

PUBLIC-PRIVATE PARTNERSHIP AGREEMENT

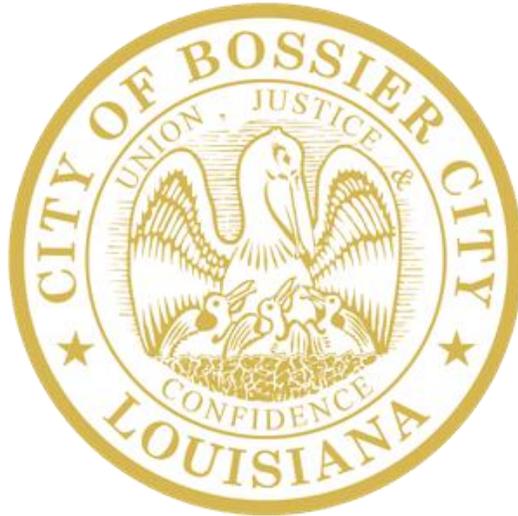


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PUBLIC—PRIVATE PARTNERSHIP AGREEMENT

THIS AGREEMENT establishes a Contract effective as of _____ (“Effective Date of Contract”) between
City of Bossier City, Louisiana (“Public Owner”) and
Manchac Consulting Group, Inc. (“Private Entity”).

The Public–Private Project that is the subject of this Contract is generally identified as the management and oversight of the Utilities Department to include planning, design, construction management, financial assistance, operational assistance, maintenance oversight, and all management of day-to-day activities associated with the City’s Public Utilities department.

Public-Private Partnership ("Project").

The following existing facilities are to be transferred to Private Entity’s oversight, management and control as part of the Project, as described below:

- Red River Wastewater Treatment Plant
- NE Wastewater Treatment Plant
- Bossier City Water Treatment Plant
- Bossier City Water Distribution System Infrastructure including all potable water lines, valves and hydrants, elevated water storage tanks, raw water pump stations and miscellaneous items
- Bossier City Sewage Collection and Conveyance System Infrastructure including all gravity collection lines, manholes, sewer lift stations, force mains and miscellaneous items
- Sewer Pre-Treatment

Other terms used in this Contract are defined in Article 1.

Public Owner and Private Entity further agree as follows:

ARTICLE 1 – DEFINITIONS

1.01 *Standard Definitions*

- A. Wherever used in this Agreement or in any other Contract Document, a term printed with initial capital letters, including the term’s singular and plural forms, will have the meaning indicated in the definitions below. In addition to terms specifically defined, terms with initial capital letters in the Agreement include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Agreement*—The written instrument, executed by Public Owner and Private Entity, that identifies the parties, describes the Project, grants the concession, establishes obligations, sets forth various general terms and conditions, and designates the specific items that are Contract Documents.
 2. *Concession*—The rights that Public Owner grants to Private Entity in this Agreement, and related obligations; all as more specifically defined in Article 3.
 3. *Concession Term*—The period of time in which the concession granted in this Agreement is in effect (see Article 3).

4. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5101 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
5. *Constructor*—Any person or entity performing or supporting construction activities relating to the Project, including but not limited to Private Entity, contractors, subcontractors, suppliers, utility companies, construction managers, testing firms, equipment rental companies, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
6. *Contract*—The entire and integrated written contract between the Public Owner and the Private Entity concerning the Project.
7. *Contract Documents*—Those items so designated in this Agreement, and which together comprise the Contract.
8. *Design and Construction Management*—The entire design and construction, or the various separately identifiable parts thereof, required to be provided by Private Entity under the Contract. Design and Construction Management includes and is the result of performing or providing all professional services needed to produce the design; for the labor, services (including but not limited to professional services), and documentation necessary to provide construction management; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.
9. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, permits, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction, and any applicable consent decrees.
10. *Project*—The various tasks and responsibilities that Private Entity agrees to undertake under this Agreement, as specifically identified at page 1, typically ranging from design and construction of Project Facilities to the operation and maintenance of such facilities.
11. *Relief Event*—An event or occurrence that takes place during the Concession Term, and is the basis for an equitable adjustment in the Concession Term; or in some combination of such provisions.
12. *Site*—The Existing Facilities (Treatment Plants, Pump Stations, sewage collection and conveyance system, water distribution and storage system), if any, and the lands or areas where construction of New Facilities is to be performed, including rights-of-way and easements, and such other lands as are designated for the use of Private Entity.

ARTICLE 2 – PROJECT REQUIREMENTS

2.01 *Project Requirements*

- A. Public Owner wishes to contract with Private Entity for a Public-Private Partnership for day-to-day management and oversight of the Public Owner's utility (water and sewer) infrastructure. This infrastructure includes the following:
1. Red River Wastewater Treatment Plant
 2. North East Wastewater Treatment Plant
 3. Bossier City Water Treatment Plant
 4. Bossier City Water Distribution System Infrastructure including all potable water lines, valves and hydrants, elevated water storage tanks, raw water pump stations and miscellaneous items.
 5. Bossier City Sewage Collection and Conveyance System Infrastructure including all gravity collection lines, manholes, sewer lift stations, force mains and miscellaneous items.
 6. Sewer Pre-Treatment

2.02 *Public Owner's Policies and Procedures*

- A. Public Owner has included in the Project Requirements any and all policies and procedures of Public Owner applicable to Private Entity's performance of services under this Contract.

ARTICLE 3 – PUBLIC OWNER'S GRANT OF CONCESSION; CONCESSION TERM

3.01 *Grant of Concession*

- A. Subject to the provisions of this Contract, and for the sole purpose of meeting the Project Requirements, as the Concession under this Contract the Public Owner hereby grants to Private Entity the exclusive right, and Private Entity hereby accepts the obligation: (1) to provide qualified personnel to insure the proper operation and maintenance of Bossier City's existing water and wastewater infrastructure and to include oversight and management of emergency projects as they arise. Public Owner grants Private Entity with the authority to direct Public Owner's employees in their day-to-day duties and to provide hands-on operation and maintenance of the Public Owner's water and wastewater infrastructure (2) to manage the Public Owner's Utility Department in partnership with the designated Public Owner's employee(s). Private Entity will provide one (1) licensed professional engineer registered in the State of Louisiana to serve as the Public Owner's Utilities Department Division Manager. This engineer will work in partnership with the Public Owner's designated personnel assigned to the Utilities Department Administration Department. Private Entity shall also provide the following minimum personnel:

1. One Water Treatment Plant Division Manager – must have Class IV Operators License
2. One WWTP Division Manager (Shall also serve as Pre-Treatment Division Manager) – must have Class IV Operators License
3. One Sewer Lift Station Division Manager
4. One Water Distribution and Sewerage Collection System Division Manager
5. Other Private Entity personnel as needed to fulfill the terms and conditions of the agreement.

3.02 *Concession Term*

- A. The Concession Term shall be from the Effective Date of the Contract for five (5) years subject to the termination of this Agreement pursuant to its terms. During the Concession Term, Private Entity shall present to the City Council once per year the status of the Public-Private Partnership related to the operations and management of the Public Owner's water and sewer infrastructure and the state of the Utilities Department. The annual fee for the Private Entity for providing professional services for the Public-Private Partnership is outlined in Exhibit B.
- B. After the first five (5) years the Public Owner and Private Entity reserve the right to renew this agreement subject to any changes to the terms and conditions of this agreement.

ARTICLE 4 – PUBLIC OWNER'S RIGHTS AND RESPONSIBILITIES

4.01 *General*

- A. Public Owner shall be responsible for, and Private Entity may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by Public Owner to Private Entity pursuant to this Agreement. Private Entity may use such requirements, programs, instructions, reports, data, and information in performing or fulfilling its obligations under this Agreement.
- B. Public Owner shall give prompt written notice to Private Entity whenever Public Owner observes or otherwise becomes aware of (1) any development that affects the scope or time of performance of Private Entity's obligations, (2) any defect or nonconformance in Private Entity's obligations, or (3) the presence at the Site of any Constituent of Concern.
- C. Public Owner will maintain ownership of the Sites and will not be leasing the Site to Private Entity. Public Owner shall grant Private Entity access and control over the Sites throughout the Concession Term.
- D. Public Owner will assist in Site acquisition of necessary projects including its exercise of its right of eminent domain. Private Entity will assist Public Owner in site acquisitions by acquiring boundary surveys at the expense of the Public Owner that delineate the required properties.
- E. Public Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Private Entity's performance of its obligations under this Contract.

4.02 *Review and Oversight of Public-Private Project*

- A. *Submittals:* Submittals are defined herein but not limited to project related Change Orders, Work Change Directives, Contractor Pay Applications, project reports, project related correspondence, etc. All submittals that Private Entity must prepare and deliver to Public Owner, for Public Owner's review and approval, shall comply with any submittal requirements made a part of this Agreement. Public Owner shall conduct such review promptly, and in writing shall either (1) approve the submittal, (2) approve the submittal subject to reasonable conditions, or (3) reject the submittal. Public Owner shall approve submittals without conditions unless it can identify with specificity why the submittal is contrary to the Project Requirements or the material terms of the Agreement. Approval of a submittal by Owner does not change the Project Requirements or any contract requirements unless expressly stated in the approval.
- B. *Technical Accuracy:* Public Owner shall not be responsible for discovering deficiencies in the technical accuracy of Private Entity's services. Private Entity shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Public Owner-furnished information.

ARTICLE 5 – OPERATIONS AND MAINTENANCE

5.01 *Staffing*

- A. Private Entity shall insure adequate staffing of the Project Facilities with qualified and properly certified personnel. Private Entity shall provide a staffing plan, which shows personnel comprised of Private Entity employees and Public Owner employees for approval by Public Owner. Staffing plan (organizational chart) is attached to this agreement as Exhibit C.
- B. Private Entity staff shall be available as necessary, and as required by any regulating authorities, for compliance with regulated operations.

5.02 *Training and Safety*

- A. Private Entity shall conduct on-going training of Public Owner personnel.

5.03 *System and Equipment Operation*

- A. Private Entity shall operate the Project Facilities' equipment and systems pursuant to the applicable recommendations of the manufacturers and designers of such equipment and systems.
- B. Private Entity shall take commercially appropriate measures to maintain warranty rights, including conducting scheduled maintenance and keeping standard records.

5.04 *Periodic Inspections and Monitoring*

- A. Private Entity shall inspect and monitor the performance and condition of the Project Facilities on a regular basis.
- B. Private Entity shall prepare bi-annual reports regarding the performance, condition, and status of the Project Facilities, including its equipment and systems, and make such reports available to the Public Owner for review.

5.05 *Preventive and Corrective Maintenance*

- A. Private Entity shall provide management and oversight to insure that the required maintenance on all Project Facilities is done as required.
- B. Private Entity shall maintain records of all maintenance of Project Facilities, including equipment and systems.
- C. Private Entity shall make any reports of maintenance required by regulating authorities.

5.06 *Cleaning and Waste Removal*

- A. Private Entity shall insure that the Project Facilities are maintained in a neat and clean condition at all times.
- B. Private Entity shall insure proper disposal of all materials removed or cleaned from the Project Facilities in accordance with Laws and Regulations. Public Owner shall be responsible for the costs associated with removal of waste from Public Facilities as necessary.

5.07 *Records and Reporting*

- A. Private Entity shall maintain all records and provide all reports required by Laws and Regulations or this Agreement in a timely manner.

ARTICLE 6 – FACILITIES MANAGEMENT

6.01 *General Duties*

- A. Private Entity shall provide all general administrative, budgeting, staffing plans, and accounting functions for the Project, including the Project Facilities, unless expressly provided otherwise in this Contract.

6.02 *Project Additions*

- A. Private Entity will plan, propose, design, and manage bidding and construction of new projects that expand, upgrade or rehabilitate the Public Owner infrastructure.
- B. Public Owner will review basis of all new projects and allocated funding through the City Council as appropriate.

ARTICLE 7 – REPRESENTATIONS AND WARRANTIES

7.01 *Private Entity's Representations:* Private Entity makes the following representations:

- A. Private Entity has examined and carefully studied the Contract Documents, and all data and reference items identified in the Contract Documents.
- B. Private Entity has visited the Infrastructure Sites and, conducted a thorough, alert visual examination of the Sites, and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect the Project.
- C. Private Entity is familiar with and is satisfied as to all Laws and Regulations that may affect the Project.
- D. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for proceeding with the Project.
- E. Private Entity has performed due diligence with respect to Project costs; has sufficient financial and management strength for the Project; has or can obtain necessary licenses, or can subcontract tasks to licensed entities; and has the skills and experience necessary for successful performance of its obligations.

ARTICLE 8 – ENVIRONMENTAL CONDITION OF SITE

8.01 *Encountering a Constituent of Concern*

- A. Public Owner has disclosed to Private Entity in writing the presence of all known and suspected Constituents of Concern located at or near the Sites, including type, quantity, and location.
- B. Public Owner represents to Private Entity that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to Private Entity, exist at the Sites.
- C. If Private Entity encounters or learns of an undisclosed Constituent of Concern at the Site, then Private Entity shall notify (1) Public Owner and (2) appropriate governmental officials if Private Entity reasonably concludes that doing so is required by applicable Laws or Regulations.
- D. Public Owner shall be responsible for taking appropriate action to remediate, remove, or manage Constituents of Concern that Public Owner was aware of or suspected to be at the Site prior to the Effective Date, but failed to disclose to Private Entity, and for all related costs and expenses. Public Owner and Private Entity shall work together to minimize the impact on the Project of the Constituents of Concern.
- E. Private Entity and Public Owner shall determine the appropriate action to take in response to any Constituents of Concern discovered after the Effective Date, and that Public Owner was unaware of and did not suspect to be at the Site. The Public Owner and Private Entity shall work together to develop a solution that will have a minimal impact upon the Project, with the allocation of costs to be equitably allocated based upon the specific facts and

circumstances concerning the presence of the Constituents of Concern, responsibility for acquisition and investigation of the Site, and other relevant factors.

ARTICLE 9 – INSURANCE AND INDEMNIFICATION

9.01 Insurance—General Provisions

- A. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 10 days prior written notice has been given to the primary insured. Upon receipt of such notice, the primary insured shall promptly forward a copy of the notice to the other party to this Contract.
- B. At any time, Public Owner may request that Private Entity or its Project contractors or consultants, at Public Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit A. If so requested by Public Owner, and if commercially available, Private Entity shall obtain and shall require its contractors and consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Public Owner, and Exhibit A will be supplemented to incorporate these requirements.

9.02 Private Entity's Insurance

- A. Private Entity shall procure and maintain the insurance required in Exhibit A, "Insurance," and shall deliver to Public Owner certificates of insurance evidencing the coverages indicated in that exhibit. Such certificates shall be furnished prior to commencement of Private Entity's performance of responsibilities and at renewals thereafter during the life of the Contract, or as otherwise specified. Upon request by Public Owner or any other insured, Private Entity shall also furnish other evidence of such required insurance, including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Private Entity may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.
- B. Private Entity shall cause Public Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Private Entity.
- C. Private Entity shall require all contractors and consultants to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other insurance necessary to protect Public Owner's and Private Entity's interests in the Project. Private Entity shall require such contractors and consultants to cause Public Owner and Private Entity to be listed as additional insureds with respect to such liability insurance.

9.03 Indemnification

- A. To the fullest extent permitted by law, Private Entity shall indemnify and hold harmless Public Owner, and Public Owner's officers, officials, agents, contractors, consultants, and employees, from and against any and all liabilities, damages, claims, fines, causes of action,

suits, judgments, and losses (including reasonable consultants' and attorneys' fees and expenses) arising from third-party claims or actions relating to the Project, to the extent caused by an act or omission of Private Entity or Private Entity's officers, directors, members, partners, agents, employees, contractors, subcontractors, or consultants, and based on an alleged or proven:

1. breach by Private Entity of this Contract, construction or design contracts, or any other contract that Private Entity enters into with respect to the Project;
 2. failure to comply with Laws or Regulations, including but not limited to environmental and tax Laws and Regulations;
 3. patent, trademark, or copyright infringements;
 4. negligence, recklessness, fraud, bad faith, or willful misconduct;
 5. release or threatened release of Constituents of Concern; or
 6. interference with the work or operations of others by Private Entity or Private Entity's officers, directors, members, partners, agents, employees, contractors, subcontractors, or consultants.
- B. Private Entity's indemnity obligation shall not extend to any loss to the extent caused or contributed by:
1. The negligence, recklessness, fraud, bad faith, or willful misconduct of the indemnified party;
 2. The violation of Laws or Regulations by the indemnified party;
 3. Public Owner's material breach of this Contract.
- C. Private Entity shall not responsible for fines levied by regulatory agencies and/or costs involved in response to Compliance Orders or other regulatory agency orders unless the fines or costs associated with orders are proven to be a result of the direct negligence of the Private Entity.

ARTICLE 10 – ASSIGNMENT AND TRANSFER; NO THIRD-PARTY BENEFICIARIES

10.01 Successors, Assigns, and Beneficiaries

- A. Public Owner and Private Entity are hereby bound and the successors, executors, administrators, and legal representatives of Public Owner and Private Entity are hereby bound to the other party to this Contract and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Contract.

10.02 *Transfer by Public Owner*

- A. To the fullest extent permitted by law, upon 60 days advance notice to Private Entity the Public Owner may assign, sell, sublet, or transfer its rights and obligations under this Agreement, and its rights and obligations regarding the Site and the Project Facilities, to a third party, provided that such third party is a public entity or is otherwise able to undertake Public Owner's duties and obligations without detriment to Private Entity.

10.03 *Transfer by Private Entity*

- A. Private Entity shall not voluntarily or involuntarily assign, sell, convey, grant, sublet, transfer, pledge, mortgage, subordinate, or otherwise encumber its rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of Public Owner, except:
 - 1. To the extent that any assignment, subletting, or transfer is mandated by law.
 - 2. To lenders for security as permitted by this Contract, provided that Private Entity must retain responsibility for the performance of its obligations under the Contract; or
 - 3. To any entity in which Private Entity or its shareholders or members exercise management control.
- B. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Contract.
- C. All transfers of interest by Private Entity, whether requiring Public Owner's consent or not, shall be subject to Public Owner's review and approval of transfer documentation to assure the transfer is consistent with the terms and goals of the Contract, and with the public interest.

10.04 *No Third Party Beneficiaries*

- A. Unless expressly provided otherwise:
 - 1. Nothing in this Contract shall be construed to create, impose, or give rise to any duty owed by Public Owner or Private Entity to any third-party individual or entity.
 - 2. All duties and responsibilities undertaken pursuant to this Contract will be for the sole and exclusive benefit of Public Owner and Private Entity and not for the benefit of any other party.

ARTICLE 11 – CHANGES

11.01 *Relief Events*

- A. Private Entity or Public Owner may seek a change in the Concession Term, or seek other relief or remedies to this agreement by submitting a proposed Contract amendment to the other party, indicating the Relief Event that is the basis for such proposed change.

11.02 *Administration of Proposed Contract Changes*

- A. When a possible Relief Event occurs, the party seeking relief shall give the other party prompt notice of the Relief Event.
- B. Promptly after giving notice the party seeking relief shall submit to the other party a Change Proposal that proposes potential modifications of the Concession Term, or other relief, and includes related documentation.
- C. The parties shall meet and confer regarding the Change Proposal, and attempt to negotiate an agreeable resolution.
- D. If negotiations are not successful, then the party seeking relief shall present the other party with a final position in the form of specific proposed modifications to the Contract. The receiving party shall approve or reject the proposed modifications within 30 days of receipt. If the receiving party has not approved or rejected the proposed modifications within 30 days after receipt, the proposed modifications shall be deemed rejected.
- E. In the case of a rejection of the proposed modifications, the party seeking relief shall have the option of exercising its rights under Article 12, Final Resolution of Disputes.

ARTICLE 12 – FINAL RESOLUTION OF DISPUTES

12.01 *Unresolved Change Proposals*

- A. If the party submitting a Change Proposal under Article 11 does not obtain the relief sought, and the administrative procedures set out in Paragraph 12.02 have been followed, the party may proceed to the final resolution of disputes under this Article.

12.02 *Mediation*

- A. Public Owner and Private Entity agree that they shall submit any and all unsettled Change Proposals, claims, counterclaims, disputes, and other matters in question between them arising out of or relating to the Project, or this Contract or the breach thereof (“Disputes”), to mediation by a mutually acceptable mediator. Public Owner and Private Entity agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis, and shall be completed within 120 days of submission to mediation. The mediator’s fees and related charges shall be shared equally by Public Owner and Private Entity.

12.03 *Final Resolution of Disputes*

- A. If such mediation is unsuccessful in resolving a Dispute, then (a) the parties may mutually agree to a dispute resolution of their choice, or (b) either party may seek to have the Dispute resolved by a court of competent jurisdiction.

ARTICLE 13 – MISCELLANEOUS

13.01 *Controlling Law*

- A. This Contract is to be governed by the laws of the State of Louisiana.

13.02 *Laws and Regulations*

- A. Private Entity and Public Owner shall comply with applicable Laws and Regulations.

13.03 *Notices*

- A. Any notice required under this Contract will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by facsimile, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

13.04 *Survival*

- A. All express representations, waivers, indemnifications, and limitations of liability included in this Contract will survive its completion or termination for any reason.

13.05 *Severability*

- A. Any provision or part of the Contract held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Public Owner and Private Entity, which agree that the Contract shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

13.06 *Waiver*

- A. A party's failure to enforce any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Contract.

13.07 *Mutual Waiver*

- A. To the fullest extent permitted by law, Public Owner and Private Entity waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Contract or the Project.

13.08 *Direct Damages*

- A. Notwithstanding the foregoing mutual waiver, damages directly relating to anticipated compensation, and reasonable costs of mitigating any loss of service under this Contract, are direct and not consequential damages.

13.09 *Independent Contractor*

- A. Private Entity is an independent contractor with respect to Public Owner, and is not a partner, joint venturer, or agent of Public Owner.

13.10 *Contractors and Consultants*

- A. Private Entity may retain such contractors and consultants as Private Entity deems necessary to assist in the performance or furnishing of Private Entity's responsibilities, subject to reasonable, timely, and substantive objections by Public Owner.

13.11 *Electronic Transmittals*

- A. Public Owner and Private Entity may transmit, and shall accept, Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.
- B. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

13.12 *Designated Representatives*

- A. With the execution of this Agreement, Private Entity and Public Owner shall designate specific individuals to act as Private Entity's and Public Owner's representatives with respect to the responsibilities under the Contract. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of the respective party whom the individual represents.

ARTICLE 14 – SUSPENSION AND TERMINATION

14.01 *Suspension*

- A. By Public Owner: Public Owner may suspend the Project for up to 90 days upon seven days written notice to Private Entity.
- B. The Public Owner shall be responsible for equitable costs including all demobilization, remobilization, lost fees, revenue, impact on financing costs and reasonable overhead costs resulting from any suspension.

14.02 Termination

- A. The obligation to continue performing obligations under this Contract may be terminated:
1. For cause,
 - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
 - b. Notwithstanding the foregoing, this Contract will not terminate if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
 - c. Upon termination for default, the Private Entity irrevocably assigns and transfer all management of Project Facilities and improvements to Public Owner and shall execute and record all documents confirming such transfer upon the request of Public Owner.
 2. For convenience, by Public Owner effective upon Private Entity's receipt of notice from Public Owner.
- B. *Effective Date of Termination:* The terminating party may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Private Entity to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.
- C. *Payments Upon Termination:*
1. In the event of any termination, for cause or convenience, Private Entity will be entitled to invoice Public Owner and to receive equitable payment for services performed or furnished in accordance with this Contract and expenses incurred through the effective date of termination. Public Owner shall pay for the present value of any improvements provided and paid for by the Private Entity.
 2. In the event of termination by Public Owner for convenience or by Private Entity for cause, Private Entity shall be entitled to receive the termination payment stated in the preceding paragraph, plus any costs attributable to the termination.

ARTICLE 15 – CONTRACT DOCUMENTS

15.01 *Designation of Contract Documents*

- A. This Contract is comprised of this executed Agreement, and the Exhibits incorporated by reference or attachment, as listed in the following paragraph.

15.02 *Exhibits Included*

- A. Exhibit A - ***Insurance***
- B. Exhibit B – ***Payments to Private Entity for Services and Reimbursable Expenses***
- C. Exhibit C – ***Organizational Chart***

15.03 *Total Agreement*

- A. This Contract constitutes the entire agreement between Public Owner and Private Entity and supersedes all prior written or oral understandings. This Contract may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Public Owner: City of Bossier City, LA
Lorenz "Lo" Walker

Private Entity: Manchac Consulting Group, Inc.
Justin Haydel, P.E.

By: _____

By: _____

Title: Mayor

Title: Chief Executive Officer

Date Signed: _____

Date Signed: _____

Private Entity License No. 4491

State of: Louisiana

Address for giving notices:

Address for giving notices:

620 Benton Road

10542 S Glenstone Place

Bossier City, LA

Baton Rouge, LA

71111

70810

Designated Representative:

Designated Representative:

Justin Haydel, P.E.

Title: _____

Title: Chief Executive Officer

Phone Number: _____

Phone Number: 225-448-3972

E-Mail Address: _____

E-Mail Address: justin@manchacgroup.com

Insurance

Article 9 of the Agreement is supplemented to include the following agreement of the parties.

9.04 Insurance

A. The types of insurance and the limits of liability for that insurance, as required by Paragraph 9 of the Agreement, are as follows:

1. By Private Entity:

- | | |
|--|----------------|
| a. Workers' Compensation: | Statutory |
| b. Employer's Liability -- | |
| 1) Bodily injury, each accident: | \$100,000.00 |
| 2) Disease, Policy Limit: | \$500,000.00 |
| 3) Disease, each employee: | \$100,000.00 |
| c. General Liability -- | |
| 1) Each Occurrence: | \$1,000,000.00 |
| 2) General Aggregate: | \$2,000,000.00 |
| d. Excess or Umbrella Liability -- | |
| 1) Per Occurrence: | \$1,000,000.00 |
| 2) General Aggregate: | \$1,000,000.00 |
| e. Automobile Liability --Combined Single Limit (Bodily Injury and Property Damage): | |
| | Each Accident |
| | \$1,000,000.00 |
| f. Professional Liability -- | |
| 1) Each Claim Made | \$5,000,000.00 |
| 2) Annual Aggregate | \$5,000,000.00 |

B. *Additional Insureds:*

1. The following persons or entities are to be listed as additional insureds:

a. *City of Bossier City, Louisiana*

This is **EXHIBIT B**, consisting of 2 pages, referred to in and part of the Agreement between Owner and Engineer for Public-Private Partnership dated _____, 2016.

Payments to Private Entity for Services and Reimbursable Expenses Lump Sum

Article 3 of the Agreement is supplemented to include the following agreement of the parties:

ARTICLE 3 - PUBLIC OWNER'S GRANT OF CONCESSION; CONCESSION TERM

3.02 C Compensation for Basic Services – Lump Sum Method of Payment

C. Owner shall pay Engineer for Basic Services set forth in Exhibit A as follows:

1. For the first 365 days (one year) a Lump Sum amount of \$1,042,755.00 to be invoiced \$120,000 upon execution of this agreement (mobilization) and \$83,886.00 for the next eleven (11) months.
2. The fee for the second year shall be negotiated with the Public Owner 60 days prior to the end of the first year.
3. The Lump Sum includes compensation for Engineer's services and services of Engineer's Consultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor, overhead, profit, and Reimbursable Expenses.

This is **EXHIBIT C**, consisting of 1 page, referred to in and part of the Agreement between Owner and Engineer for Public-Private Partnership dated _____, 2016.

Organizational Chart

The Organizational Chart is shown below. This organizational Chart is a part of this agreement and cannot be modified without the express written consent of the Public Owner.

