties, shall be of the same validity, force and effect as the original thereof.
14. **Neutral Construction.** This Agreement shall be deemed for all purposes to have been drafted equally by all parties hereto and no presumption shall apply as against the drafter of this Agreement or in favor of the non-drafting party.
15. **Representation by Counsel.** Each party hereto has been represented by counsel regarding the action and, specifically, regarding the drafting, negotiation, and execution of this Agreement.
16. **Attorney's Fees.** The prevailing party in any legal action brought to enforce the terms of this Agreement, or as a result of any other parties' breach of this Agreement, shall be entitled to an award of reasonable attorney's fees incurred in any such actions, as well as that party's costs of suit.
17. **Use of Captions.** The captions or titles of the various articles of this Agreement are used for convenience purposes only, and are not intended to, and shall not in any way, enlarge or diminish the obligations of the parties, or affect the meaning or construction of this Agreement.

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18. **Severability.** Should any provision of this Agreement be declared or determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby. Any illegal or invalid part, term, or provision shall be deemed not to be a part of this Agreement but the remaining provisions shall remain in effect and shall be fully enforceable.
19. **Approval by City Council.** This Agreement is conditioned upon and approval by a majority of the Beaumont City Council at a publicly noticed council meeting and shall be deemed effective as of the date of such approval.
20. **Government Code Sections 53243, et seq.** The parties hereto acknowledge that this Agreement may be determined to be subject to one or more of California Government Code sections 53243, 53243.1, 53243.2, 53243.3, and 53243.4, which provide as follows:

Government Code Section 53243. On or after January 1, 2012, any contract executed or renewed between a local agency and an officer or employee of a local agency that provides paid leave salary offered by the local agency to the officer or employee pending an investigation shall require that any salary provided for that purpose be fully reimbursed if the officer or employee is convicted of a crime involving an abuse of his or her office or position.

Government Code Section 53243.1. On or after January 1, 2012, any contract executed or renewed between a local agency and an officer or employee of a local agency that provides funds for the legal criminal defense of an officer or employee shall require that any funds provided for that purpose be fully reimbursed to the local agency if the officer or employee is convicted of a crime involving an abuse of his or her office or position.

Government Code Section 53243.2. On or after January 1, 2012, any contract of employment between an employee and a local agency employer shall include a provision which provides that, regardless of the term of the contract, if the contract is terminated, any cash settlement related to the termination that an employee may receive from the local agency shall be fully reimbursed to the local agency if the employee is convicted of a crime involving an abuse of his or her office or position.

Government Code Section 53243.3 On or after January 1, 2012, if a local agency provides, in the absence of a contractual obligation, for any of the payments described in this article, then the employee or officer receiving any payments provided for those purposes shall fully reimburse the local agency that provided those payments in the event that the employee or officer is convicted of a crime involving the abuse of his or her office or position.

Government Code Section 53243.4. For purposes of this article, "abuse of office or position" means either of the following:

(a) An abuse of public authority, including, but not limited to, waste, fraud, and violation of the law under color of authority.

(b) A crime against public justice, including, but not limited to, a crime described in Title 5 (commencing with Section 67), Title 6 (commencing with Section 85), or Title 7 (commencing with Section 92) of Part 1 of the Penal Code.

In the event Kapanicas is convicted of a crime involving an abuse of his office or position, as defined in Government Code Section 53243.4, and should the foregoing provisions of the Government Code be determined to be applicable, Kapanicas shall reimburse City for any and all paid leave salary and/or cash settlement funds paid to him by City while on administrative leave between May 29, 2015 and November 15, 2015.

21. **Public Record.** The Parties agree this Agreement is a public record and shall be available for public inspection and is subject to approval at a noticed and public City council meeting after public comment.
22. **No Future Employment.** Kapanicas agrees not to seek or to accept employment with City. Kapanicas acknowledges and agrees that he has no right to future employment with City and agrees not to sue City and/or any of its elected or appointed officials, subsidiaries or affiliated entities as a result of being denied employment by City or any other employer. Should he apply for employment with City, Kapanicas acknowledges and agrees that this provision shall serve as a legitimate, non-discriminatory and non-retaliatory reason to deny employment.
23. **No Assignment.** Kapanicas represents that there has not been an assignment or transfer of any Claim compromised or released by this Agreement. Kapanicas agrees to defend, indemnify and hold City harmless from any liability incurred by City as a result of any person asserting any such assignment or transfer.
24. **Older Workers Benefit Protection Act Waiver.** Kapanicas acknowledges that he has had at least twenty-one (21) calendar days within which to consider this Agreement before signing it. Kapanicas' signature on this Agreement constitutes an express waiver of the twenty-one-day period as if his signature is affixed prior to the expiration of that period. Kapanicas has the right to revoke this Agreement for up to and including seven (7) calendar days following his execution of this Agreement, and this Agreement shall not be effective until the expiration of that seven-calendar-day period. This provision regarding revocation shall not affect the validity or the enforceability of any other term or condition of this Agreement. To revoke this Agreement, it is agreed that a written notice from Kapanicas must be actually received by Beaumont City Manager at Beaumont Civic Center, 550 E 6th St, Beaumont, CA 92223 by no later than 2:00 p.m. on the eighth day following Kapanicas' execution of this Agreement. If Kapanicas revokes this Agreement, he shall not be entitled to any of the benefits of this Agreement, and Kapanicas will not be paid the settlement amounts described above.

000008

25. **No Further Litigation.** The parties hereto agree that if they commence, join in, or in any manner seek relief through any suit, claim, or administrative proceeding arising out of, based upon, or relating to any of the Claims released in or by this Agreement, then that party shall pay to the other party, in addition to any damages caused thereby, all attorneys' fees, expenses, and costs incurred in defending or otherwise responding to the suit, claim, or administrative proceeding.
26. **Acknowledgment of Understanding of Agreement.** By signing below, each person is attesting to the fact that he or it has read the entire Agreement, the Agreement is written in a manner to be understood by each party, and that each party understands its terms and is in agreement with its terms.

CITY OF BEAUMONT

Dated: _____

By: _____

Dated: _____

Alan Kapanicas

000009

C-11-09(p)

Agenda Item # 4.f

TO: Mayor and Members of the City Council
FROM: Joe Aklufi, City Attorney
DATE: June 21, 2011
SUBJECT: Conversion of the City Manager's Position from Independent Contractor to Employee

BACKGROUND

Prior to 1992, it was the City's custom and practice to fill key management positions with employees. However, in the years immediately preceding 1992, it became apparent that a number of these positions were filled by individuals who either lacked performance capabilities, or were not acting in the best interests of the City, or both. Consequently, the City Council replaced many of these key management employee positions with independent contractors, a policy that gave the Council the flexibility it needed to make changes in City policy and direction. The use of contractors also allowed the Council to reorganize City Departments and to increase, or decrease, staffing levels in accordance with changing economic conditions, without the attendant problems associated with, for example, layoffs.

More recently, the City Council has expressed a growing interest in replacing contractors with full-time City employees. The Council's expressed interest has been reflected in a number of mid- and upper-level management positions.

Mr. Kapanicas, our City Manager, has fulfilled his duties as an employee of one of the City's contractors, GGMS, Inc., and has been doing so since 1993. Within the last couple of years, however, both the Council and he have expressed an interest in converting his independent contractor status to that of a City employee, performing the same functions. In anticipation of that conversion, the City Budget reflects the funding needed to make the conversion.

Mr. Kapanicas has expressed a willingness to serve as a City employee in accordance with the terms set forth in the attached "Terms of Employment." Basically, Mr. Kapanicas proposes an employment contract of 6 years, with the same benefits other management employees receive.

The proposed salary, \$218,920.00, represents the average of all cities within Riverside County, as reflected on the attached Salary Survey. This proposed salary is in keeping with the City's philosophy that employees be paid at neither the highest nor the lowest salary range of all other municipal employees, but in the middle. Mr. Kapanicas' salary would be increased at the rate of 2.5% per year, with the possibility that it be increased by as much as 5%, a merit increase, if the City Council finds that he exceeds expectations. With respect to a pension, Mr. Kapanicas would become a member of PERS. As part of his membership, the City will purchase 5 years of credit to his account, with funds that are currently due and owing GGMS, Inc. for work previously billed but not paid for.

000010

FISCAL IMPACT

The City Manager's salary is already provided for in the City's Budget. The additional PERS credit will be paid for with funds that are currently due and owing to GGMS, Inc. Therefore, the employment of Mr. Kapanicas will result in no new impact on the City's finances.

RECOMMENDATION

Approve the City Manager Employment Agreement as proposed.

Respectfully submitted,

Joseph S. Aklufi
City Attorney

CITY MANAGER EMPLOYMENT AGREEMENT

SUMMARY OF TERMS OF EMPLOYMENT

Effective Date: June 21, 2011

Assigned Duties: City Manager, Redevelopment Executive Director and Secretary, Utility Authority Executive Director, Finance Authority Executive Director and Special Districts Administrator.

Compensation:

Annual Base Salary: \$218,920.00

Salary Adjustment: 2.5% per year, except that the Council can increase it to 5% if the employee exceeds expectations.

Pension: Membership in PERS as other City employees, except that the City shall purchase 5 years of PERS credit with funds owed to Employee's company, GGMS, Inc. for work performed prior to June 1, 2011, but not paid for.

Car Allowance: None.

Deferred Compensation: City shall contribute 10% of Employee's salary.

Medical Insurance: Health, dental, vision and disability shall be as provided to other employees.

Life Insurance: Equal to one year's salary. \$50,000 Bj
ack

Vacation: 5 weeks, commencing each July 1.

Sick Leave: ^{2.4} 2 weeks, commencing each July 1. Bj ack

Term and Termination:

Term: 6 years, commencing June 21, 2011 and ending June 30, 2017.

Termination: For cause or by mutual agreement.

Severance Package: None.

000012

**City of Beaumont Employment Agreement
For the Position of City Manager**

This EMPLOYMENT AGREEMENT ("Agreement") is entered into this 21st day of June, 2011, by and between the CITY OF BEAUMONT ("City"), a California general law city and Municipal Corporation, and ALAN C. KAPANICAS ("Employee"), an individual.

RECITALS

WHEREAS, it is the desire of the City Council of the City of Beaumont (hereinafter the "City Council") to employ an individual to serve in the position of City Manager, which position is prescribed by state law and the City's Municipal Code; and

WHEREAS, Employee has the skills and expertise to fulfill such position, having served the City as an Independent Contractor since July, 1993, in the positions of City Manager, Administrative Services Director, and Special Districts Administrator, and desires to accept employment from the City.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, including the Recitals which are made a part hereof, City and Employee hereby agree as follows:

AGREEMENT

1.0 EMPLOYMENT & DUTIES

City hereby employs Employee as City Manager for the City, and to perform all such functions and duties of the City Manager and also the Redevelopment (RDA) Executive Director and Secretary, the Utility Authority Executive Director, the Finance Authority Executive Director, and the Special Districts Administrator.

2.0 COMPENSATION AND REIMBURSEMENT

2.1 Compensation. For the services rendered pursuant to this Agreement for, Employee shall be compensated for all titles and duties including City Manager and Special Districts Administrator at the annual base salary of \$218,920, which shall be paid on a pro-rated basis bi-weekly.

2.2 Deferred Compensation. Employee agrees to participate in the City's deferred compensation plan. The City's contribution shall be 10% of Employee's salary.

2.3 Salary Adjustments. Employee's base salary shall be increased at the rate of 2.5% on each January 1; provided, however, the City Council may increase Employee's salary by 5% each January 1 if the majority of the Council determines that Employee's performance exceeds expectation.

2.4 Reimbursement. City shall reimburse Employee for reasonable and necessary travel, subsistence, and other business expenses incurred by Employee in the performance of his

duties. All reimbursements shall be subject to and in accordance with California law and the City's Employee Reimbursement Policy.

2.5 Pension. City agrees to enroll Employee as a member of the Public Employees Retirement System (PERS). The City shall purchase five (5) years of pension credit to Employee's account, with funds presently due and owing Employee's company GGMS, Inc., for work previously billed but not paid for, in the amount of \$214,100.00.

3.0 TERM

3.1 Commencement Date. Employee shall commence his services hereunder on June 21, 2011.

3.2 Term. The term of this Agreement shall be six (6) years following the effective date and, thereafter, this Agreement may be extended for such additional term as the City Council and Employee deem appropriate.

3.3 Termination. This Employment Agreement may be terminated by mutual agreement of the City and Employee. This Agreement may also be terminated by the City for cause, including the conviction of a felony, or abandonment of his duties. Employee shall have no severance pay rights.

4.0 BENEFITS AND OTHER COMPENSATION

4.1 Medical Insurance, Health and Disability Insurance. City agrees to provide hospitalization, surgical and comprehensive medical insurance, life, accident, sickness, dental, vision, short and long-term disability income benefits, major medical and dependents' coverage group insurance covering Employee and his dependents to the highest level as other Management Employees receive or the entire premium, whichever is greater. The City agrees to pay such premiums. If Employee chooses to not participate in any medical, dental or vision coverage, the premium therefor shall be paid, at the single rate, to Employee as deferred compensation.

4.2 Leave Time.

4.2.1 Holiday Leave: 14 days per year.

4.2.2 Vacation Leave: 5 weeks, commencing each July 1, accruing at the rate of 7.692 hours per bi-weekly pay period, any such accrued and unused leave to be paid out according to City policy.

4.2.3 Sick Leave: ^{2.4 (B)} ~~3~~ weeks commencing each July 1, accruing at the rate of 3.69 hours per bi-weekly pay period, any such accrued and unused leave to be paid out according to City policy. *ack*

4.3 Other Benefits. City agrees to give the Employee all other benefits that are given to other employees generally.

5.0 DUES, SUBSCRIPTIONS, PROFESSIONAL DEVELOPMENT

5.1 Dues, Subscriptions and License Fees. City agrees to pay for the professional dues and subscriptions necessary for Employee's continued and full participation in national, state, regional and local associations and organizations necessary and desirable for his continued professional participation, growth and advancement, and for the good of the City. City also agrees to pay for or reimburse Employee for fees necessary to maintain professional licenses in possession of Employee.

5.2 Professional Development. City agrees to pay travel and subsistence expenses of Employee, subject to the City's travel policy, for 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 City including, but not limited to, the annual conferences of the International City Management Association, the League of California Cities Annual Conference, the League of California Cities City Managers' Department Meeting and other such national, regional, state and local government groups and committees on which Employee serves as a member. City also agrees to pay travel and subsistence expenses of Employee for short courses, institutes and seminars necessary for Employee's professional development and the good of the City.

6.0 GENERAL PROVISIONS

6.1 Notices. Any notice required or permitted by this Agreement shall be in writing and shall be personally served or shall be sufficiently given when served upon the other party as sent by United States Postal Service, postage prepaid and addressed as follows:

To City:

Mayor, City of Beaumont
550 E. 6th Street
Beaumont, CA 92223

To Employee:

Alan C. Kapanicas
550 E. 6th Street
Beaumont, CA 92223

Notices shall be deemed given as of the date of personal service or upon the date of deposit in the course of transmission with the United States Postal Service.

6.2 Partial Invalidity. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

6.3 Indemnification. City shall defend, indemnify and hold harmless Employee against any tort, professional liability claim or demand or other legal action arising out of an alleged act or omission occurring in the performance of Employee's services under this Agreement. The City may compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon. This section shall not apply to any intentional tort or crime committed by Employee, to any action resulting from fraud, corruption or malice of Employee, to any action outside the course and scope of the services provided by Employee

under this Agreement, or any other intentional or malicious conduct or gross negligence of Employee.

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

6.5 Drafting of Agreement. The parties acknowledge that this Agreement has been negotiated at arm's length, that each party has been represented by independent counsel and that this Agreement as been drafted by both parties and no one party shall be construed as the draftsman.

6.6 Authority of Signatures. The parties executing this Agreement personally affirm that they are empowered by the organization to execute binding contracts on their behalf.

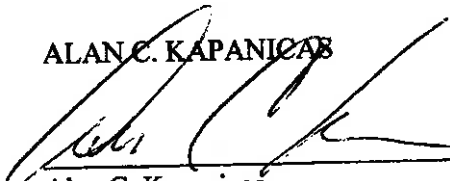
IN WITNESS WHEREOF, the City of Beaumont has caused this Agreement to be signed and executed on its behalf by its Mayor, and duly attested by its City Clerk, and Employee has signed and executed this Agreement, the day and year below written.

CITY OF BEAUMONT



Mayor Brian De Forge

ALAN C. KAPANICAS



Alan C. Kapanicas

ATTEST:

City Clerk