

## The City intends that any Management Contract will contain language similar to the Safe Harbor Requirements below

**Management Contract Safe Harbor Requirements.** The Parties acknowledge that all or a portion of the Facilities were financed with proceeds of tax exempt obligations and are subject to restrictions on private business use pursuant to Section 141(b) of the Internal Revenue Code of 1986, as amended (the "Code"). The Parties intend for this Agreement to meet the safe harbor requirements of Internal Revenue Service Revenue Procedure 2017-13 and to not result in private business use of the Facilities. The Parties certify and covenant as follows:

- a. General Financial Requirements. The [Contractor's] compensation under this Agreement is reasonable compensation for the services provided. No element of the compensation (including eligibility for, the amount of, and the timing of the payment) takes into account, or is contingent upon, either the net profits of the Facilities or both the revenues and expenses of the Facilities for any fiscal period. The [Contractor] will not share in any net losses from the operation of the Facilities.
- b. Term Limitations. The term of this Agreement, including all legally enforceable renewal options, is no greater than the lesser of 30 years or 80% of the weighted average reasonably expected economic life of the Facilities.
- c. Control Requirements. The City will exercise a significant degree of control over the use of the Facilities. The City has the right to approve the annual budget of the Facilities, capital expenditures with respect to the Facilities, each disposition of property that is part of the Facilities, rates charged for the use of the Facilities, and the general nature and type of use of the Facilities.
- d. Risk of Loss. The City will bear the risk of loss upon damage or destruction of the Facilities (for example, upon force majeure). However, insuring against risk of loss through a third party or imposing upon the [Contractor] a penalty for failure to operate the Facilities in accordance with the standards set forth in this Agreement will not cause the Agreement to fail to meet this requirement.
- e. No Inconsistent Tax Position. The [Contractor] is not entitled to and will not take any tax position that is inconsistent with being a service provider to the City with respect to the Facilities. The [Contractor] will not take any depreciation or amortization, investment tax credit, or deduction for any payment as rent with respect to the Facilities.
- f. Limitation of Rights. The Parties certify that:
  - (a) No more than 20% of the voting power of the governing body of the City in the aggregate is vested in the directors, officers, shareholders, partners, members, and employees of the [Contractor];
  - (b) The governing body of the City does not include the chief executive officer of the [Contractor] or the chairperson (or equivalent executive) of the [Contractor's] governing body; and
  - (c) The chief executive officer of the [Contractor] is not the chief executive officer of the City or any of the City's related parties.

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