

SECURITIES AND EXCHANGE COMMISSION

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FILER

**BEST ENERGY SERVICES, INC.**

CIK: **1397346** | IRS No.: **000000000** | State of Incorporation: **NV** | Fiscal Year End: **0131**  
Type: **8-K** | Act: **34** | File No.: **000-53260** | Film No.: **09545328**  
SIC: **1400** Mining & quarrying of nonmetallic minerals (no fuels)

Mailing Address

1010 LAMAR STREET SUITE  
1200  
HOUSTON TX 77002

Business Address

1010 LAMAR STREET SUITE  
1200  
HOUSTON TX 77002  
713-933-2600











## AGREEMENT

This Agreement ("Agreement") dated January 20, 2009 is made and entered into between Best Energy Services, Inc., a Nevada corporation with offices at 1010 Lamar, Suite 1200 Houston, Texas 77002 ("BES" or the "Company"), and Larry W. Hargrave ("Hargrave") as follows:

WITNESSTH:

WHEREAS, Hargrave was employed by BES as its Chairman, President and Chief

Executive Officer pursuant to an Employment Agreement dated March 5, 2008 (the "Employment Agreement"), a copy of which is attached hereto as Exhibit A; and

WHEREAS, Hargrave's employment with BES terminated effective October 13, 2008;

and

WHEREAS, Hargrave and BES (hereinafter together referred to as the "Parties") desire to set forth the terms relating to the separation payment to be made to Hargrave pursuant to Section 6 of the Employment Agreement as a result of the termination of Hargrave's employment; and

WHEREAS, in furtherance of such agreement, the Parties have agreed to the terms and conditions of this Agreement as set forth below;

Therefore, as material considerations and inducements to the execution and delivery of this Agreement and in consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby contract, covenant, and agree as follows:

1. **Capitalized Terms.** Unless otherwise defined herein, capitalized terms used in this Agreement shall have the meaning set forth in the Employment Agreement.
2. **Termination.** Effective as of October 13, 2008 (hereinafter referred to as the "Termination Date"), Hargrave's status as an employee and officer of BES ceased in its entirety.
3. **Consideration.** Hargrave shall be paid the following:
  - (a) **Cash Pam.** Hargrave has been paid the amount of \$25,000, which equals two (2) months pay at his current Base Salary.
  - (b) **Common Stock.** Hargrave will be issued 75,000 shares of the Company's common stock, par value \$0.001 per share ("Common Stock"), in three equal installments of 25,000 shares each with the first such installment to be issued on January 20, 2009 and the second and third such installments to be issued on January 31, 2009 and February 28, 2009, respectively
  - (c) **Medical Insurance.** Subject to the terms of the Company's medical insurance plan in effect as of the date hereof, BES will pay for Hargrave to remain covered under the Company's current medical insurance plan (at current levels of coverage) through April 30, 2009.

(d) Reimbursement of ARH Receivables. BES has collected certain accounts receivable of American Rig Housing, Inc , a Texas corporation ("ARH"), arising prior to February 28, 2008 (the "Receivables"). The Company agrees to pay such collected Receivables to Hargrave in cash by corporate check in accordance with the terms of this Section 3(d). The payment to be made pursuant to this Section 3(d) shall be made from and after the later of (i) the date that all funds are released from the account established pursuant to that certain Escrow Agreement dated February 14, 2008 by and among the Company, Tony Bruce and JP Morgan Chase Bank, N.A. and (ii) the date that the Company and Hargrave agree upon the amount of the Receivables collected by the Company.

(e) Reimbursement of Business Expenses. BES will reimburse Hargrave for verified out-of-pocket expenses incurred by Hargrave in the performance of his duties under the Employment Agreement.

(f) Deferred Compensation. The Company has previously agreed to pay Hargrave a total of \$1,000,000 in deferred compensation (the "Deferred Compensation") and currently owes \$850,000 of the Deferred Compensation to Hargrave. The Deferred Compensation shall be payable as follows: (i) upon execution and delivery of this Agreement, the Company shall issue a total of 600,000 shares of Common Stock valued at \$0.50 per share to Hargrave; (ii) beginning on January 15, 2009 and continuing through and including April 15, 2009, the Company shall pay Hargrave \$15,000 per month on the 15th day of each month; and (iii) beginning on May 15, 2009,

the Company shall pay Hargrave \$10,000 per month for a period of 49 months. All amounts paid pursuant to this Section 3(f) shall represent full and final payment of the Deferred Compensation. Notwithstanding anything to the contrary set forth in this Agreement, if the Board of Directors of the Company reasonably determines that the Company does not have sufficient cash to pay any amounts pursuant to this Section 3(f) or if the payment of such amounts would cause a default under any agreement to which the Company is a party, then the Company may postpone the payment of any such amount until the cause of such non-payment has been resolved.

(g) Taxes and Withholding. All payments made to Hargrave under this Agreement shall be less applicable tax withholding and payroll deductions.

The payments delivered pursuant to Paragraphs (a) through (g) above are referred to as the "Consideration."

" BES is not obligated to pay any of the Consideration if Hargrave revokes or breaches this Agreement. Hargrave acknowledges the sufficiency of the Consideration as consideration to him for executing this Agreement and agreeing to be bound by its terms.

Additionally, Hargrave acknowledges and agrees that upon payment of the Consideration, he will have been paid all moneys owed to him pursuant to the Employment Agreement.

#### 4. Release.

(a) Release and Assignment of All Claims by Hargrave. In consideration of

BES's agreement to provide the Consideration described in Paragraph 3 of this Agreement, Hargrave, his spouse, heirs, executors, trustees, assigns, and attorneys, if any (collectively, the "Releasers"), hereby release and forever discharge BES and all of its past, present and future officers, directors, stockholders, partners, representatives, board members, subsidiaries, parent companies, related entities, insurance carriers, agents, servants, employees, successors, assigns, heirs, legatees, and attorneys, in their individual and official capacities (the "Released Parties"), from any and all claims, causes of



action, lawsuits, proceedings, damages, interests, benefits, and all other demands of any kind or character whatsoever, in law or in equity, in any way directly or indirectly related to or connected with his employment or separation therefrom with the Released Parties.

This Release includes, without limitation, the following:

- (i) Claims related to Hargrave's employment and/or the termination of his employment including, without limitation, any allegation of a violation of any employment, bonus, or other compensation agreement with BES, including, without limitation, the Employment Agreement;
- (ii) Claims that could have been asserted in any Charge of Discrimination filed by Hargrave with the Equal Employment Opportunity Commission and/or the Texas Workforce Commission--Civil Rights Division;
- (iii) Claims arising under state or federal constitution or state or federal statute (including, without limitation, all tort claims), city ordinance, or public policy, including, without limitation, the Securities Exchange Act of 1934, as amended, the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq. and claims involving employment discrimination, harassment, and/or retaliation of any form (including, without limitation, claims under the Age Discrimination in Employment Act of 1967, 29 U.S.C. §621 et seq., Title VII of the Civil Rights Act of 1964 as amended, 42 U.S.C. §2000e et seq., the Civil Rights Act of 1870, 42 U.S.C. §1981, the Americans with Disabilities Act of 1990, 42 U.S.C. §12101 et seq., the Family and Medical Leave Act of 1993, 29 U.S.C. §2601 et seq., the Equal Pay Act, 29 U.S.C. §206, the Texas Commission on Human Rights Act, Tex. Lab. Code Ann. §21.001 et seq., and/or the Texas Workers' Compensation Act, Tex. Lab. Code §451.001 et seq.);
- (iv) Claims arising under state or federal contract, tort, or common law, including, without limitation, any claim of breach of contract, promissory estoppel, detrimental reliance, wrongful discharge, false imprisonment, assault, battery, intentional infliction of emotional distress, defamation, slander, libel, fraud, invasion of privacy, breach of the covenant of good faith and fair dealing, breach of fiduciary duty, conversion, and tortious interference with any type of third-party relationship, as well as any and all damages that may arise out of any such claims, including, without limitation, claims for economic loss, lost profits, loss of capital, lost wages, lost earning capacity, emotional distress, mental anguish, personal injuries, punitive damages, or any future damages;
- (v) Claims of retaliation of any nature, including, but not limited to, the anti-retaliatory provisions of the statutes identified in Paragraph 4(a)(iii) of this Agreement; and
- (vi) CLAIMS OF NEGLIGENCE OF ANY KIND INCLUDING, WITHOUT LIMITATION, GROSS NEGLIGENCE AGAINST BES BASED UPON THE ACTION OR INACTION OF BES.

The claims described in Paragraph 4 (a)(i) through (vi) are hereinafter collectively referred to as the "Claims." This Agreement may be pleaded as, and shall constitute, an absolute and final bar to any and all lawsuits or administrative claims now pending, or that may hereafter be filed or prosecuted by Releasors against the Released Parties that arose out of or in connection with any of the Claims. Additionally, Hargrave agrees that at no time subsequent to the execution of this Agreement will he permit the filing or maintenance, in any state, federal, or foreign court, or before any local, state, federal, or foreign administrative agency, or any other tribunal, of any charge, claim, or action of

any kind arising out of or in any way related to any of the Claims. Finally, it is the intention of the Parties that this Agreement shall be construed as broadly and all-encompassing as permitted by law and that, notwithstanding such intention, if it is found that any claim of any kind has not been released, Hargrave agrees that any such claim is hereby assigned to BES. Nothing in this Agreement shall be construed to affect the rights and responsibilities of the Equal Employment Opportunity Commission (the "Commission"), the National Labor Relations Board (the "NLRB"), or any other federal, state or local agency with similar responsibilities to enforce any laws pertaining to employment discrimination or retaliation, or union activity or participation. Likewise, this waiver will not be used to justify interfering with the protected right of any employee to file a charge or participate in an investigation or proceeding conducted by the Commission, the NLRB or any similar agency; however, Hargrave waives the right to any benefits or recovery arising out of any such proceeding.

(b) Limited Release by BES. In consideration of the payments made to Hargrave pursuant to this Agreement and the Release and Assignment of all Claims by

Hargrave pursuant to Paragraph 4, BES, its past, present and future officers, directors, stockholders, partners, representatives, board members, subsidiaries, parent companies, related entities, insurance carriers, agents, servants, employees, successors, assigns, heirs, legatees, and attorneys, hereby release Hargrave and forever discharge him from any and all claims or causes of action which it or any of them may have against him arising out of or relating in any manner whatsoever to his employment with BES, except for breaches of fiduciary duty, violations of securities laws or fraud.

5. Director. Hargrave is currently a member of the Board of Directors of BES with a term of office expiring at the Company's annual meeting of stockholders in 2009. Hargrave shall remain as a director of BES until the expiration of his term of office.

6. No Future Employment. Hargrave agrees that BES has no obligation, contractual or otherwise, to employ Hargrave as an employee of BES in the future. Hargrave hereby waives any right to future employment as an employee of BES.

7. Stock Options. Hargrave has previously been granted the following options to purchase shares of the Company's common stock:

Number of Options	Exercise Price	Date of Grant	Expiration Date	Vesting
	Per Share			
300,000 2013	\$0.16 Immediate	March 5, 2008	March 5,	
300,000 2013	\$0.50 December 31, 2008	March 5, 2008	March 5,	

All of such options shall remain in full force and effect in accordance with their respective terms.

S. No Admission of Wrongdoing. Both Parties acknowledge and agree that this Agreement shall not be construed as an admission by the other of any act of wrongdoing, liability, or responsibility for any wrongdoing of any kind.

9. Taxation Consequences and Indemnity. Hargrave acknowledges and agrees that BES has made no representations to him regarding the taxation of any portion of the Consideration. Hargrave also understands that he is solely responsible for the payment of all taxes, if any, related to the Consideration and that BES has no duty to defend him against any such claims. Finally, Hargrave understands and agrees that he shall fully indemnify BES for any claims brought by taxing authorities against BES seeking payment of taxes, penalties, and/or interest related in any way to the assessment, determination, and/or reporting of taxes under federal, state, and/or local law. This agreement to indemnify BES includes the agreement to pay all attorneys' fees and other costs that BES may reasonably incur in the defense of such claims; additionally, the choice of counsel to represent BES in any such proceedings to which this agreement to indemnify applies shall at all times rest within the sole discretion of BES. Finally, Hargrave agrees that, if requested by BES at any time following his execution of this Agreement, he shall complete, execute, and deliver to BES a Form W-4 and/or Form W-9 providing such information as may be necessary for any party issuing the appropriate Internal Revenue Service form related to the Consideration.

10. Entire Agreement. Hargrave acknowledges and agrees that, except as expressly set forth herein, no representations of any kind or character have been made by or on behalf of BES to induce his execution of this document and that this Agreement constitutes the complete understanding and agreement between him and BES. Hargrave also acknowledges and agrees that this Agreement supersedes any and all prior agreements, promises, or inducements concerning the subject matter of this Agreement. By executing and delivering this Agreement, Hargrave expressly disclaims any reliance on any representations, promises, or other statements by BES, except to the extent such representations, promises, or other statements are expressly contained in this Agreement.

11. Confidentiality. Hargrave agrees to maintain the confidentiality of the terms, contents and conditions of this Agreement and shall not further disclose or discuss the Agreement except to governmental officials; as required by law; to tax advisors; and for other good cause after notice to BES and written approval by its Chairman of the Board. Hargrave shall instruct his tax advisors as to the terms of this Paragraph and shall insist upon their compliance with the terms of this Paragraph.

12. Property and Confidential Information. Hargrave represents and warrants that he has returned any and all property, information or documents including, but not limited to, any and all confidential information belonging to BES, including any originals, copies or summaries currently in Hargrave's possession, custody or control.

13. Default and Notice. In the event that BES fails to make any payment due under the provisions of this Agreement, Hargrave shall give written notice of such failure to BES, and BES shall have a period of fifteen (15) business days from receipt of such notice in which to cure such default. For purposes of this Paragraph 13, all notices to BES for failure to make any payment due under this Agreement shall be in writing and either hand delivered or sent by Certified Mail, Return Receipt Requested, to Steven R. Jacobs, Jackson Walker L.L.P., 112 East Pecan Street, Suite 2400, San Antonio, Texas 78205.

14. No Presumption Against Interest. This Agreement has been jointly negotiated,

drafted, and reviewed by Hargrave and BES and, therefore, no provision arising directly or indirectly herefrom may be construed against any Party as being drafted by that Party.

15. Waiver. No waiver of any of the terms of this Agreement shall be valid unless in writing and signed by all Parties to this Agreement. The waiver by any party hereto of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by any party, nor shall any waiver operate or be construed as a rescission of this Agreement.

16. Severability. The Parties agree that should any part of this Agreement be declared or determined by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the Parties intend that the legality, validity, and enforceability of the remaining parts shall not be affected thereby, and said illegal, invalid or unenforceable part shall be deemed not to be a part of this Agreement.

However, the Parties have carefully read and understand the provisions herein and agree that all aspects of this Agreement are reasonable.

17. Captions. The captions contained in this Agreement are intended for convenience only and should not be considered in interpreting the terms of this Agreement.

18. Understanding of Agreement. By signing this Agreement, Hargrave acknowledges that he has fully and carefully read this Agreement, that he fully understands and agrees to its contents and effects, and that he is entering into this Agreement of his own free will and accord. Hargrave further agrees and acknowledges that:

- He has read and considered the terms of this Agreement, including the Release and Assignment of All Claims set forth in Paragraph 4;
- He understands and agrees to such terms of his own free will and accord;
- He has had an opportunity to consult with an attorney prior to executing this Agreement, and he is hereby advised in writing to consult with counsel of his choice prior to executing and delivering this Agreement;
- The Release and Assignment of all Claims set forth in Paragraph 4 specifically refers to rights and/or claims that may arise under the Age Discrimination in Employment Act, 29 U.S.C. §§ 621 et seq., and any similar state or local protective statute;
- Through this Agreement, he is releasing BES, along with the other parties named above as the "Released Parties," from any and all claims that he has or may have against them;
- He has been given at least twenty-one (21) days to consider this Agreement (but remains free to execute this Agreement before the expiration of the twenty-one (21) days);
- For a seven (7) day period following his execution of this Agreement, he may revoke it, and it will not become effective or enforceable until the expiration of the seven (7) day period; and
- His revocation, if any, must be in writing and sent to Steven R. Jacobs, Jackson Walker L.L.P., 112 East Pecan Street, Suite 2400, San Antonio, Texas 78205, on or before the expiration of the seventh day after this Agreement is executed by Hargrave via facsimile at (210) 978-7790 or hand delivery at the address above or e-mail to Steven R. Jacobs at [sjacobs@jw.com](mailto:sjacobs@jw.com). If Hargrave revokes this Agreement, he shall not be entitled to receive any payments under it.

19. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

## CONSULTING AGREEMENT

**This Consulting Agreement** (this "**Agreement**") is entered into as of January 20, 2009 (the "**Effective Date**"), between Best Energy Services, Inc., a Nevada corporation with offices at 1010 Lamar, Suite 1200, Houston, Texas 77002, ("**BES**" or the "**Company**"), and Larry W. Hargrave, an individual ("**Consultant**").

### **Recitals**

**WHEREAS**, Consultant was employed by BES as its President and Chief Executive Officer pursuant to an Employment Agreement dated March 5, 2008 (the "Employment Agreement"), a copy of which is attached hereto as Exhibit A; and

**WHEREAS**, Consultant resigned from his employment with BES effective October 13, 2008; and

**WHEREAS**, BES and Consultant entered into an Agreement setting forth the terms relating to the separation payment to be made to Consultant pursuant to the Employment Agreement, a copy of which is attached hereto as Exhibit B; and

**WHEREAS**, Consultant desires to perform, and BES desires to have Consultant perform, certain consulting services as an independent contractor to BES on the terms set forth in this Agreement.

### **Agreement**

**Now, Therefore**, based on the foregoing premises and in consideration of the agreements contained herein, the parties agree as follows:

- 1. Prior Affiliation.** The parties acknowledge that Consultant's services for BES, as an officer and employee, have terminated as of October 13, 2008.
- 2. Appointment and Acceptance.** BES retains Consultant to provide the consulting services defined in Section 3 below, and Consultant agrees to render such services to BES, in accordance with the terms and conditions set forth in this Agreement.
- 3. Consulting Services.** Throughout the term of this Agreement, Consultant shall provide such services to BES as BES may reasonably request from time to time, including, without limitation, daily oversight of BES' American Rig Housing business unit, which are collectively referred to as the "**Services.**" Consultant shall report to the Company's Chief Executive Officer.
- 4. Services Commitment.** At the request of BES, Consultant shall provide BES with the Services at such times during normal working hours and at such places as BES may reasonably request.
- 5. Term.** The term of this Agreement shall commence on January 15, 2009 and continue through June 15, 2009 (the "**Term**").
- 6. Consultant's Compensation.** Consultant shall be entitled to the following compensation, and no other compensation:
  - (a)** For Services, BES shall pay Consultant a consulting fee of \$10,000.00 per month. This amount will be payable in two installments of \$5,000.00 each on the first and fifteen of each month during the Term.
  - (b)** Consultant shall be reimbursed for reasonable and documented actual business expenses incurred by Consultant in the performance of his duties and responsibilities under this Agreement in accordance with the policies and procedures of BES in effect from time to time.
- 7. Termination.**

**(a)** If BES terminates this Agreement before the end of the term, BES is obligated to compensate Consultant as if Consultant had provided Services for the entire term; and (ii) Sections 8 (Relationship of the Parties) and 9 (Confidential Information) shall survive termination of this Agreement.

**(b)** If Consultant terminates this Agreement before the end of the term or advises that he intends to terminate this Agreement before the end of the term, BES shall have the right to accept Consultants termination notice early (effectively choosing the date of termination) and shall have no obligation pay Consultant any compensation past the termination date; and (ii) Sections 8 (Relationship of the Parties) and 9 (Confidential Information) shall survive termination of this Agreement.

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## 8. Relationship of Parties.

(a) **Nature of Contract.** The parties acknowledge and agree that Consultant is an independent contractor and is not an agent, partner or employee of BES, and has no authority to bind BES in any manner without appropriate BES approvals. Consultant shall perform the Services under the general direction of , but Consultant shall reasonably determine the manner and means by which the Services are accomplished, subject to the terms of this Agreement and the requirement that Consultant shall at all times comply with applicable law.

(b) **Taxes.** Consultant shall report as income the consulting fees and any and all other consideration received by Consultant under this Agreement. BES shall not withhold, deduct or otherwise be responsible for any federal, state or local income or employment taxes or make any contributions on behalf of Consultant relating to the Consulting Fee or other consideration received by Consultant under this Agreement.

(c) **No Participation in Employee Plans.** Consultant acknowledges and agrees that he is not entitled to participate in any employee welfare or retirement plans or programs of BES (including, without limitation, medical insurance, life insurance, paid leave, vacation, sick leave, pension, profit sharing, disability) and hereby waives all right to participate in such plans or programs. This provision does not reflect any right that Consultant may have as a former employee of BES to continue medical and/or dental coverage that he had while employed by BES, subject to the terms of such plans.

## 9. Confidential Information.

(a) **BES Information.** Consultant agrees at all times during the term of this Agreement and thereafter to hold in strictest confidence, and not to use except for the benefit of BES, or to disclose to any person without advance written authorization of BES, any Confidential Information of BES. Consultant understands that "Confidential Information" means any BES proprietary information, technical data, trade secrets or know-how, including, but not limited to, research, product plans, product descriptions or specifications, services, customer lists and customers, vendor lists and vendors, designer lists and designers, market research or data, developments, inventions, processes, technology, designs, drawings, engineering, marketing, finances or other business information disclosed to Consultant by BES either directly or indirectly in writing or orally. Consultant further understands that Confidential Information does not include any of the foregoing items which has become publicly known and made generally available through no wrongful act of Consultant or of others who were under confidentiality obligations as to the item or items involved.

(b) **Third Party Information.** Consultant recognizes that BES has received and in the future will receive from third parties their confidential or proprietary information subject to a duty on BES's part to maintain the confidentiality of such information and to use it only for certain limited purposes. Consultant agrees to hold all such confidential or proprietary information in the strictest confidence and not to disclose it to any person, firm or corporation or to use it except as necessary in carrying out Consultant's work for BES consistent with BES's agreement with such third party.

10. **Compliance with Other Agreements.** Consultant represents and warrants to BES that the execution, delivery and performance of this Agreement will not conflict with or result in the violation or breach of any term or provision of any order, judgment, injunction, contract, agreement, commitment or other arrangement to which Consultant is a party or by which he is bound, including without limitation any agreement restricting the sale of products similar to BES's products in any geographic location or otherwise. Consultant acknowledges that BES is relying on his representation and warranty in entering into this Agreement, and Consultant agrees to indemnify BES from and against all claims, demands, causes of action, damages, costs or expenses (including attorneys' fees) arising from any breach thereof.

## 11. Miscellaneous



(a) **Assignment.** Consultant shall not assign Consultant's rights or delegate Consultant's duties under this Agreement either in whole or in part, except in the case of Consultant's death, any unpaid earned portion of the Consulting Fee shall be paid to Consultant's heirs. BES shall have the right to assign its rights and delegate its duties under this Agreement in whole or in part without the consent of Consultant so long as the assignee agrees in writing to assume all obligations of BES under this Agreement.

(b) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas (without given effect to the principles of conflicts of law). Any litigation proceeding under this Agreement shall be confidential in nature to the fullest extent permitted by applicable law.

(c) **Severability.** If any provision of this Agreement is determined to be illegal, invalid or otherwise unenforceable by a court of competent jurisdiction, then to the extent necessary to make such provision or this Agreement legal, valid or otherwise enforceable, such provision shall be limited, construed or severed and deleted from this Agreement, and the remaining portion of such provision and the remaining other provisions hereof shall survive, remain in full force and effect and continue to be binding, and shall be interpreted to give effect to the intention of the parties hereto insofar as that is possible.

(d) **Entire Agreement.** This Agreement and attachments hereto set forth the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, written or oral, between them concerning such subject matter.

(e) **Headings.** The descriptive headings of the several Sections of this Agreement are inserted for convenience only and do not constitute a part of this Agreement.

(f) **Amendment, Modification and Waiver.** This Agreement and its provisions may not be amended, modified or waived except in a writing signed by Consultant and BES.

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**(g) Counterparts.** This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each party hereto and delivered to each party hereto.

**(h) Construction.** The normal rule of construction that an agreement shall be interpreted against the drafting party shall not apply to this Agreement. In this Agreement, whenever the context so requires, the masculine, feminine or neuter gender, and the singular or plural number or tense, shall include the others.

**(i) Notices.** Any notice or other communication required or permitted hereunder shall be in writing and shall be deemed effective (a) upon personal delivery, if delivered by hand, (b) upon receipt of electronic confirmation, if sent by facsimile transmission, (c) three (3) days after the date of deposit in the mails, if mailed by certified or registered mail (return receipt requested), or (d) on the next business day, if mailed by overnight mail service to the parties at their addresses set forth below.

In the case of BES:

Attention: Mark Harrington  
1010 Lamar, Suite 1200  
Houston, Texas 77002

With a copy to:

Steven R. Jacobs  
Jackson Walker LLP.  
112 E. Pecan Street, Suite 2400  
San Antonio, Texas 78205

In the Case of Employee:

Mr. Larry W. Hargrave  
19611 Enchanted Sq.  
Spring, TX 77388

**(j) Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

**LARRY W. HARGRAVE**

**BEST ENERGY SERVICES, INC.**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_



## AGREEMENT

This Agreement ("Agreement") dated January 21, 2009 is made and entered into between Best Energy Services, Inc., a Nevada corporation with offices at 1010 Lamar Suite 1200 Houston, Texas 77002 ("BES" or the "Company"), and James W. Carroll ("Carroll") as follows:

WITNESST

H:

**WHEREAS**, Carroll was employed by BES as its Executive Vice President and Chief Financial Officer pursuant to an Employment Agreement dated March 5, 2008

(the "Employment Agreement") , a copy of which is attached hereto as Exhibit A; and

**WHEREAS**, Carroll's employment with BES terminated effective October 13, 2008; and

**WHEREAS**, Carroll and BES (hereinafter together referred to as the "Parties") desire to modify the terms relating to the separation payment to be made to Carroll pursuant

to Section 6 of the Employment Agreement in order to reduce the financial cost to the Company of the termination of Carroll's employment; and

**WHEREAS**, in furtherance of such agreement, the Parties have agreed to the terms and conditions of this Agreement as set forth below;

Therefore, as material considerations and inducements to the execution and delivery of this Agreement and in consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby contract, covenant, and agree as follows:

**1. Capitalized Terms.** Unless otherwise defined herein, capitalized terms used in this Agreement shall have the meaning set forth in the Employment Agreement.

**2. Termination.** Effective as of October 13, 2008 (hereinafter referred to as the "Termination Date"), Carroll's status as an employee and officer of BES ceased in its entirety.

**3. Consideration.** Carroll shall be paid the following:

a) **Cash Payment.** In lieu of a severance payment under Section 6 of the Employment Agreement, Carroll shall be paid a cash settlement in the amount of \$37,500. This amount shall be paid upon execution of this Agreement.

(b) Medical Insurance. Subject to the terms of the Company's medical insurance plan in effect as of the date hereof, BES will pay for Carroll to remain covered

under the Company's current medical insurance plan (at current levels of coverage) through February 28, 2009.

(c) Reimbursement of Business Expenses. BES will reimburse Carroll for valid out-of-pocket expenses incurred by Carroll in the performance of his duties under the Employment Agreement.

(d) Taxes and Withholding. The Company will determine whether the Cash Payment made to Carroll under this Agreement shall be considered compensation, subject to payroll taxes and federal income tax withholding, or shall be considered a payment not subject to tax withholding or payroll deductions. If it is the former, the amounts will be reported to Carroll as salary on Form W-2 for 2009; if it is the latter, it will be reported to Carroll as income on Form 1099 for 2009.

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The payments delivered pursuant to Paragraphs (a) through (d) above are referred to as the "Consideration." BES is not obligated to pay any of the Consideration if Carroll revokes or breaches this Agreement. Carroll acknowledges the sufficiency of the Consideration together with the Release and Assignment of All Claims by BES in Paragraph (b) hereof, as consideration to him for executing this Agreement and agreeing to be bound by its terms. BES acknowledges the sufficiency of Carroll's eliminating his severance under Section 6 of the Employment Agreement and accepting the lesser amounts described in Paragraph 3 hereof, as consideration to BES for its executing the Agreement and agreeing to be bound by its terms.

Additionally, Carroll acknowledges and agrees that upon payment of the Consideration, he will have been paid all moneys owed to him pursuant to the Employment Agreement.

#### **4. Release.**

(a) Release and Assignment of All Claims by Carroll. In consideration of BES's agreement to provide the Consideration described in Paragraph 3 of this Agreement and the Release and Assignment of All Claims by BES as set forth in Paragraph 4 (b) hereof, Carroll, his spouse, heirs, executors, trustees, assigns, and attorneys, if any (collectively, the "Releasers"), hereby release and forever discharge BES and all of its past, present and future officers, directors, stockholders, partners, representatives, board members, subsidiaries, parent companies, related entities, insurance carriers, agents, servants, employees, successors, assigns, heirs, legatees, and attorneys, in their individual and official capacities (the "Released Parties"), from any and all claims, causes of action, lawsuits, proceedings, damages, interests, benefits, and all other demands of any kind or character whatsoever, in law or in equity, in any way directly or indirectly related to or connected with his employment or separation therefrom with the Released Parties, except for any claims arising under Paragraph 10 of this Agreement. This Release includes, without limitation, the following:

i) Claims related to Carroll's employment and/or the termination of his employment including, without limitation, any allegation of a violation of any employment, bonus, or other compensation agreement with BES, including, without limitation, the Employment Agreement;

(ii) Claims that could have been asserted in any Charge of Discrimination filed by Carroll with the Equal Employment Opportunity Commission and/or the Texas Workforce Commission-- Civil Rights Division;

(iii) Claims arising under state or federal constitution or state or federal statute (including, without limitation, all tort claims), city ordinance, or public policy, including, without limitation, the Securities Exchange Act of 1934, as amended, the Employee Retirement Income Security Act of 1974, 29 U.S.C.

§1001 et seq. and claims involving employment discrimination, harassment, and/or retaliation of any form (including, without limitation, claims under the Age

Discrimination in Employment Act of 1967, 29 U.S.C. §621 et seq., Title VII of the Civil Rights Act of 1964 as amended, 42 U.S.C. §2000e et seq., the Civil

Rights Act of 1870, 42 U.S.C. §1981, the Americans with Disabilities Act of 1990, 42 U.S.C. §12101 et seq., the Family and Medical Leave Act of 1993, 29

U.S.C. §2601 et seq., the Equal Pay Act, 29 U.S.C. §206, the Texas Commission on Human Rights Act, Tex. Lab. Code Ann. §21.001 et seq., and/or the Texas Workers' Compensation Act, Tex. Lab. Code §451.001 et seq.);

(iv) Claims arising under state or federal contract, tort, or common law, including, without limitation, any claim of breach of contract, promissory estoppel, detrimental reliance, wrongful discharge, false imprisonment, assault, battery, intentional infliction of emotional distress, defamation, slander, libel, fraud, invasion of privacy, breach of the covenant of good faith and fair dealing, breach of fiduciary duty, conversion, and tortious interference with any type of third-party relationship, as well as any and all damages that may arise out of any such claims, including, without limitation, claims for economic loss, lost profits, loss of capital, lost wages, lost earning capacity, emotional distress, mental anguish, personal injuries, punitive damages, or any future damages;

(v) Claims of retaliation of any nature, including, but not limited to, the anti-retaliatory provisions of the statutes identified in Paragraph 4(a)(iii) of this Agreement; and

(vi) CLAIMS OF NEGLIGENCE OF ANY KIND INCLUDING, WITHOUT LIMITATION, GROSS NEGLIGENCE AGAINST BES BASED UPON THE ACTION OR INACTION OF BES.

The claims described in Paragraph 4 (a)(i) through(vi) are hereinafter collectively referred to as the "Claims." This Agreement may be pleaded as, and shall constitute, an absolute and final bar to any and all lawsuits or administrative claims now pending, or that may hereafter be filed or prosecuted by Releasors against the Released Parties that arose out of or in connection with any of the Claims. Additionally, Carroll agrees that at no time subsequent to the execution of this Agreement will he permit the filing or maintenance, in any state, federal, or foreign court, or before any local, state, federal, or foreign administrative agency, or any other tribunal, of any charge, claim, or action of any kind arising out of or in any way related to any of the Claims. Finally, it is the intention of the Parties that this Agreement shall be construed as broadly and all encompassing as permitted by law and that, notwithstanding such intention, if it is found that any claim of any kind has not been released, Carroll agrees that any such claim is hereby assigned to BES, except for any claims arising under Paragraph 10 of this Agreement. Nothing in this Agreement shall be construed to affect the rights and responsibilities of the Equal Employment Opportunity Commission (the "Commission"), the National Labor Relations Board (the "NLRB"), or any other federal, state or local agency with similar responsibilities to enforce any laws pertaining to employment discrimination or retaliation, or union activity or participation. Likewise, this waiver will not be used to justify interfering with the protected right of any employee to file a charge or participate in an investigation or proceeding conducted by the Commission, the NLRB or any similar agency; however, Carroll waives the right to any benefits or recovery arising out of any such proceeding.

b) Release and Assignment of All Claims by BES. In consideration of Carroll's reducing the payments otherwise due to him by BES under Section 6 of the Employment Agreement and the Release and Assignment of all Claims by Carroll pursuant to Paragraph 4 (a), BES, its past, present and future officers, directors, stockholders, partners, representatives, board members, subsidiaries, parent companies, related entities, insurance carriers, agents, servants, employees, successors, assigns, heirs, legatees, and attorneys, hereby release Carroll and forever discharge him, his spouse, heirs, executors, trustees, and assigns from any and all claims, causes of action, lawsuits, proceedings, damages, interests, benefits, and all other demands of any kind or character whatsoever, in law or in equity, arising out of or relating in any manner whatsoever, directly or indirectly, to his employment with BES or service as a Director of BES, to the maximum extent permitted by law. It is the intention of the Parties that this Agreement shall be construed as broadly and all-encompassing as permitted by law and that, notwithstanding such intention, if it is found that any claim of any kind has not been released, BES agrees that any such claim is hereby assigned to Carroll.

**5. Director Resignation.** Carroll is currently a member of the Board of Directors of BES with a term of office expiring at the annual meeting of the Company's stockholders in 2009. Upon execution of this Agreement by both Parties, Carroll shall resign as a director of BES.

**6. No Future Employment.** Carroll agrees that BES has no obligation, contractual or otherwise, to employ Carroll as an employee of BES in the future. Carroll hereby waives any right to future employment as an employee of BES.

**7. Stock Options.** Carroll has previously been granted the following options to purchase shares of the Company's common stock:

<u>Date</u>	<u>Number of Options Vesting</u>	<u>Exercise Price Per Share</u>	<u>Date of Grant</u>	<u>Expiration</u>
2013 December 31, 2008	150,000	\$0.50	March 5, 2008	March 5,

All of such options shall have vested on December 31, 2008 and shall remain in full force and effect in accordance with their respective terms.

**8. No Wrongdoing.** Both Parties acknowledge and agree that this Agreement shall not be construed as an assertion of or an admission by the other of any act of wrongdoing, liability, or responsibility for any wrongdoing of any kind.

**9. Taxation Consequences.** Carroll acknowledges and agrees that BES has made no representations to him regarding the taxation of any portion of the Consideration. Carroll also understands that he is solely responsible for the payment of all taxes owed by him, if any, related to the Consideration and that BES has no duty to defend him against any such claims. Further, Carroll agrees that, if requested



by BES at any time following his execution of this Agreement, he shall complete, execute, and deliver to BES a Form W-4 and/or Form W-9 providing such information as may be necessary for any party issuing the appropriate Internal Revenue Service form related to the Consideration.

**10. Indemnification.** The Company agrees to indemnify and to advance funds to pay expenses to defend Carroll to the fullest extent permitted by the Company's Articles of Incorporation, Bylaws and applicable law against all expenses, liabilities, losses, damages and costs that are incurred or paid by Carroll in connection with any Proceeding. For purposes of this Section 10, "Proceeding" shall mean any threatened, pending or completed action, suit, claim, demand, arbitration, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether formal or informal, including any and all appeals, whether brought by or in the right of the Company or otherwise, whether civil, criminal, administrative or investigative, whether formal or informal, in which Carroll was, is or will be involved as a party or otherwise, by reason of or relating to Carroll's former position as a director, officer and employee of the Company and by reason of or relating to any action or alleged action taken by Carroll (or failure or alleged failure to act) or of any action or alleged action (or failure or alleged failure to act) on Carroll's part, while acting in his or her capacity as a director, officer or employee of the Company.

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**11. Entire Agreement.** Carroll acknowledges and agrees that, except as expressly set forth herein, no representations of any kind or character have been made by or on behalf of BES to induce his execution of this document and that this Agreement constitutes the complete understanding and agreement between him and BES. Carroll also acknowledges and agrees that this Agreement supersedes any and all prior agreements, promises, or inducements concerning the subject matter of this Agreement. By executing and delivering this Agreement, Carroll expressly disclaims any reliance on any representations, promises, or other statements by BES, except to the extent such representations, promises, or other statements are expressly contained in this Agreement.

**12. Confidentiality.** Carroll and BES agree to maintain the confidentiality of the terms, contents and conditions of this Agreement and shall not further disclose or discuss the Agreement except to governmental officials; as required by law; to tax advisors, accountants and attorneys; and for other good cause after notice to the other Party and written approval by the other Party. Carroll and BES shall instruct their tax advisors, accountants, and attorneys as to the terms of this Paragraph and shall insist upon their compliance with the terms of this Paragraph. However, Carroll acknowledges and understands that this Agreement may be required to be attached to, and filed with, an 8-K, or the terms disclosed as required by applicable laws, and in such event, BES shall be free to do so and this paragraph shall be cancelled and have no further effect on either Party.

**13. Property and Confidential Information.** Carroll represents and warrants that, to his best recollection and belief, he has returned any and all property, information or documents including, but not limited to, any and all confidential information belonging to BES, including any originals, copies or summaries currently in Carroll's possession, custody or control.

**14. Default and Notice.** In the event that BES fails to make any payment due under the provisions of this Agreement, Carroll shall give written notice of such failure to BES, and BES shall have a period of fifteen (15) business days from receipt of such notice in which to cure such default. For purposes of this Paragraph 14, all notices to BES for failure to make any payment due under this Agreement shall be in writing and either hand delivered or sent by Certified Mail, Return Receipt Requested, to Steven R. Jacobs, Jackson Walker L.L.P., 112 East Pecan Street, Suite 2400, San Antonio, Texas 78205.

**15. No Presumption Against Interest.** This Agreement has been jointly negotiated, drafted, and reviewed by Carroll and BES and, therefore, no provision arising directly or indirectly herefrom may be construed against any Party as being drafted by that Party.

**16. Waiver.** No waiver of any of the terms of this Agreement shall be valid unless in writing and signed by all Parties to this Agreement. The waiver by any party hereto of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by any party, nor shall any waiver operate or be construed as a rescission of this Agreement.

**16. Severability.** The Parties agree that should any part of this Agreement be declared or determined by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the Parties intend that the legality, validity, and enforceability of the remaining parts shall not be affected thereby, and said illegal, invalid or unenforceable part shall be deemed not to be a part of this Agreement. However, the Parties have carefully read and understand the provisions herein and agree that all aspects of this Agreement are reasonable.

**18. Captions.** The captions contained in this Agreement are intended for convenience only and should not be considered in interpreting the terms of this Agreement.

**19. Understanding of Agreement.** By signing this Agreement, Carroll acknowledges that he has fully and carefully read this Agreement, that he fully understands and agrees to its contents and effects, and that he is entering into this Agreement of his own free will and accord. Carroll further agrees and acknowledges that:

! He has read and considered the terms of this Agreement, including the Release and Assignment of All Claims set forth in Paragraph 4;

! He understands and agrees to such terms of his own free will and accord;

! He has had an opportunity to consult with an attorney prior to executing this Agreement, and he is hereby advised in writing to consult with counsel of his choice prior to executing and delivering this Agreement;

! The Release and Assignment of all Claims set forth in Paragraph 4 specifically refers to rights and/or claims that may arise under the Age Discrimination in Employment Act, 29 U.S.C. §§ 621 et seq., and any similar state or local protective statute;

! Through this Agreement, he is releasing BES, along with the other parties named above as the "Released Parties," from any and all claims that he has or may have against them;

! He has been given at least twenty-one (21) days to consider this Agreement (but remains free to execute this Agreement before the expiration of the twenty-one (21) days);

! For a seven (7) day period following his execution of this Agreement, he may revoke it, and it will not become effective or enforceable until the expiration of the seven (7) day period; and

! His revocation, if any, must be in writing and sent to Steven R. Jacobs, Jackson Walker L.L.P., 112 East Pecan Street, Suite 2400, San Antonio, Texas 78205, on or before the expiration of the seventh day after this Agreement is executed by Carroll via facsimile at (210) 978-7790 or hand delivery at the address above or e-mail to Steven R. Jacobs at [sjacobs@jw.com](mailto:sjacobs@jw.com). If Carroll revokes this Agreement, he shall not be entitled to receive any payments under it.

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