

GRANT AGREEMENT

THIS GRANT AGREEMENT, dated as of October 15, 2014 (the “Effective Date”) (this “Grant Agreement”), between the DISTRICT OF COLUMBIA, a municipal corporation, acting by and through the Department of General Services, with offices at 2000 14th Street, NW, 8th Floor, Washington, D.C. (“Grantor”), and the NOMA PARKS FOUNDATION, a District of Columbia tax exempt 501(c)(3) organization, having its principal office at 1200 First Street, NE, Washington D.C. (“Grantee”).

WITNESSETH:

WHEREAS, the 2014 Budget Support Act provided the DC Department of Parks and Recreation (“DPR”), through its implementing agency the Department of General Services (“DGS”), with a budget of fifty million and 00/100 dollars (\$50,000,000.00) of capital funds over the period of District of Columbia Fiscal Year 2014 through Fiscal Year 2019 for the purpose of improving the recreational and educational opportunities for residents of the NoMa neighborhood by acquiring property and developing public parks and recreational/civic spaces (the “NoMa Parks Grant Funds”). The amount of capital funds currently available for NoMa Parks Grant Funds per fiscal year (per fiscal year the “Fiscal Year Grant Amount”) is as follows:

FISCAL YEAR	FISCAL YEAR GRANT AMOUNT*
2014	\$10,000,000
2015	\$7,500,000
2016	\$7,500,000
2017	\$5,000,000
2018	\$5,000,000
2019	\$15,000,000

*The Parties acknowledge that the above amounts are currently budgeted and are subject to change as a result of adjustments to the District’s capital budget. All NoMa Parks Grant Funds Disbursements (as hereinafter defined) shall in all events be subject to actual funds budgeted and available for the purposes provided herein; and

WHEREAS, Subtitle O of the Fiscal Year 2014 Budget Support Act of 2013 authorizes the Director of DGS to issue grants “to the NoMa BID, the NoMa Parks Foundation, or a related Friends of NoMa Parks organization for the purpose of acquiring land and building public parks

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and public spaces that are to be owned by the District, or for which the District will receive a suitable and permanent easement, covenant, or ground lease, in accordance with the NoMa Public Realm Design Plan from the funds made available to DGS (hereinafter, the “**NoMa Parks Project**”); and

WHEREAS, by Agreement dated June 5, 2014, Grantor made a portion of the NoMa Parks Grant Funds available to Grantee to be used by Grantee to fund its costs leading to the acquisition or improvement of specific projects, as defined therein, for the NoMa Parks Project; and

WHEREAS, the parties hereby desire to enter into an agreement governing the entirety of the NoMa Parks Grant Funds available to Grantee to be used by Grantee to further fund the costs of the NoMa Parks Project.

NOW THEREFORE, in consideration of the mutual undertakings herein set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

ARTICLE I

DEFINITIONS

“**Code**” means the Internal Revenue Code, Title 26, U.S. Code, et seq.

“**Acquisition Project Costs**” means all costs, expenses and fees incurred by or accrued by Grantee during the Term for the acquisition of a NoMa Park Site, including, if applicable, the purchase price for the fee or lesser real property interest in the NoMa Park Site and associated settlement costs such as, by way of example only and not as a limitation, recordation taxes, fees for examination of title, title insurance premiums, settlement services for the benefit of purchaser, and other customary purchaser’s expenses due and payable at settlement.

“**NoMa Park Site**” means a Potential Park Site, identified in Exhibit B of this Agreement, that is determined by Grantee to be suitable and feasible for development as a park and as to which Grantee will proceed with acquisition, design and development in accordance with the terms of this Grant Agreement or as to a Potential Park Site not identified in Exhibit B of the Agreement, that is determined by Grantee and approved by Grantor, to be suitable and feasible for development as a park and as to which Grantee will proceed with acquisition, design and development in accordance with the terms of this Grant Agreement.

“**Potential Park Site**” means a suitable potential park including, but not limited to, spaces within the public realm such as underpasses, plazas and planting zones.

“**Project Costs**” means all costs, expenses and fees incurred by or accrued by Grantee during the Term in connection with: (a) the identification of Potential Park Sites, (b) due diligence, including, but not limited to, environmental, geotechnical, soil, and other appropriate tests and studies of Potential Park Sites, (c) negotiations with owners, or their agents, for the acquisition of fee title to Potential Park Sites, or suitable and permanent easement, covenant, or

ground lease to or for such sites, (d) appraisals and surveys of Potential Park Sites, (e) conceptual or other preliminary design for Potential Park Sites, (f) development of program requirements, pro formas and/or other financial analyses regarding the development of a Potential Park Site or the operation of a developed Potential Park Site, (g) acquisition-related transactional costs not included in Acquisition Project Costs, (h) the costs of any further due diligence appropriate for a NoMa Park Site, (i) design fees and other soft costs for a NoMa Park Site, (j) abatement or site remediation costs for a NoMa Park Site, (k) the costs for permits and approvals for a NoMa Park Site, (l) hard costs associated with constructing a NoMa Park Site including overhead and general conditions, (m) obtainment of any necessary financing, (n) project management fees for services provided by the NoMa Business Improvement District or the NoMa Parks Foundation, and (o) public outreach. Project Costs may also include related third party professional services such as, but not limited to, engineering, architectural, legal and accounting costs. With respect to legal costs, such costs shall include only the legal costs directly related to negotiating and documenting the transactions necessary for acquiring an appropriate real property interest in each NoMa Park Site, development of each NoMa Park Site, obtaining any necessary zoning and land use approvals, securing permits, and the design, development and construction of the project. Project Costs are described in the Budget (as hereinafter defined) and in all cases shall be incurred by or accrued by Grantee in furtherance of the NoMa Parks Project. For the sake of clarity, the Parties hereby acknowledge that Item (n) above, the project management fees for services provided by the NoMa Business Improvement District or the NoMa Parks Foundation, are on a fixed fee basis and payable, in arrears, upon a draw request setting forth the time period for which such fee is requested and calculating the amount due as a pro rata share based on the ratio of the time period covered to the applicable fiscal year(s). The payment of project management fees by Grantor to Grantee shall in all events remain subject to the requirements of Section 2.1(c) of this Agreement.

“**NoMa Parks Grant Funds Disbursements**” means one or more disbursements made from the NoMa Parks Grant Funds to Grantee or at Grantee’s direction to another payee in accordance with Article II of this Grant Agreement.

“**Term**” means the term of this Grant Agreement which is for District of Columbia Fiscal Years 2014, 2015, 2016, 2017, 2018, and 2019, unless earlier terminated, or extended.

ARTICLE II

THE GRANT

2.1(a) Application of NoMa Parks Grant Funds for Project Costs.

Precatory Statement: The parties agree that due to the conceptual nature of budgets there are likely to be reasonable adjustments in both the projects to be funded and the costs of individual projects, which shall be handled by the parties as provided herein. The parties further agree that additional or substitute project opportunities may become viable that are consistent with the objectives of the NoMa Public Realm Design Plan and can be accomplished within the budget. Grantee shall submit an amended budget to the Grantor should additional or substitute projects arise and Grantor may approve or disapprove such additional or substitute

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projects in its reasonable discretion, it being understood that, with respect to additional public realm opportunities identified in the NoMa Public Realm Design Plan (the "Plan"), the exercise of such discretion by the District shall be solely based on: 1) whether the proposed additional or substitute project is consistent with the objectives of the Plan; 2) whether the proposed project creates substantial operational costs, or unreasonable risks or liability to the District; or 3) whether there are identifiable, unanticipated and material changes in conditions from the Plan which render the additional or substitute project unsuitable to the District. If the additional or substitute project is not identified in the Plan, Grantor may approve or disapprove such additional or substitute projects in its reasonable discretion upon any reasonable basis.

From and after the date of this Grant Agreement, Grantee shall submit to Grantor draw requests in the form attached hereto as **Exhibit A** no more frequently than once a month. Such draw requests shall reflect Project Costs incurred by or accrued by Grantee in the course of the architectural, engineering, project management, and other work for the NoMa Parks Project prior to the date of the draw request, during the Term, and shall be for costs included in the budget attached hereto as **Exhibit B** (the "**Budget**") and during any fiscal year shall in no event exceed the actual capital funds specifically budgeted for the purposes provided herein and available to the Department of General Services for the NoMa Parks Project during such fiscal year, as currently provided as of the date of this Grant Agreement by the Fiscal Year Grant Amount for each fiscal year. The Budget is based on Grantee's good faith estimate of the Project Costs and Grantee will provide Grantor with a revised budget if Project Costs estimates change based upon facts and information learned in the course of performance under this Grant Agreement, in which case, (1) if the revision changes a particular Potential Park Site's or NoMa Park Site's budget line item by greater than 25% of the line item, then upon Grantor's approval, which may be conditioned or withheld in Grantor's reasonable discretion, the revised budget shall be deemed the Budget; (2) if the revision increases the total Budget, then upon Grantor's approval, which may be conditioned or withheld in Grantor's sole and absolute discretion, which approval shall include Grantor's written confirmation of funding necessary to satisfy the increased Budget, the revised budget shall be deemed the Budget; and (3) in all other cases, such revised budget shall be deemed the Budget (the foregoing process for revising the Budget hereinafter collectively referred to as the "**Budget Revision Process**"). The Budget includes a line item for contingencies and any changes to the line item for contingencies shall be made in accordance with the Budget Revision Process. A draw request shall attach invoices, bills, receipts or other reasonable documentation establishing that the requested costs have been incurred by or accrued by Grantee in connection with the NoMa Parks Project. A draw request shall be subject to Grantor's reasonable approval - which approval shall not be unreasonably withheld, conditioned or delayed - as to whether the requested costs are eligible Project Costs under the Grant Agreement. Within ten (10) business days of receiving a draw request, subject to the conditions provided in Section 2.1(c), Grantor shall either approve the draw request and submit a request for payment to the Office of Chief Financial Officer or deliver written notice to Grantee setting forth in reasonable specificity the reasons for withholding such disbursement, either in whole or in part. Upon issuance of payment by the Office of Chief Financial Officer, Grantor shall promptly disburse the approved funds to Grantee for deposit into an account set up by Grantee specifically for purposes of funding the Project Costs as follows:

If by Wire Transfer:

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TD Bank
NoMa Parks Foundation
Routing Number: 054001725
Account Number: 42771134

2.1(b) Application of NoMa Parks Grant Funds for Acquisition Project Costs. The purchase price for the fee or lesser real property interest in a NoMa Park Site shall be negotiated by Grantee only after both: (i) Grantor and Grantee have agreed upon the type of real property interest to be acquired in such NoMa Park Site, and (ii) Grantee has obtained an appraisal of the relevant type of real property interest in the NoMa Park Site, which appraisal shall be prepared by a real property appraiser, licensed to provide appraisal services in the District of Columbia, who is a member of the Appraisal Institute with at least five (5) years experience in real property appraisal of properties in the District of Columbia, and who is knowledgeable of the Uniform Appraisal Standards for Federal Land Acquisitions and the Uniform Standards of Professional Appraisal Practice.

1. A copy of a final appraisal (the “**Appraisal**”) shall be provided to Grantor promptly upon receipt by Grantee. The purchase/acquisition price for a NoMa Park Site shall be for no more than the final appraised value reflected on the applicable Appraisal.
2. Attached hereto as **Exhibit C** is a budget, based solely on Grantee’s good faith estimates, without having obtained third party advice as to price and market conditions, of the purchase/acquisition price for each Potential NoMa Park Site (the “**Estimated Purchase Price Budget**”). Grantor and Grantee hereby acknowledge that the Estimated Purchase Price Budget is an initial estimate of purchase prices and that the actual purchase price for each of the NoMa Park Sites shall be as negotiated with the owner of such site, and in no event be more than the applicable Appraisal. Grantee acknowledges that, as of the Effective Date, the top priority sites for possible acquisition are:
 - a. Pepco Park
 - b. Third and N Street, NE

Grantor acknowledges that changes to the Budget and site selections may be necessary. Grantee will provide Grantor with a revised Estimated Purchase Price Budget as and when a final purchase price is negotiated with the applicable owner of each NoMa Park Site, in which case any revisions to the Estimated Purchase Price Budget shall be made in accordance with the Budget Revision Process.

3. The HUD-1 Settlement Statement prepared by the applicable settlement agent shall constitute the draw request, together with a written request from Grantee attaching a copy of the applicable appraisal and acquisition agreement, as to the Acquisition Project Costs with respect to a NoMa Park Site and due at settlement. Grantee shall submit to Grantor the proposed HUD-1 Settlement Statement (together with the settlement agent’s escrow account information for purposes of wire transfers) no less than ten (10) business days prior to the proposed settlement

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date for District's reasonable approval - which approval shall not be unreasonably withheld, conditioned or delayed - as to whether the costs, fees and expenses shown thereon as due from "purchaser" are eligible expenses under the Grant Agreement. Within ten (10) business days of receiving the proposed HUD-1, subject to the conditions provided in Section 2.1(c), Grantor shall either approve the proposed HUD-1 and submit a request for payment to the Office of Chief Financial Officer or deliver written notice to Grantee setting forth in reasonable specificity the reasons for withholding such disbursement, either in whole or in part. Upon issuance of payment by the Office of Chief Financial Officer, and settlement agent having signed an escrow agreement satisfactory to Grantor and Grantee, Grantor shall promptly disburse the approved funds on behalf of Grantee for deposit into the applicable settlement agent's escrow account for payment of the Acquisition Project Costs shown on the approved HUD-1. With respect to any acquisition-related costs which are due prior to or after settlement, such costs shall be requested as Project Costs in accordance with, and subject to, Section 2.1(a).

4. With respect to any NoMa Park Site which is not owned or controlled by the District of Columbia, in fee simple, through a transfer of jurisdiction with the federal government, as a public space, right-of-way or otherwise, prior to execution of a purchase agreement for such site, Grantor and Grantee shall determine how title will be taken at settlement. Unless otherwise approved by the Grantor, title to a NoMa Park Site shall be acquired in the name of the District of Columbia. Grantor shall not be required to execute or join into a purchase agreement as a party, however, the Grantor may provide written acknowledgement of the purchase agreement solely to confirm that such acquisition is in accordance with the terms this Agreement. If title to a NoMa Park Site is acquired in the name of the District of Columbia, then simultaneously with settlement, Grantor and Grantee shall enter into a separate right-of-entry agreement, in such form as mutually agreed to by Grantor and Grantee, sufficient to enable Grantee to perform the work contemplated by this Grant Agreement on such site.
5. The NoMa Parks Foundation consists of a single member, the NoMa BID. The NoMa BID membership is comprised of certain owners and tenants of real property located in the NoMa BID area, all as set forth in the Business Improvement District Act of 1996, as amended (D.C. Official Code § 2-1215.01 *et seq.*). Pursuant to the bylaws and policies of the NoMa Parks Foundation and the NoMa BID, as to any contract or transaction in which a member has an interest in as the holder of any amount of its stock or otherwise, may be a party to, or be pecuniarily or otherwise interested in, the member will disclose the relevant facts of the transaction and will recuse herself from voting on such contract or transaction. The foregoing disclosure and recusal obligations apply to any contract or transaction pursuant to this Grant Agreement. The foregoing disclosure and recusal obligations will also apply to each member that owns property adjacent and contiguous to a property that is the subject of a contract or transaction pursuant to this Grant Agreement.

2.1(c) Eligibility Requirements for Reimbursement of Costs with District Funds.

The parties acknowledge and agree that any reimbursement of Grantee's costs, any internal District reimbursement of District operating or capital/paygo funds utilized for the Project Costs, or any future disbursements made by Grantor from District of Columbia tax-exempt bond proceeds shall be conditioned upon the following: (i) the District authorizes the issue of District bonds for this project; (ii) the District has issued bonds for this project, the proceeds of which are available for this purpose; (iii) the property for which the bond proceeds will be applied is owned in fee simple or other method of ownership acceptable to the Internal Revenue Service as qualified for use of District tax-exempt bond proceeds or, in the case of direct costs of acquisition (including purchase price and standard settlement costs) and an impending settlement for the acquisition of the property by the District, the District will acquire fee simple title, or other method of ownership acceptable to the Internal Revenue Service as qualified for use of District tax-exempt bond proceeds, upon payment of such settlement costs; (iv) after acquisition of the property, any and all operating, management, service or other use agreements for the property shall meet all Internal Revenue Service requirements for use of tax-exempt bond proceeds; and (v) the original use of the funds to be reimbursed from tax-exempt bond proceeds is qualified for reimbursement under applicable Internal Revenue Service requirements for District tax-exempt bond proceeds. The determination of Internal Revenue Service requirements shall be made by the District Office of the Chief Financial Officer, with the advice of the District's bond counsel as necessary.

2.2 Records. Grantee shall maintain records, including copies of bills, invoices and receipts as appropriate, to establish the total amount of payments made with respect to the Project Costs and shall make these records available for Grantor's review and copy upon request for a period of no less than five (5) years after the expiration or termination of this Grant Agreement. Grantee shall maintain environmental studies, surveys and appraisals, and final design documents for the NoMa Parks Project which are being paid for out of the NoMa Parks Grant Funds and shall make such materials available for Grantor's review and copy upon request.

ARTICLE III

OPERATIONS AND MAINTENANCE

3.1 Operations and Management of a NoMa Park Site. After design is complete but before operations commence as to a NoMa Park Site, to the extent permitted by applicable laws, the NoMa Parks Foundation, DGS and DPR (or other applicable District of Columbia government agency) will enter into a mutually-satisfactory written agreement addressing maintenance and operations of such NoMa Park Site. The maintenance portion of the agreement shall address the repair, replacements, improvements, and upkeep of each park site. The operations portion of the agreement shall address the parks' management, security, and sales and vending, to the extent permitted by applicable law. While the Parties understand that each NoMa Park Site may not be suitable for sales and vending, the Parties agree and acknowledge that revenues from sales and vending could help toward the costs of operating, maintaining, and programming the NoMa Park Sites and therefor each NoMa Park Site will include sales and vending to the extent permitted by applicable law and to the extent suitable, as determined by

mutual written agreement of the Parties and set forth in the applicable agreement, for such NoMa Park Site. Each NoMa Park Site agreement shall also include terms regarding the programming of the NoMa Park Site, including estimated hours and dates and times of use and tentative proposed programs, use of revenues generated by events, programming, activities, concessions, vendors or other revenue-generating activities at the site which are planned, organized, scheduled, booked, or otherwise programmed by the NoMa Parks Foundation and the allocation of responsibility for maintenance and operating costs. The Parties agree and acknowledge that to the extent revenues are generated by events, programming, activities, concessions, vendors or other revenue-generating activities at any NoMa Park Site planned, organized, scheduled, booked, or otherwise programmed by the NoMa Parks Foundation, the net revenues (meaning the revenues net of the expenses incurred to hold such events, programming, activities, concessions, vendors or other revenue-generating activities) will be committed to operating costs and programming of the NoMa Park Sites. The Parties agree and acknowledge that to the extent the NoMa Parks Foundation is responsible for programming of a NoMa Park Site, the NoMa Parks Foundation shall also be responsible for all of the costs and expenses related to any such programming activities.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

Grantee represents and warrants that:

4.1 Organization and Powers. Grantee is duly organized, validly existing and in good standing under the laws of the District of Columbia. Grantee has the power and authority to own its assets and property, to carry on its activities as now conducted by it, to conduct the activities contemplated by this Grant Agreement, to design and construct the NoMa Parks Project, and to execute, deliver and perform this Grant Agreement.

4.2 Tax Status. Grantee is an organization described in Section 501(c)(3) of the Code and is exempt from federal income tax under Section 501(a) of the Code except with respect to unrelated trade or business income.

4.3 Authorization; Binding Agreement. The execution, delivery and performance by Grantee of this Grant Agreement have been duly authorized by all requisite actions. Upon execution and delivery thereof by Grantee, this Grant Agreement will, assuming enforceability against Grantor, constitute the legal, valid and binding obligation of Grantee, enforceable in accordance with its terms, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency or other similar laws of general application or equitable principles relating to or affecting the enforcement of contracts generally against persons similarly situated.

4.4 Litigation. To Grantee's knowledge, there is no action, suit or proceeding pending or threatened in writing before any court or governmental or administrative body or agency which may reasonably be expected to result in a material adverse change in the activities,

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operations, assets or properties of Grantee, or materially impair the ability of Grantee to perform its obligations under this Grant Agreement. Grantee is not in material default with respect to any judgment, writ, injunction, decree, rule or regulation of any court or any governmental or administrative body or agency.

4.5 No Conflicts. To Grantee's knowledge, the execution, delivery and performance by Grantee of this Grant Agreement, the activities contemplated by this Grant Agreement, and the design and construction of the NoMa Parks Project will not violate any provision of law, any order, rule or regulation of any court or governmental or regulatory body, the bylaws of Grantee or any indenture or deed of trust, agreement or instrument to which Grantee is a party or by which Grantee or its assets or properties are bound, or conflict with, result in a material breach of or constitute (with due notice and beyond any applicable cure period) a material default under any such indenture or deed of trust, agreement or instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the assets or properties of Grantee, except as otherwise permitted, required or contemplated by this Grant Agreement.

4.6 Governmental Consents. To Grantee's actual knowledge, no consent, approval or authorization of, or declaration or filing with, any governmental or administrative body or agency on the part of Grantee is required for the valid execution, delivery and performance by Grantee of this Grant Agreement.

4.7 Intentionally omitted.

4.8 Representations and Warranties. Each submission by Grantee of a draw request or NoMa Parks Grant Funds Disbursement under this Grant Agreement shall constitute Grantee's representation and warranty that Grantee (a) has all necessary power and authority to undertake and complete the work being paid for, and (b) has all necessary power and authority to incur the Project Costs that are the subject of the draw request.

4.9 Authorization; Binding Agreement. The execution, delivery and performance by Grantor of this Grant Agreement and the funding of the NoMa Parks Grant Funds to be made hereunder have been duly authorized by all requisite executive and legislative action. Upon execution and delivery thereof by Grantor and Grantee, this Grant Agreement will constitute a legal, valid and binding obligation of Grantor enforceable in accordance with its terms.

4.10 Consents. No further consent, approval or authorization of, or declaration or filing with, any governmental office, agency or administrative body or agency on the part of Grantor is required for the valid execution, delivery and performance by Grantor of this Grant Agreement.

ARTICLE V

DOCUMENTATION

Grantee Deliveries. On or before the date hereof, Grantee has delivered to Grantor the following:

5.1 Good Standing Certificate. A certificate issued by the Department of Consumer and Regulatory Affairs of the District of Columbia within 45 days of the date of this Grant Agreement, that Grantee is in good standing and is qualified to do business in the District of Columbia.

5.2 [Reserved.]

5.3 Tax Certification. The certification of the Office of Tax and Revenue and Department of Employment Services that no taxes owed by Grantee to the District of Columbia are past due.

ARTICLE VI

COVENANTS OF GRANTEE

Grantee covenants and agrees that so long as this Grant Agreement shall remain in effect unless Grantor shall otherwise consent in writing, Grantee will:

6.1 Use of Proceeds. Use NoMa Parks Grant Funds Disbursements solely and exclusively for the purposes set forth in this Grant Agreement.

6.2 Organization Existence and Compliance. Do or cause to be done all things necessary to preserve, renew and keep in full force and effect its organizational existence, and comply in all material respects with all applicable laws and regulations.

6.3 Payment of Indebtedness and Taxes. Pay all of its indebtedness and obligations promptly and in accordance with the terms thereof, file or cause to be filed all federal, and District of Columbia tax or information returns which are required to be filed by it and pay and discharge or cause to be paid and discharged promptly any taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits, or upon any of its property or upon any part thereof, before the same shall become in default, provided, however, that Grantee shall not be required to pay and discharge or to cause to be paid and discharged any such tax, assessment, governmental charge or levy so long as the validity thereof shall be contested in good faith by appropriate proceedings.

6.4 Performance Measures. Use commercially reasonable efforts, as determined by the Grantor in its reasonable discretion, to satisfy the performance measures provided in Exhibit C, as may be updated by mutual written agreement of the Parties as provided in Section 6.6(c)(iii).

6.5 Compliance with Laws. Comply with all laws, orders, rules or regulations of any court, governmental or regulatory body applicable to Grantee or the NoMa Parks Project.

6.6 Keeping of Books, Reports, Visitation, Inspection, etc.

(a) Keep proper books of record and account, containing complete and accurate entries of all financial and business transactions relating to the business, operations, properties, programs, projects or condition (financial or otherwise) of the NoMa Parks Project and the NoMa Parks Grant Funds in conformity with generally accepted accounting principles and all requirements of any laws, rules or regulations applicable to Grantee.

(b) Permit a representative of Grantor, designated in writing by Grantor, to examine the books and records of Grantee relating to the use of the NoMa Parks Grant Funds and to make copies and take extracts therefrom, and to discuss the condition or prospects of the NoMa Parks Project relating to the use of the NoMa Parks Grant Funds with the officers and independent public accountants of Grantee, all at such reasonable times during normal business hours upon reasonable notice but not more frequently than four times per year.

(c) Submit a written report to Grantor by September 30th of each year during the Term which provides the following

- i. Total NoMa Parks Grant Funds Disbursements received by Grantee pursuant to this Grant Agreement during the previous fiscal year and the cumulative total received under the Grant Agreement;
- ii. The specific services funded by the NoMa Parks Grant Funds during the previous fiscal year and a timeline for delivery of services paid for with NoMa Parks Grant Funds; and
- iii. The status of performance measures and performance outcomes during the previous fiscal year. A schedule of the performance measures and performance outcomes for Fiscal Years 2014, 2015, 2016, 2017, 2018, and 2019 is attached hereto as **Exhibit C**, which the parties shall review at least annually and update by mutual written agreement as appropriate.

6.7 Disclosure. In all relevant written materials, Grantee will acknowledge the role of Grantor.

6.8 Anti-Discrimination. Grantee hereby certifies that (i) Grantee shall comply with the provisions of Title 1, Chapter 25 of the District of Columbia Code (D.C. Code §§ 2-1401.01 et seq., as amended) and (ii) Grantee does not currently and shall not during the Term wholly or partially deny, restrict or abridge or condition the use of, or access to, any of its facilities and services to any person otherwise qualified, for a discriminatory reason, based upon the race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, political affiliation, source of income or physical handicap of any individual.

6.9 CBE Satisfaction. Grantee shall enter into agreements with local, small and disadvantaged business enterprises for such enterprises to provide goods and services for which the NoMa Parks Grant Funds will pay in accordance with the requirements of and in such

percentages as provided in D.C. Official Code Section 2-218.46. Grantee will submit a small business utilization plan to Grantor for Grantor's approval prior to disbursement of NoMa Parks Grant Funds. This plan shall outline Grantee's approach and goals for contracting with local and small businesses to provide goods and services for which the NoMa Parks Grant Funds will pay in accordance with the requirements of and in such percentages as provided in D.C. Official Code Section 2-218.46 and Section 2-218.51.

6.10 Sustainability. For each NoMa Park Site, Grantee shall pursue site-specific performance benchmarks in accordance with the Sustainable Sites Initiative's SITES v2 Rating System unless prohibited by the LEED accreditation system requirements.

ARTICLE VII

TERMINATION OF GRANT AGREEMENT

7.1 Termination or Conclusion. This Grant Agreement shall cease upon the earlier of the following:

(a) the date on which Grantee gives written notice to Grantor that it is unable or unwilling to complete the NoMa Parks Project, in which case Grantee shall return to Grantor any NoMa Parks Grant Funds that have been disbursed by Grantor to Grantee as of the date of termination and which are in excess of Project Costs incurred or paid by Grantee as of the date of termination, if any; or

(b) the date the Grant Agreement is terminated in accordance with Section 7.3(a) below; or

(c) September 30, 2020.

7.2 Termination of Grantor Obligation to Disburse.

If this Grant Agreement is terminated pursuant to Section 7.3(a) prior to the disbursement of all of the NoMa Parks Grant Funds, Grantor shall have no obligation under this Grant Agreement to disburse to Grantee any of the remaining NoMa Parks Grant Funds except for all costs and expenses as have been incurred and/or paid by Grantee up to and as of the termination date (and have not previously been reimbursed to Grantee pursuant to this Grant Agreement and otherwise eligible for reimbursement under this Grant Agreement).

7.3 Breach.

(a) If Grantee shall breach any provision of this Grant Agreement, including any of its representations, warranties or covenants hereunder, Grantor shall provide notice to Grantee and Grantee shall in good faith promptly commence and diligently pursue remedy of such breach, provided that if such breach is not remedied within one hundred and twenty (120) days of notice thereof to Grantee, Grantor may declare this Grant Agreement terminated.

(b) Grantor agrees that in the event it breaches this Grant Agreement, Grantee may initiate a suit in mandamus (or similar action for specific performance) to compel compliance. Grantee agrees that such a suit for mandamus (or similar action for specific performance) shall be its sole remedy for a breach of this Grant Agreement by Grantor.

(c) In the event of a breach of this Grant Agreement by Grantee and Grantor's subsequent termination of this Grant Agreement pursuant to Section 7.3(a), (i) Grantor shall have available to it all applicable remedies under the laws of the District of Columbia, regardless of whether any such remedy is a remedy at law or in equity; and (ii) Grantee shall cooperate with Grantor to have all studies and plans and specifications done by or on behalf of Grantee assigned to Grantor.

ARTICLE VIII

MISCELLANEOUS

8.1 Entire Agreement. This Grant Agreement supersedes all prior agreements or understandings, written or oral, in respect thereof, and shall not be amended or modified in any fashion except by instrument in writing signed by the party charged with such amendment or modification.

8.2 Notices. Any notice or other communication given pursuant hereto by either of the parties hereto to the other party hereto shall be in writing and delivered by hand or mailed by first class mail, postage prepaid, or by a nationally recognized overnight courier, to the parties at their addresses set forth above or to such other address or addresses as hereafter shall be furnished as provided in this Section 7.2 by either of the parties hereto to the other party hereto. Notice shall be deemed given, if by delivery in person or by overnight courier, on the date of delivery (or refusal thereof) and, if by first class mail, three (3) days after deposit with the United States Postal Service. Copies of all notices and other communications sent to Grantee shall also be sent to Sanju Misra, Esq., Misra Law PLLC, 120 11th Street, NE, Washington, D.C. 20002.

8.3 Waiver; Remedies. No delay on the part of either party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of either party hereto of any right, power or privilege hereunder operate as a waiver of any other right, power or privilege hereunder, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege substantially.

8.4 Assignment. Neither Grantor nor Grantee may assign all or any portion of its rights under this Grant Agreement without the prior written consent of the other party hereto provided that Grantee may assign its right to payment hereunder to a third party to secure debt. Provided, further, that Grantee may assign its rights under this Grant Agreement to the NoMa BID.

8.5 Exculpation and Indemnification.

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(a) No officer, director, trustee, employee or agent of Grantee shall have any personal liability hereunder, at law or in equity, for any act or omission of Grantee in connection with any breach of this Grant Agreement or any claim arising in connection herewith, provided, however, no such person shall be released from personal liability to the extent such breach or claim is based upon that person's willful misconduct or fraudulent conduct.

(b) No recourse shall be had by Grantee for any claims based upon this Grant Agreement against Grantor or any such person alleging personal liability unless such claims are based upon the willful misconduct or fraudulent conduct of any elected or appointed official, officer, or employee of Grantor involved in the approving, making, funding, or disbursement of the Grant.

(c) Grantee shall indemnify Grantor and its officers, employees and agents and hold them harmless against losses, claims, damages or liabilities to the extent of and which directly arise out of (i) any breach by Grantee of any obligation, representation or warranty contained in this Grant Agreement or (ii) any fraudulent or intentionally false statement by Grantee in any request for a NoMa Parks Grant Funds Disbursement made hereunder. The parties agree that Grantee may reasonably rely on any written warranty, written representation or certification of a supplier, contractor, subcontractor, or other party providing materials, labor or services to Grantee in connection with the NoMa Parks Project as not being fraudulent or intentionally false.

(d) The provisions of this Section 8.5 shall survive the termination of this Grant Agreement for a period of three (3) years.

(e) Grantee shall cause any vendor who will enter upon District owned property, in connection with its contract with Grantee, to maintain insurance in commercially reasonable coverage and amounts and such policies shall name the District as an additional insured.

8.6 Captions. All Article and Section titles or captions contained in this Grant Agreement are for convenience only and shall not be deemed a part of this Grant Agreement.

8.7 Counterparts. This Grant Agreement may be executed in counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one agreement, and either party hereto may execute this Grant Agreement by signing one or more counterparts thereof.

8.8 Governing Law. This Grant Agreement shall be governed by, interpreted under, construed, and enforced in accordance with the laws of the District of Columbia, without reference to the conflicts of laws provisions thereof. Grantor and Grantee irrevocably submit to the jurisdiction of the courts of the District of Columbia for the purposes of any suit, action, or other proceeding arising out of this Grant Agreement or any transaction contemplated hereby. Grantor and Grantee irrevocably and unconditionally waive any objection to the laying of venue of any action, suit, or proceeding arising out of this Grant Agreement or the transactions contemplated hereby in the courts of the District of Columbia, and hereby further waive and

agree not to plead or claim in any such court that any such action, suit, or proceeding brought in any such court has been brought in an inconvenient forum.

8.9 Anti-Deficiency Act Limitations. Grantee acknowledges that Grantor is not authorized to make any obligation in advance or in the absence of lawfully available appropriations and that Grantor's authority to make such obligations is and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349, 1350, 1351; (ii) D.C. Official Code Section 47-105; (iii) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01 – 355.08, as the foregoing statutes may be amended from time to time; and (iv) Section 446 of the District of Columbia Home Rule Act.

8.10 No Partnership. Nothing contained herein shall be deemed or construed by the Parties hereto or any third party as creating the relationship of principal and agent or of partnership or of joint venture between Grantor and Grantee.

8.11 WAIVER OF JURY TRIAL.

TO THE EXTENT PERMITTED BY LAW, ALL SIGNATORIES HERETO WAIVE THE RIGHT TO TRIAL BY JURY IN CONNECTION WITH ANY LITIGATION ARISING IN RESPECT OF THIS GRANT AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

8.12 Severability. Each provision of this Grant Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Grant Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, then such provision shall be deemed to be replaced by the valid and enforceable provision most substantively similar to such invalid or unenforceable provision.

8.13 Compliance with District-issued Bond Requirements. This Grant Agreement and any agreements for operations and maintenance of NoMa parks, to the extent funded by a District of Columbia bond issuance, must be consistent with the applicable bond and tax laws, rules and regulations relating to management agreements with the District of Columbia.

8.14 Termination of Prior Grant Agreement. Upon full execution of this Agreement, the Grant Agreement dated June 5, 2014 (the "**Prior Grant Agreement**") shall automatically terminate, without further action from the parties, and the parties shall have no further obligations under the Prior Agreement except that the Acquisition Project Costs incurred by Grantee during the Term of the Prior Agreement shall remain payable by the Grantor in accordance with the terms of this Agreement.

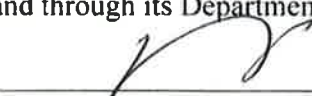
[SIGNATURE PAGE FOLLOWS]

EXECUTION COPY

IN WITNESS WHEREOF, the parties have duly executed this Grant Agreement as of the day and year first above written.

GRANTOR:

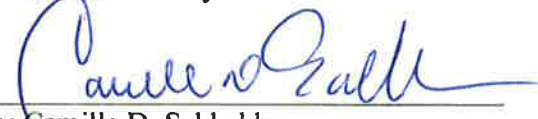
DISTRICT OF COLUMBIA,
By and through its Department of General Services,

By: 
Name: Brian J. Hanlon
Title: Director

Date: 10.15.14

Approved as to Legal Sufficiency:


Office of the Attorney General for the District of Columbia

By: 
Name: Camille D. Sabbakhan
Title: General Counsel

Date: 10/15/14

GRANTEE:

NOMA PARKS FOUNDATION

By: 
Name: Robin E. Jasper
Title: President

Date: Sept. 3, 2014