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C. For NPS:

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**ARTICLE VII – AWARD AND PAYMENT**

A. Columbus Circle / Columbus Plaza

1. DDOT's contractors shall submit monthly invoices for eligible Project expenses. DDOT will seek reimbursement for the invoices from FTA and pay the contractors an amount not to exceed \$4,933,988 in federal ITC funds as apportioned to the District by FTA and matched by \$1,233,497 in USRC capital funds. The FTA ITC funds are provided for this Project at eighty percent (80%) federal participation rate, and the required local matching contribution of twenty percent (20%) shall be from USRC non-federal sources of funds.
2. As its contribution to this Project, NPS shall provide \$175,000 from its own FY 2004/2005 budget, account number 3064-6430-MAL, for the design and installation of the NPS-approved landscape plan for Columbus Plaza. Additionally, NPS shall provide \$354,000 from its FY 2004 budget, account number 3064-6430-MAL, for the design, repair and restoration of the memorial and fountains on Columbus Plaza.

B. Bicycle Station

1. Contingent upon a bicycle station site being located on land under the jurisdiction of USRC or USV, and contingent upon FHWA approval and obligation of the CMAQ funds mentioned above, DDOT shall procure consulting services to plan

and design the bicycle station at Union Station. As expenditures are incurred, DDOT will provide invoices to USRC for the local match share of eligible expenses associated with this aspect of the Project. USRC shall pay these invoices within 45 days. Approval of this Agreement by the USRC Board of Directors shall constitute an authorization for these payments.

2. If planning and design activities result in the bicycle station not being located on the grounds of Union Station, then DDOT shall cease making requests for local matching funds from USRC for the bicycle station. Additionally, within four (4) months of a decision to locate the bicycle station on property other than a Union Station site, DDOT shall refund any such prior bicycle station CMAQ matching payments made by USRC.
3. The obligations of DDOT and USRC under this Agreement are contingent upon the approval by FHWA of the District's request for the obligation of funds for the purpose of designing and constructing a bicycle station at Union Station.

C. Pedestrian Tunnel

1. Contingent upon the identification of a shortfall in the amount that nearby property owners are willing to pay for the completion of a pedestrian tunnel between the existing First Street Metrorail entrance and the H Street Overpass, DDOT shall request FHWA approval and obligation of the CMAQ funds mentioned in Article IV.A.11, to the extent that doing so will ensure the completion of the tunnel aspect of the Project.
2. A separate agreement between DDOT, WMATA, USRC and private entities will be entered into to govern the process for providing and paying invoices, including payment of the local match amount provided by USRC. Approval of this Agreement by the USRC Board of Directors shall constitute authorization for the USRC President to sign such an agreement provided that any obligations of USRC contained within such an agreement are not materially different than provided in this Agreement.
3. The obligations of DDOT and USRC under this Agreement are contingent upon the approval by FHWA of the District's request for the obligation of funds for the purpose of designing and constructing an extension to the pedestrian tunnel at Union Station. If FHWA does not approve this request, DDOT and USRC are relieved of any obligations with respect to the pedestrian tunnel under this Agreement.
4. If private sector entities are willing and able to finance the tunnel aspect of the Project without additional subsidization, then the CMAQ funds designated for the pedestrian tunnel as mentioned in Article IV.A.11 shall be available for other uses and USRC shall be relieved of any duty to make payments for local matching funds as mentioned in Article IV.B.12.

D. Method of Payment

1. Invoices for design and construction of the reconfiguration of Columbus Circle and Columbus Plaza, which have been approved by FTA, shall be forwarded to USRC. USRC shall provide its 20% match of approved invoice totals to DDOT within forty-five (45) days of receipt.
2. Invoices for CMAQ projects, which have been approved by FHWA, shall be forwarded to USRC. USRC shall provide its 20% match of approved invoice totals to DDOT within forty-five (45) days of receipt.
3. NPS shall provide its share of funds for Columbus Plaza landscaping (\$175,000) to DDOT prior to the end of October 2004. NPS shall provide its share of funds for memorial and fountain repair and restoration (\$354,000) to DDOT prior to the end of October 2004. Invoices for work related to the restoration of the memorial fountain on Columbus Plaza shall be sent to DDOT and shall be managed, approved and paid for according to DDOT procedures.

E. Financial Records.

DDOT is responsible for maintaining all records and accounts associated with contractor billings, change orders, and claims associated with the work at Columbus Circle and Columbus Plaza, including such records and accounts associated with contractor billings, change orders and claims associated with the restoration of the memorial fountain on Columbus Plaza. DDOT shall provide FTA with required financial reports indicating all invoices received and paid by the DDOT under this Agreement. DDOT will make these reports available to USRC and NPS upon request.

**ARTICLE VIII - CONSULTATION BETWEEN ALL PARTIES**

All parties to this Agreement shall be afforded the opportunity to review and comment on all preliminary findings, recommendations, drafts and final reports. They shall also be afforded the opportunity to inspect, at any time, work in progress, the financial records, and any other supporting documentation, and to participate in all meetings, field reviews, bid openings, pre-construction conferences, and periodic and final construction inspections. They shall maintain a close liaison and consult regularly on all matters pertaining to this Agreement. Although not a party to this Agreement, USV shall be provided opportunities to review and comment on the design of this Project as it moves toward completion.

**ARTICLE IX - ASSIGNMENT**

No transfer or assignment of this Agreement, or of any part thereof or interest therein, directly or indirectly, voluntarily or involuntarily, shall be made unless such transfer or assignment is first approved in writing by USRC, NPS and DDOT.

**ARTICLE X - MODIFICATIONS AND TERMINATION**

- A. This Agreement may be modified only by a written instrument executed by the parties.
- B. The parties acknowledge that NPS may initiate termination of this Agreement only in accordance with 43 C.F.R. §§ 12.961 or 12.962.
- C. The parties further acknowledge that the following grounds would be sufficient for the termination of this Agreement:
  - 1. Lack of local funding;
  - 2. Lack of a Congressionally-approved budget;
  - 3. Changes in applicable law;
  - 4. Changes in District or Federal policy affecting the Project;
  - 5. Changes in the structure or nature of the Project;
  - 6. Elimination of the Project or services;
  - 7. Failure of any party to follow applicable Federal or District laws, rules or regulations, or the conditions of this Agreement; or
  - 8. Failure of FTA to reimburse the Project.

**ARTICLE XI - DISPUTE RESOLUTION**

Any disputes between DDOT and the other parties arising out of this Agreement may be disposed of by the parties by written agreement and/or amendment of this Agreement. If the parties cannot resolve the dispute, then the party seeking a resolution shall provide written notice, by hand delivery, of the nature of the dispute and the issue(s) to the other party(ies). The authorized representative(s) of the other party(ies) shall respond in writing, by hand delivery, within seven (7) federal business days by stating its response to the dispute and the first party's identified issue(s), and giving in that response any related issues. There shall be three resolution steps, with identified time periods, between the parties to pursue resolution of the dispute and its written issue(s).

- 1. Step One. Upon the hand delivery of a second party's written response or eighth (8<sup>th</sup>) federal business day, whichever occurs first, the DDOT Director and the representatives of the other party(ies) shall have fifteen (15) federal days to make such arrangements as are mutually agreeable to confer to resolve the dispute and its issues.
- 2. Step Two. If the dispute has not been resolved by the conclusion of Step One, the Mayor of the District of Columbia, the Regional Director of NPS's National Capital Region and the President of USRC (the chief executives) shall have fifteen (15) federal business days to supplement their written documentation by hand delivery of such a supplement to the other party(ies) chief executive(s). The chief executives may make such arrangements as are mutually agreeable to confer to resolve the dispute and its issues.

3. Step Three. If the dispute has not been resolved within twenty one (21) federal business days after the conclusion of Step One, and the dispute is limited to the availability of funding, the parties may terminate the Agreement as provided for herein. Otherwise, the parties may seek binding arbitration from a committee, initially comprised of a representative of each of the parties. Upon notification that binding arbitration will be utilized, the parties' representatives shall have ten (10) federal business days to submit to one another the names of acceptable neutral Third Parties. Within five (5) additional federal business days, they shall select a neutral Third Party. Upon the Third Party's acceptance, the parties' representatives and the Third Party will acknowledge in writing the date and constitution of the Arbitration Committee. Once established, the Committee shall establish its own rules and procedures for gathering information and reaching a decision. A written majority decision shall be considered binding and shall be issued within sixty (60) federal business days of the establishment of the Committee unless the Committee agrees in writing to an extension of time or the parties inform the Committee in writing that an amicable resolution to the dispute has been achieved.

## **ARTICLE XII - OWNERSHIP OF PROPERTY**

The use, disposition, and/or acquisition of new or existing property shall be in accordance with the rules set forth at 43 CFR §§ 12.933 through 12.935, as amended.

Title to all equipment and supplies furnished by NPS under this Agreement shall remain the property of the NPS and shall not give rise to any proprietary or other interest by the USRC or the DDOT. Title to all equipment and supplies furnished by the USRC under this Agreement shall remain the property of the USRC and shall not give rise to any proprietary or other interest by the NPS or the DDOT. Title to all equipment and supplies furnished by the DDOT under this Agreement shall remain the property of the DDOT and shall not give rise to any proprietary or other interest by the NPS or the USRC.

Title to all reports and documents prepared under this Agreement shall remain the joint property of USRC and DDOT.

## **ARTICLE XIII - LIABILITY**

A. The parties accept full responsibility for any property damage, injury, or death caused by the acts or omissions of their respective employees, acting within the scope of their employment, to the fullest extent of the law. All claims shall be processed pursuant to applicable governing law. To the extent that work is performed by other than Federal or District employees, those persons shall be licensed to do business in the District of Columbia in keeping with 23 CFR 635.110(c).

To the extent that work is performed by other than Federal or District employees, the parties shall require such person or corporation to:

1. Procure public and employee liability insurance from a responsible company or companies with a minimum limitation of One Million Dollars (\$1,000,000) per

person for any one claim, and an aggregate limitation of Three Million Dollars (\$3,000,000) for any number of claims arising from any one incident. The policies shall name the United States, the District of Columbia, USRC and USV as additional insureds, shall specify that the insured shall have no right of subrogation against the United States, the District of Columbia, USRC or USV for payments of any premiums or deductibles due thereunder, and shall specify that the insurance shall be assumed by, be for the account of, and be at the insured's sole risk. Prior to beginning the work authorized herein, the contractor shall provide the parties and USV with confirmation of such insurance coverage. Confirmation shall be sent to the parties' contacts listed in this Agreement. In the case of USV, confirmation shall be sent to:

Joan Malkowski  
Union Station Venture, Ltd.  
40 Massachusetts Avenue, NE  
Washington, DC 20002;

2. Pay the United States, the District of Columbia, USRC and USV the full value for all damages to their respective lands or other property caused by such person or organization, its representatives, or employees; and
  3. Indemnify, save and hold harmless, and defend the United States, the District of Columbia, USRC and USV against all fines claims, damages, losses, judgments, and expenses arising out of or from any omission of activity of such person, organization, its representatives or employees arising out of or in any way connected to activities authorized pursuant to this Agreement. This obligation shall survive the termination or expiration of this Agreement.
- B. The parties agree to cooperate with each other in the investigation and defense of any claims that may be filed with the NPS, DDOT, USRC or USV arising out of the activities of this Agreement. This obligation shall survive the termination or expiration of this Agreement.

#### **ARTICLE XIV - GENERAL AND SPECIAL PROVISIONS**

##### **A. General Provisions**

1. **OMB Circulars and other Regulations** - The following OMB Circulars and other regulations are incorporated by reference into this Agreement:
  - a. *OMB Circular A-87*, "Cost Principles for State, Local, and Indian Tribal Governments."
  - b. *OMB Circular A-97*, "Provisions for Specialized and Technical Services to State and Local Governments."

- c. *OMB Circular A-102*, as codified by *43 CFR Part 12, Subpart C*, “Uniform Administrative Requirements for Grants-in-Aid to State Governments.”
- d. *OMB Circular A-133*, “Audits of States, Local Governments, and Non-Profit Organizations.”
- e. *FAR Clause 52.203-12*, Paragraphs (a) and (b), “Limitation on Payments to Influence Certain Federal Transactions.”

As the documents referenced in Article XII.A.1.a. – e are updated, the new documents will take precedence over the old.

- 2. **Non-Discrimination** - All activities pursuant this Agreement shall be in compliance with the requirements of Executive Order 11246; Title VI of the *Civil Rights Act of 1964*, as amended, (78 Stat. 252; 42 U.S.C. §§ 2000d et seq.); Title V, Section 504 of the *Rehabilitation Act of 1973*, as amended, (87 Stat. 394; 29 U.S.C. § 794); the *Age Discrimination Act of 1975* (89 Stat. 728; 42 U.S.C. §§ 6101 et seq.); and with all other federal laws and regulations prohibiting discrimination on grounds of race, color, sexual orientation, national origin, disabilities, religion, age, or sex.
- 3. **Lobbying Prohibition** - 18 U.S.C. § 1913 - No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation, law, ratification, policy, or appropriation, whether before or after the introduction of any bill, measure, or resolution proposing such legislation, law, ratification, policy, or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to any such Member or official, at his request, or to Congress or such official, through the proper official channels, requests for legislation, law, ratification, policy, or appropriations which they deem necessary for the efficient conduct of the public business, or from making any communication whose prohibition by this section might, in the opinion of the Attorney General, violate the Constitution or interfere with the conduct of foreign policy, counter-intelligence, intelligence, or national security activities. Violations of this section shall constitute violations of Section 1352(a) of Title 31.
- 4. **Anti-Deficiency Act** - 31 U.S.C. § 1341 - Pursuant to the Anti-Deficiency Act, nothing contained in this Agreement shall be construed as binding on the United States, NPS or the District of Columbia to expend in any one fiscal year any sum in excess of the appropriations made by Congress for the purposes of this Agreement for that fiscal year, or as involving the United States, NPS or the

District of Columbia in any contract or other obligation for the further expenditure of money in excess of such appropriations.

5. **Minority Business Enterprise Development** - *Executive Order 12432* - It is national policy to award a fair share of contracts to small and minority firms. The NPS is strongly committed to the objectives of this policy and encourages all recipients of its Cooperative Agreements to take affirmative steps to ensure such fairness by ensuring procurement procedures are carried out in accordance with *43 CFR § 12.944* for Institutions of Higher Education; Hospitals and other Non-Profit Organizations, and *43 CFR § 12.76* for State and Local Governments.
6. **Interest of Members of Congress** - *41 U.S.C. § 22* - Nothing herein contained shall be deemed to be inconsistent with or contrary to the purpose or intent of any Act of Congress or the law of the District of Columbia establishing, affecting, or relating to this Agreement. No member of Congress shall be admitted to any share of part of this Agreement, or to any benefits that may arise therefrom.

B. **Special Provisions**

**Publications of results of studies** - No party will unilaterally publish a joint publication without consulting the other party. This restriction does not apply to popular publication of previously published technical matter. Publications pursuant to this Agreement may be produced independently or in collaboration with others; however, in all cases proper credit will be given to the efforts of those parties' contribution to the publication. In the event no agreement is reached concerning the manner of publication or interpretation of results, any party may publish data after due notice and submission of the proposed manuscripts to the other. In such instances, the party publishing the data will give due credit to the cooperation but assume full responsibility for any statements on which there is a difference of opinion.

- C. **Certifications** - The following form(s) are incorporated into this Agreement by reference. These certifications are required in accordance with the provisions of this Agreement:

DI-2010, U.S. Department of the Interior Certification Regarding Debarment, Suspension and Other Responsibility Matters, Drug-Free Workplace Requirement and Lobbying.

- D. **Public Laws** - The parties shall comply with all applicable laws, regulations and rules. This Agreement is subject to all laws, regulations and rules governing the parties, and all other applicable laws and regulations, whether now in force or hereafter enacted or promulgated. Nothing in this Agreement shall be construed as in any way impairing the general powers of the parties for supervision, regulation, and control of their property under any such applicable laws, regulations, and rules.

- E. **Severability** - If any term or provision of this Agreement is held to be invalid or illegal, such term or provision shall not impact the validity or enforceability of the remaining terms and provisions of this Agreement.
- F. **Captions** - The section headings and captions of this Agreement are for the convenience and reference of the parties and in no way define, limit, or describe the scope or intent of the Agreement or any part thereof.
- G. **Complete Agreement** - This Agreement, and all the terms and provisions contained herein, and the other agreements and documents referred to herein, constitute the full and complete agreement between the parties hereto with respect to the subject matter hereof and supersede and control over any and all prior agreements, understandings, representations, correspondence and statements whether written or oral.
- H. **Counterparts**: This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- I. **Interpretation** - This Agreement shall be governed by, and interpreted with, Federal law. The language in all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning, and not strictly for or against either party. When the context requires, the singular includes the plural. The use of masculine or neuter genders shall include the masculine, feminine, and neuter genders.

#### **ARTICLE XV - ATTACHMENTS**

This Agreement shall be subject to the following attachments and certifications, which are attached hereto and made a part of this Agreement.

- |               |   |
|---------------|---|
| Attachment A: | Scope of Work - Repair and Restoration of Memorial Fountains and Systems for Columbus Plaza   |
| Attachment B: | Permit Requirements, National Capital Parks-Central   |
| Attachment C: | Preliminary Reconfiguration Plan Including Proposed Bicycle Station Location  |
| Attachment D: | Preliminary Plan for Metrobus Circulation & Layover Parking on the Union Station Garage Bus Deck After Completion of the Garage Expansion |

**ARTICLE XVI – SIGNATURES**

IN WITNESS THEREOF, the parties hereto have executed this Agreement on the date(s) set forth below:

**FOR THE NATIONAL PARK SERVICE**

*Fur*   
\_\_\_\_\_  
Terry Carlstrom, Regional Director  
National Capital Region

Date 10/1/07

  
\_\_\_\_\_  
Thomas M. McConnell, Contracting Officer  
National Capital Region

Date 9/30/07

**FOR THE DISTRICT OF COLUMBIA DEPARTMENT OF TRANSPORTATION**

\_\_\_\_\_  
Director

\_\_\_\_\_  
Date

**FOR THE UNION STATION REDEVELOPMENT CORPORATION**

\_\_\_\_\_  
President

\_\_\_\_\_  
Date