

**INTERGOVERNMENTAL AGREEMENT
FOR THE PROVISION OF PARK GRANTS
Between
DEKALB COUNTY, GEORGIA and
THE CITY OF DUNWOODY, GEORGIA**

THIS INTERGOVERNMENTAL AGREEMENT is entered into by and between DeKalb County, Georgia (“County”) and the City of Dunwoody, Georgia (“City”).

WHEREAS, DeKalb County, Georgia is a constitutionally-created political subdivision of the State of Georgia; and

WHEREAS, the City is a municipality created by the 2008 Georgia General Assembly pursuant to Senate Bill 82 (hereinafter referred to as “SB 82”); and

WHEREAS, the County and the City desire to maintain a mutually beneficial, efficient, and cooperative relationship, that will promote the interests of the citizens of both jurisdictions.

NOW THEREFORE, in consideration of the following mutual obligations, the County and City agree as follows:

**ARTICLE 1
PURPOSE AND INTENT**

The purpose of this Agreement is to provide the terms (a) by which the County shall make three Grants to the City for specific projects, which the County has determined will benefit all DeKalb County residents and (b) by which the City will be entitled to obtain and use those three Grants.

**ARTICLE 2
DEFINITIONS**

For the purposes of this Agreement, the following terms shall be defined as:

2.1 *Capital Expenditures* means amounts spent to purchase or to improve a long-term park asset and specifically excludes amounts spent on routine park maintenance and operations.

2.2 *City’s Master Plan for Parks and Greenspace Projects* means the “City of Dunwoody 2011 Parks, Recreation and Open Space Master Plan.”

2.3 *Dunwoody Renaissance-5 Acre Park* means the project shown on the plan attached as Appendix 1.

2.4 *Grant* means provision of a portion of the proceeds of the Series 2001 Bonds and the Series 2006 Bonds, each as specified in Section 3.1 hereof.

2.5 **Grant Projects** means those purposes set forth in Sections 3.1.1, 3.1.2 and 3.1.3 below.

2.6 **Great Lawn at Brook Run Park** means the community greenspace, walkways and other amenities designated as the “Great Lawn” in the Brook Run Park Master Plan, as it may be amended from time to time.

2.7 **Park Projects** means parks and greenspace projects to be owned and operated by the City, including, but not limited to, acquiring land for additional parks and natural areas, preserving greenspace, protecting clean water and improving existing parks, dams, arts and cultural centers and athletic complexes.

2.8 **Series 2001 Bonds** means DeKalb County, Georgia Special Recreation Tax District General Obligation Bonds, Series 2001 issued by the County on October 25, 2001.

2.9 **Series 2006 Bonds** means DeKalb County, Georgia Special Transportation, Parks and Greenspace and Libraries Tax District General Obligation Bonds, Series 2006 issued by the County on February 7, 2006.

ARTICLE 3 COMPENSATION AND CONSIDERATION

3.1 In consideration of the City’s agreements to waive and release any possible legal claim to proceeds of the Series 2001 Bonds and Series 2006 Bonds beyond the Grants, to use the Grants, as specified below only in the specific manner provided, to execute the Tax Certificate attached hereto as Appendix 2, and to meet those certain other requirements set forth herein, the County shall make three Grants to the City to be used as follows:

3.1.1 The County will make a one-time Grant to the City in the amount of Three Million Two Hundred Thousand dollars (\$3,200,000.00) to be used toward the construction and development of the Dunwoody Renaissance-5 Acre Park. If any funds from this Grant remain after completion of such construction and development of the Dunwoody Renaissance-5 Acre Park, those remaining funds shall be used by the City only for Capital Expenditures for Park Projects that will benefit all DeKalb County residents, as determined in accordance with Section 3.2 below.

3.1.2 The County will make a one-time Grant to the City in the amount of Five Hundred Thousand dollars (\$500,000.00) to be used to update the City’s Master Plan for Parks and Greenspace Projects. If any funds from this Grant remain after updating the City’s Master Plan for Parks and Greenspace Projects, those remaining funds shall be used by the City only for Capital Expenditures for Park Projects that will benefit all DeKalb County residents, as determined in accordance with Section 3.2 below.

3.1.3 The County will make an additional one-time Grant to the City in the amount of Three Hundred Thousand dollars (\$300,000.00) to be used solely for construction of a Great Lawn at Brook Run Park. If any funds from this Grant remain after constructing a Great Lawn at Brook Run Park, those remaining funds shall be used by the City only for Capital

Expenditures for Park Projects that will benefit all DeKalb County residents, as determined in accordance with Section 3.2 below.

3.2 In consideration of the Grants set forth above, the City agrees that it shall: (a) use the Grants only for the purposes provided above; (b) provide the same parks and recreation services to residents of unincorporated DeKalb County as are provided to residents of the City at the same cost charged to City residents, if any; (c) allow the residents of the unincorporated area of the County the same access to City parks, recreations areas and centers, equipment and facilities as is allowed for residents of the City at the same cost charged to City residents, if any; and (d) execute the Tax Certificate attached hereto as Appendix 2 and any other documents reasonably necessary, as determined solely by the County, to establish compliance with the terms of the Series 2001 Bonds or the Series 2006 Bonds, including the maintenance of the tax-exempt status of the Series 2001 Bonds and the Series 2006 Bonds.

3.3 Payment of the Grants shall be remitted by the County within thirty (30) days of adoption and approval of this Agreement by both governing bodies, to wit: the Mayor and City Council and the County Governing Authority.

3.4 Payment by the County to the City pursuant to this Agreement shall be by wire delivery of funds through the Federal Reserve System to an account designated in writing by the City Manager to the County's finance director.

3.5 So long as the City complies with the terms of the City's Tax Certificate, the City shall not incur any liability whatsoever in connection with any audit or investigation with respect to the Series 2001 Bonds or the Series 2006 Bonds or in connection with a determination of taxability of interest on the Series 2001 Bonds or the Series 2006 Bonds, it being understood between the County and the City that the Series 2001 Bonds and the Series 2006 Bonds, and compliance with all laws relating thereto, are the sole responsibility of the County. In the event that the City's noncompliance with the terms of the City's Tax Certificate causes the County to incur liability for that noncompliance, the City will reimburse the County for any such liability.

In the event the City uses the proceeds of any Grant in contravention of this Agreement, its maximum liability shall be repayment to the County of such Grant. Under no circumstances shall the City incur any liability for repayment of the Series 2001 Bonds or the Series 2006 Bonds.

ARTICLE 4 MUTUAL WAIVER AND RELEASE

4.1 The City hereby waives and releases, effective the date the City receives the above-described Grants, any right to pursue or initiate any legal claims for any additional portion of the proceeds of the Series 2001 Bonds or the Series 2006 Bonds, based on O.C.G.A. § 36-31-11.1(i) or otherwise, except for the right to assert claims to enforce the terms of this Agreement.

4.2 The County waives and releases, effective the date the City receives the above-described Grants, any claims against the City related to the proceeds of the Series 2001 Bonds or

the Series 2006 Bonds, based on O.C.G.A. § 36-31-11.1(i) or otherwise, except for the right to assert claims to enforce the terms of this Agreement.

**ARTICLE 5
RECORDKEEPING AND REPORTING**

5.1 The City's parks and recreation department will be the central repository for all records relating to the Grant Projects and that department shall make those records available as required by the Georgia Open Records Act, O.C.G.A. § 50-18-70, *et seq.*

5.2 Except as limited by any provision of state or federal law, the County may request, review, and access data and City records related to the Grant Projects, at a mutually agreed upon time, to ensure compliance with both this Agreement, the Series 2001 Bonds and the Series 2006 Bonds.

**ARTICLE 6
REMEDIES**

The parties reserve all available remedies afforded by law to enforce any term or condition of this Agreement.

**ARTICLE 7
NOTICES**

All required notices shall be given by certified first class U.S. Mail, return receipt requested. The parties agree to give each other non-binding duplicate facsimile or e-mail notice. Future changes in address shall be effective upon written notice being given by the City to the County Executive Assistant or by the County to the City Manager via certified first class U.S. mail, return receipt requested. Notices shall be addressed to the parties at the following addresses:

If to the County:	Executive Assistant 1300 Commerce Drive, 6 th Floor Decatur, Georgia 30030
With a copy to:	County Attorney 1300 Commerce Drive, 5 th Floor Decatur, Georgia 30030
If to the City:	City Manager City of Dunwoody 41 Perimeter Center East, Suite 250 Dunwoody, GA 30346

With a copy to: City Attorney
City of Dunwoody
41 Perimeter Center East, Suite 250
Dunwoody, GA 30346

**ARTICLE 8
AMENDMENT OF AGREEMENT**

This Agreement may be amended at any time by mutual consent of both parties so long as such amendment is in writing and approved by official action of the City Council and approved by official action of the County governing authority.

**ARTICLE 9
NON-ASSIGNABILITY**

Neither party shall assign any of the obligations or benefits of this Agreement.

**ARTICLE 10
ENTIRE AGREEMENT**

The parties acknowledge, one to the other, that the terms of this Agreement constitute the entire understanding and Agreement of the parties regarding the subject matter of the Agreement. This Agreement constitutes the entire understanding and agreement between the Parties concerning the subject matter of this Agreement, and supersedes all prior oral or written agreements or understandings. No representation oral or written not incorporated in this Agreement shall be binding upon the City or the County. All parties must sign any subsequent changes in the Agreement.

**ARTICLE 11
SEVERABILITY, VENUE AND ENFORCEABILITY**

If a court of competent jurisdiction renders any provision of this Agreement (or portion of a provision) to be invalid or otherwise unenforceable, that provision or portion of the provision will be severed and the remainder of this Agreement will continue in full force and effect as if the invalid provision or portion of the provision were not part of this Agreement. No action taken pursuant to this Agreement should be deemed to constitute a waiver of compliance with any representation, warranty, covenant or agreement contained in this Agreement and will not operate or be construed as a waiver of any subsequent breach, whether of a similar or dissimilar nature. This Agreement is governed by the laws of the state of Georgia without regard to conflicts of law principles thereof. Should any party institute suit concerning this Agreement, venue shall be in the Superior Court of DeKalb County, Georgia. Should any provision of this Agreement require judicial interpretation, it is agreed that the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the same, it being agreed that the agents of all parties have participated in the preparation hereof.

**ARTICLE 12
BINDING EFFECT**

This Agreement shall inure to the benefit of, and be binding upon, the respective parties' successors.

**ARTICLE 13
COUNTERPARTS**

This Agreement may be executed in several counterparts, each of which shall be an original, and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the County and City have executed this Agreement through their duly authorized officers on the day and year indicated below.

DEKALB COUNTY, GEORGIA

By: _____ (SEAL)

Lee May
Interim Chief Executive Officer
DeKalb County, Georgia

Date: _____

ATTEST:

Barbara H. Sanders, CCC
Clerk of the
Board of Commissioners of
DeKalb County, Georgia

APPROVED AS TO SUBSTANCE:

APPROVED AS TO FORM:

Zachary Williams
Chief Operating Officer/Executive Assistant

O.V. Brantley
County Attorney

CITY OF DUNWOODY, GEORGIA

_____ (SEAL)

Mike Davis
Mayor

_____ (SEAL)

Sharon Lowery
Municipal Clerk

Date: _____

Approved as to Form:

Approved as to Substance:

Cecil McLendon
City Attorney

Eric Linton
City Manager

APPENDIX 1



DUNWOODY RENAISSANCE | 5 ACRE PARK

DECEMBER 2013

APPENDIX 2

DEKALB COUNTY, GEORGIA
Special Recreation Tax District
General Obligation Bonds
Series 2001

DEKALB COUNTY, GEORGIA
Special Transportation, Parks and Greenspace and Libraries Tax District
General Obligation Bonds
Series 2006

TAX CERTIFICATE OF THE CITY OF DUNWOODY, GEORGIA

We understand that DeKalb County, Georgia (the “**County**”) issued (1) the above-captioned Series 2001 Bonds (the “**Series 2001 Bonds**”) on October 25, 2001 for the purpose of financing the acquisition, construction, renovation and equipping of certain parks and greenspace projects located or to be located in a special recreation tax district that consists of the geographical boundaries of the unincorporated portion of the County as such boundaries existed on January 16, 2001 and (2) the above-captioned Series 2006 Bonds (the “**Series 2006 Bonds**”) and together with the Series 2001 Bonds, the “**Bonds**”) on February 7, 2006 for the purpose of financing the acquisition, construction, renovation and equipping of certain transportation projects, parks and greenspace projects and libraries projects located or to be located in a special transportation, parks and greenspace and libraries tax district that consists of the geographical boundaries of the unincorporated portion of the County as such boundaries existed on August 30, 2005. The Series 2001 Bonds were issued pursuant to a resolution adopted by the Board of Commissioners of the County and approved by the Chief Executive Officer of the County on October 11, 2001, and the Series 2006 Bonds were issued pursuant to a resolution adopted by the Board of Commissioners of the County and approved by the Chief Executive Officer of the County on January 24, 2006. The final maturity of the Series 2001 Bonds is scheduled to be paid on December 1, 2015, and the final maturity of the Series 2006 Bonds is scheduled to be paid on December 1, 2030. Pursuant to the terms of an Intergovernmental Agreement for the Provision of Park Grants dated _____, 2015 (the “**Intergovernmental Agreement**”) between the County and the City of Dunwoody, Georgia (the “**City**”) which Intergovernmental Agreement was approved by the County pursuant to a resolution adopted by the Board of Commissioners of the County and approved by the Chief Executive Officer of the County on _____, 2015, the County granted a portion of the proceeds of the Series 2001 Bonds in the amount of \$_____ and a portion of the proceeds of the Series 2006 Bonds in the amount of \$_____ (collectively, the “**Grant**”) to the City on _____, 2015 for the purpose of (i) developing, constructing and equipping the Dunwoody Renaissance-5 Acre Park (as defined in the Intergovernmental Agreement); (ii) updating the City’s Master Plan for Parks and Greenspace Projects (as defined in the Intergovernmental Agreement) and (iii) constructing the Great Lawn at Brook Run Park (as defined in the Intergovernmental Agreement), with any excess moneys to be used for other Park Projects (as defined in the Intergovernmental Agreement) (collectively, the “**City Projects**”).

The undersigned officials of the City hereby certify that we are the duly authorized, qualified, and Mayor and Clerk of the City, respectively, and that we have all authority necessary to execute this Certificate on behalf of the City, and **WE HEREBY CERTIFY** for and on behalf of the City that:

1. In General

1.1 Except as otherwise disclosed herein, each of the City Projects are or will be owned and operated by the City. The aggregate capital cost of the City Projects is reasonably expected to be not less than \$4,000,000.

1.2 All items of cost of the City Projects are properly chargeable to capital account of one or more improvements having a useful life exceeding one year or would be so chargeable with or but for an election to treat the item as chargeable to capital account for federal income tax purposes. For the avoidance of doubt, none of such costs constitutes a current expense for federal tax or other accounting purpose. In addition, the portion of the cost of the City Projects to be financed with proceeds of the Grant, is the net of the amount of any other grant or subsidized loans received by the City in respect of the cost of the City Projects.

1.3 We, either alone or with others, are responsible for the City's acquisition, construction, installation, and equipping of the City Projects and are familiar with their expected manner of use and their capital costs.

2. Private Activity Bond Test

2.1 Except as otherwise disclosed herein, the City will own and operate the City Projects with its own employees.

2.2 The City Projects will be available for general public use or will be devoted to governmental use.

2.3 Use of any of the City Projects by any person other than a governmental unit will be on the same basis as use by other members of the general public.

2.4 The City knows of no facts or circumstances surrounding the City Projects that would indicate that the primary purpose of any of the City Projects is to benefit one private user or a limited number of private users.

3. Contracts and Other Arrangements

3.1 The City has not entered into, and will not enter into any lease or other contract providing for use of any of the City Projects with any person or entity other than a state or local governmental unit.

3.2 The City has not entered into, and will not enter into, any management contract (as that term is defined in Exhibit A hereof) involving any of the City Projects with any person or entity other than a state or local governmental unit, unless it is a qualified management contract (as that term is defined in Exhibit A hereto).

3.3 The City has not entered into and will not enter into any other arrangements with any person or entity other than a state or local governmental unit that convey special legal entitlements to any of the City Projects.

4. Prompt Completion of City Projects

4.1 As of the date of this Certificate, the City reasonably expects to proceed with diligence to expend all proceeds of the Grant on the City Projects.

5. Reimbursement Matters

5.1 None of the proceeds of the Grant or the Bonds were or will be allocated to reimburse the City for any expenditures that were originally paid for a City Project before date of this Certificate.

6. Miscellaneous

6.1 The City further covenants, as follows:

(a) after each City Project is first placed in service and while any portion of the Bonds (or any tax-exempt bonds issued by the County for the purpose of refunding all or a portion of the Bonds) remain outstanding, to notify the County (i) if any part of the City Project has become subject to a lease, license or other arrangement that results in such part being subject to private business use (as that term is defined in Exhibit A hereto); and (ii) if any part of the City Project has been sold or otherwise disposed of, or in the event any such private business use or disposition has occurred, to promptly advise the County of such occurrence and to promptly take any remedial actions in accordance with Treas. Reg. § 1.141-12 which, in the opinion of bond counsel, are necessary to ensure that any exclusion of the interest on the Bonds (or any tax-exempt bonds issued by the County for the purpose of refunding all or a portion of the Bonds) is not adversely affected, for purposes of federal income taxation; and

(b) to establish and maintain records of the actions required to be taken in paragraph (a) and maintain such records during the period ending on April 15 of the fourth calendar year following the calendar year in which all of the Bonds (or any tax-exempt bonds issued by the County for the purpose of refunding all or a portion of the Bonds) have been retired. The Mayor or chief elected executive officer may designate the City official or office responsible for the foregoing duties or otherwise his office shall be responsible for these duties.

6.2 The City will observe each covenant and undertaking made herein until December 1, 2030 or such later date which the County shall specify to the City representing the final maturity date of any tax-exempt bonds issued to refund the Bonds.

6.3 To the best of our knowledge, information, and belief, there are no other facts, estimates, or circumstances that would materially change any of the foregoing certifications. The representations contained in this Certificate are made for the benefit of the County or McKenna Long & Aldridge LLP, Bond Counsel, and others and may be relied upon by the County and McKenna Long & Aldridge LLP, Bond Counsel, and others in determining whether or not the interest on the Bonds is subject to income taxation by the United States under existing statutes, regulations, and decisions.

6.4 This Certificate was prepared by Bond Counsel. The City takes no responsibility whatsoever as to the sufficiency of this Certificate for any purpose relating to tax exemption of interest on the Bonds or for any other purpose.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

Dated: _____, 2015

CITY OF DUNWOODY, GEORGIA

By:
Mayor

(SEAL)

Attest:

EXHIBIT A
DEFINITIONS

The following definitions are furnished only as general guidelines. For complete definitions, competent tax counsel should be consulted.

“Adjusted Gross Revenues”

“Adjusted gross revenues” means gross revenues of all or a portion of the Governmental Project, less allowances for bad debts and contractual and similar allowances.

“Capitation Fee”

“Capitation fee” means a fixed periodic amount for each person for whom the “service provider” or the “qualified user” assumes the responsibility to provide all needed services for a specified period so long as the quantity and type of services actually provided to covered persons varies substantially.

“Government Use”

“Government use” means any use other than a “private business use.”

“Management Contract”

“Management contract” means a management, service, or incentive payment contract between the City and a “service provider” under which the “service provider” provides services involving all, a portion, or any function of the Governmental Project.

“Net Sale Proceeds”

“Net Sale Proceeds” means the sale proceeds of an issue (or that are allocable to a segment of an issue) less the portion of those sale proceeds invested in a reasonably required reserve or replacement fund under Section 148(d) of the Code or as part of a minor portion under Section 148(c) of the Code.

“Penalties”

“Penalties” for terminating a contract include a limitation on the City’s right to compete with the “service provider”; a requirement that the City purchase equipment, goods, or services from the “service provider”; and a requirement that the City pay liquidated damages for cancellation of the contract. In contrast, a requirement effective on cancellation that the City reimburse the “service provider” for ordinary and necessary expenses or a restriction on the City against hiring key personnel of the “service provider” is generally not a contract termination penalty. Another contract between the “service provider” and the City, such as a loan or guarantee by the “service provider,” is treated as creating a contract termination penalty if that contract contains terms that are not customary or arm’s-length that could operate to prevent the City from terminating the contract (for example, provisions under which the contract terminates if the “management contract” is terminated or that place substantial restrictions on the selection of a substitute “service provider”).

“Periodic Fixed Fee”

“Periodic fixed fee” means a stated dollar amount for services rendered for a specified period of time. For example, a stated dollar amount per month is a periodic fixed fee. The stated dollar amount may automatically increase according to a specified, objective, external standard that is not linked to the output or efficiency of the Governmental Project. For example, the Consumer Price Index and similar external indices that track increases in prices in an area or increases in revenues or costs in an industry are objective external standards. “Capitation fees” and “per-unit fees” are not periodic fixed fees.

“Per-Unit Fee”

“Per-unit fee” means a fee based on a unit of service provided specified in the contract or otherwise specifically determined by an independent third party or the City.

“Private Business Use”

“Private business use” means use (directly or indirectly) in a trade or business carried on by any person other than a governmental unit (which for purposes hereof does not include the federal government or any agency or instrumentality thereof). For purposes of the preceding sentence, use as a member of the general public is not taken into account, and any activity carried on by a person other than a natural person is treated as a trade or business.

“Qualified Management Contract”

“Qualified management contract” means a “management contract” that meets the requirements set forth in (a), (b), and (c) below.

(a) General compensation requirements. The contract must provide for reasonable compensation for services rendered with no compensation based, in whole or in part, on a share of net profits from the operation of the Governmental Project. Compensation based on (1) a “capitation fee,” (2) a “per-unit fee,” or (3) a percentage of gross revenues (or “adjusted gross revenues”) of the Governmental Project or a percentage of expenses from the Governmental Project, but not both, is generally not considered to be based on a share of net profits. Reimbursement of the “service provider” for actual and direct expenses paid by the “service provider” to unrelated parties is not by itself treated as compensation. A productivity reward equal to a stated dollar amount based on increases or decreases in gross revenues (or “adjusted gross revenues”), or reductions in total expenses (but not both increases in gross revenues (or “adjusted gross revenues”) and reductions in total expenses) in any annual period during the term of the contract, generally does not cause the compensation to be based on a share of net profits.

(b) Permissible arrangements. The “management contract” must be described in paragraph (1), (2), (3), (4), or (5) below.

(1) 95 percent periodic fixed fee arrangements. At least 95 percent of the compensation for services for each annual period during the term of the contract is based on a “periodic fixed fee.” The term of the contract, including all “renewal options,” must not exceed the lesser of 80 percent of the reasonably expected useful life of the financed property and 15 years. For purposes of this paragraph (1), a fee does not fail to qualify as a “periodic fixed fee” as a result of an incentive or productivity award in any annual period during the term of the contract under which the amount of the award is equal to a single, stated dollar amount, a periodic fixed fee or tiered system of stated dollar amounts

or periodic fixed fees based solely on the level of performance achieved with respect to the applicable measure. Eligibility for the award is based on the quality of services provided under the contract rather than increases in revenue or decreases in expenses.

(2) 80 percent periodic fixed fee arrangements. At least 80 percent of the compensation for services for each annual period during the term of the contract is based on a “periodic fixed fee.” The term of the contract, including all “renewal options,” must not exceed the lesser of 80 percent of the reasonably expected useful life of the financed property and 10 years. For purposes of this paragraph (2), a fee does not fail to qualify as a periodic fixed fee as a result of an incentive or productivity award in any annual period during the term of the contract under which the amount of the award is equal to a single, stated dollar amount, a periodic fixed fee or tiered system of stated dollar amounts or periodic fixed fees based solely on the level of performance achieved with respect to the applicable measure. Eligibility for the award is based on the quality of services provided under the contract rather than increases in revenue or decreases in expenses.

(3) 50 percent periodic fixed fee arrangements. Either at least 50 percent of the compensation for services for each annual period during the term of the contract is based on a “periodic fixed fee” or all of the compensation for services is based on a “capitation fee” or a combination of a “capitation fee” and a “periodic fixed fee.” The term of the contract, including all “renewal options,” must not exceed 5 years. For purposes of this paragraph (3) incentive or productivity award in any annual period during the term of the contract under which the amount of the award is equal to a single, stated dollar amount, a periodic fixed fee or tiered system of stated dollar amounts or periodic fixed fees based solely on the level of performance achieved with respect to the applicable measure. Eligibility for the award is based on the quality of services provided under the contract rather than increases in revenue or decreases in expenses.

(4) Per-unit fee arrangements in certain 3-year contracts. All of the compensation for services is based on a “per-unit fee” or a combination of a “per-unit fee” and a “periodic fixed fee.” The term of the contract, including all “renewal options,” must not exceed 3 years. The contract must be terminable by the City on reasonable notice, without penalty or cause, at the end of the second year of the contract term.

(5) Percentage of revenue or expense fee arrangements in certain 2 year contracts. All the compensation for services is based on a percentage of fees charged or a combination of a “per-unit fee” and a percentage of revenue or expense fee. The term of the contract, including “renewal options,” must not exceed 2 years. The contract must be terminable by the City on reasonable notice, without penalty or cause, at the end of the first year of the contract term. This paragraph (5) applies only to contracts under which the “service provider” primarily provides services to third parties.

(c) No Circumstances Substantially Limiting Exercise of Rights. The “service provider” must not have any role or relationship with the City that, in effect, substantially limits the City’s ability to exercise its rights, including cancellation rights, under the contract, based on all the facts and circumstances. This requirement is satisfied if:

(1) not more than 20 percent of the voting power of the governing body of the City in the aggregate is vested in the “service provider” and its directors, officers, shareholders, and employees;

(2) overlapping board members do not include the chief executive officers of the “service provider” or its governing body or the City or its governing body; and

(3) the City and the “service provider” under the contract are not related parties, as defined in Treasury Regulation Section 1.150-1(b).

“Qualified User”

“Qualified user” means any state or local governmental unit.

“Renewal Option”

“Renewal option” means a provision under which the “service provider” has a legally enforceable right to renew the contract.

“Service Provider”

“Service provider” means any person other than a “qualified user” that provides services under a contract to or for the benefit of the City.