EXCHANGE AGREEMENT

BY AND BETWEEN

THE UNITED STATES OF AMERICA

ACTING BY AND THROUGH THE U.S. GENERAL SERVICES ADMINISTRATION AND IN CONSULTATION WITH THE U.S. DEPARTMENT OF TRANSPORTATION

AND

MASSACHUSETTS INSTITUTE OF TECHNOLOGY

This document contains privileged or confidential commercial or financial information that may be exempt from disclosure under FOIA.

[redacted] (b)(6)

INDEX

ARTICLE I DEFINITIONS

ARTICLE II EXCHANGE OBLIGATIONS AND CONSIDERATION

1. Completion of the Work
2. Completion of Response Actions for Exchange Parcel
3. Conveyance of Exchange Parcel
4. Value Equalization Amount Payment

ARTICLE III DESIGN AND DELIVERY OF THE NEW FACILITY

1. Collaborative Approach
2. Design Phase Services
3. Professional Liability Insurance for Design Phase Services
4. Construction Services
5. Exchange Partner Insurance
6. Ownership of Design Documents and Construction Documents
7. Change Orders
8. Options
9. Government's Construction Manager
10. Contract Requirements
11. Substantial Completion of the Work
12. Relocation to New Facility
13. Final Completion of the Work
14. Delays in Prosecuting the Work
15. Costs Due to Government for Exchange Partner Delay
16. Equitable Adjustment for Certain Delays
17. Beneficial Occupancy
18. Warranty and Guaranty of the Work
19. Determinations of Cost of the New Facility

ARTICLE IV CONDITION OF PROPERTY

1. "As-Is" Transaction
2. Unknown Environmental Conditions on New Facility Parcel
3. Differing Site Conditions on New Facility Parcel
4. Property Occupants
5. Operations and Maintenance of Exchange Parcel

ARTICLE V LIMITED REPRESENTATIONS

1. Limited Representations of the Exchange Partner
2. Limited Representations of the Government

ARTICLE VI ZONING & INTERIM USE OF EXCHANGE PARCEL

1. Zoning

This document contains privileged or confidential commercial or financial information that may be exempt from disclosure under FOIA.

(b)(6)

2. Access to and Use of Exchange Parcel

ARTICLE VII FINAL ACCEPTANCE AND CLOSING

1. Closing
2. Closing Deliveries
3. Recording
4. Fees and Closing Costs
5. Post-Closing Expenses

ARTICLE VIII SUCCESSORS AND ASSIGNS

ARTICLE IX DISCLOSURES PERTAINING TO EXCHANGE PARCEL

1. Notice Regarding Hazardous Substance Activity
2. Lead-Based Paint Disclosure and Covenants
3. Notice of Presence of Asbestos Containing Material
4. Land Use Restrictions

ARTICLE X DISPUTES, FAILURE TO PERFORM, CASUALTY PRIOR TO CLOSING, AND INDEMNIFICATION

1. Exchange Partner Default and Notice to Cure
2. Bankruptcy
3. Remedies for Exchange Partner Default
4. General Liability
5. Disputes
6. Casualty on Exchange Parcel Prior to Closing
7. Casualty on New Facility Parcel Prior to Closing
8. Indemnification

ARTICLE XI GUARANTY

ARTICLE XII GENERAL PROVISIONS

1. Notices
2. Binding Agreement
3. Anti-Deficiency Act
4. Amendment
5. Governing Law
6. Order of Precedence
7. No Recording
8. Audit
9. Captions
10. Drafts
11. Number and Gender
12. Integration
13. Waiver
14. Severability

This document contains privileged or confidential commercial or financial information that may be exempt from disclosure under FOIA.

(b)(6)

15. Binding Effect; No Third Party Beneficiaries
16. Currency
17. Time
18. Survival
19. Counterparts
20. Construction
21. Non-Discrimination
22. No Member or Delegate of Congress or Resident Commissioner Part of Agreement

EXHIBITS

EXHIBIT A – Legal Description and Plan of Property

EXHIBIT B – Plan of the New Facility Parcel

EXHIBIT C – Statement of Work (with Program of Requirements)

EXHIBIT D – Contract Requirements

EXHIBIT E – Determinations of Cost of the New Facility

EXHIBIT F – Form of Interim Use License Agreement for Exchange Parcel

EXHIBIT G – Form of Deed

EXHIBIT H – Guaranty

This document contains privileged or confidential commercial or financial information that may be exempt from disclosure under FOIA.

(b)(6)

This Exchange Agreement (this "**Agreement**") is entered into this 18th day of January 2017, by and between the UNITED STATES OF AMERICA, acting by and through the U.S. GENERAL SERVICES ADMINISTRATION (the "**Government**") in consultation with the U.S. DEPARTMENT OF TRANSPORTATION, and MASSACHUSETTS INSTITUTE OF TECHNOLOGY, a charitable corporation chartered under the provisions of Chapter 183 of the Acts of 1861 of the General Court of the Commonwealth of Massachusetts on April 10, 1861 (the "**Exchange Partner**").

RECITALS

WHEREAS, the John A. Volpe National Transportation Systems Center (the "**Volpe Center**") occupies approximately fourteen (14) acres of land owned in fee by the Government located at 55 Broadway in Cambridge, Massachusetts (the "**Property**");

WHEREAS, the Government desires to acquire a new federal facility for the Volpe Center (the "**New Facility**") to be constructed by the Exchange Partner on the New Facility Parcel (as such term is defined in Article I below);

WHEREAS, the Government issued a Request for Proposals for the New Facility (the "**RFP**") and the Exchange Partner submitted a proposal in response to the RFP (as such proposal may have been amended and/or supplemented, the "**Proposal**");

WHEREAS, the Exchange Partner desires to design and construct the New Facility on the New Facility Parcel, to satisfy the Value Equalization Amount (as defined in Article I below) due to the Government and to ensure that the Exchange Parcel (as such term is defined in Article I below) is in compliance with Massachusetts General Laws Chapter 21E and the Massachusetts Contingency Plan (310 CMR 40.0000) (collectively, "**Massachusetts Environmental Laws**") prior to the Closing (as such term is defined below);

WHEREAS, in exchange for the design, construction and delivery of the New Facility by the Exchange Partner, the satisfaction of the Value Equalization Amount and the satisfaction of all response actions necessary to comply with the Massachusetts Environmental Laws, all as more particularly described in this Agreement, the Government will agree to convey, and the Exchange Partner will agree to accept, all of the Property except for the New Facility Parcel (the "**Exchange Parcel**");

WHEREAS, the Government relied on the Proposal in making a determination to enter into this Agreement with the Exchange Partner; and

WHEREAS, authority for the Government to enter into this Agreement is found in 40 U.S.C. Section 581(c)(1).

NOW THEREFORE, in consideration of the benefits conferred, the mutual agreements, covenants and conditions contained herein, and the duties and obligations incurred, the Government and the Exchange Partner agree as follows:

This document contains privileged or confidential commercial or financial information that may be exempt from disclosure under FOIA.

(b)(6)

ARTICLE I
DEFINITIONS

Agreement means this Exchange Agreement and all exhibits attached hereto.

Beneficial Occupancy occurs when the Government occupies or otherwise makes use of certain portions of the New Facility for purposes such as installing security and information systems as described in the Statement of Work and as specified in the Construction Documents. Beneficial Occupancy can occur prior to Substantial Completion of Work.

Change Order means a written order issued by the Contracting Officer to the Exchange Partner to make changes to the Work including changes in the specifications (including drawings and designs) or to specific items in the Statement of Work.

Closing means the stage of this Agreement when, among other things, the Value Equalization Amount shall be paid by the Exchange Partner and conveyance documents for the Exchange Parcel shall be delivered to the Exchange Partner.

Contracting Officer means the warranted Government employee with the authority to enter into, administer, amend, and/or terminate this Agreement on behalf of the Government and make related determinations and findings. In the absence of the original contracting officer, another contracting officer with appropriate warrant authority may sign.

Construction Documents means all building plans, specifications, and supporting documents for the Construction Services prepared by the Exchange Partner in accordance with the Statement of Work and accepted by the Government.

Construction Services means that portion of the Work (including all base and exercised option items) consisting of all labor; materials; furniture, fixtures and equipment; tools; water; heat; utilities; transportation; and other facilities and services such as commissioning services and third-party inspection services necessary to construct and deliver the New Facility in accordance with this Agreement.

Deed means the instrument that will be in the same form attached hereto as Exhibit G and will convey fee simple title from the Government to the Exchange Partner for the Exchange Parcel.

Delivery of the New Facility means Construction Services and Relocation Services, including, but not limited to, project management services, partnering services, value engineering services, and commissioning services, regardless of when such services are performed.

Design Documents means all the submissions, deliverables, and documents for the Design Phase Services prepared by the Exchange Partner in accordance with the Statement of Work and accepted by the Government.

Design Phase Services means that portion of the Work consisting of all pre-construction services, all architectural and engineering design and construction services, constructability reviews and other related services necessary to prepare the Construction Documents, to cause the Government to issue any Notice to Proceed – Construction, and as defined in the Statement of Work pursuant to the applicable provisions hereof. The Design Phase Services will continue through the Delivery of the New Facility.

This document contains privileged or confidential commercial or financial information that may be exempt from disclosure under FOIA.

(b)(6)

Effective Date means the date this Agreement is fully executed.

Equitable Adjustment means a reasonable adjustment issued, when warranted, by the Government to the Exchange Partner in accordance with this Agreement allowing for: an extension of the Required Completion Date; an adjustment to the firm-fixed-price for the Design Phase Services or the Target Cost for the Delivery of the New Facility (including the Final Target Cost), as defined and determined in accordance with Exhibit E; and/or an amendment to the Interim Use License allowing for an increase in access and use of the Exchange Parcel.

Exchange Parcel means all of the Property except for the New Facility Parcel.

Final Completion of the Work means the stage when the Government determines the Work is fully completed in accordance with the Statement of Work including without limitation, satisfaction of the Punch List and the Relocation Services.

Government's Construction Manager is the construction manager the Government shall have the right to retain through a separate Government funded contract and is further described in Article III below.

Guaranty means the instrument attached hereto as Exhibit H.

Initial Target Cost is the amount set forth in Exhibit E.

Interim Use License is a license that, if entered into between the Exchange Partner and the Government, shall grant limited rights of access and use of the Exchange Parcel by the Exchange Partner.

Massachusetts Environmental Laws mean Massachusetts General Laws Chapter 21E and the Massachusetts Contingency Plan (310 CMR 40.0000).

New Facility means the new federal building and site to be designed for the Government and constructed on the New Facility Parcel.

New Facility Parcel means the portion of the Property that the New Facility will be constructed upon and will be retained by the Government, as shown on the Plan of the New Facility Parcel attached hereto as Exhibit B. The Parties may mutually and reasonably agree to alter the size and location of the New Facility Parcel during the Design Phase Services portion of the Work.

Notice of Final Completion and Acceptance of the Work means a written notice sent by the Government to the Exchange Partner stating that the Exchange Partner has completed and the Government has accepted the Work.

Notice to Proceed – Construction means the notice issued by the Contracting Officer to the Exchange Partner to proceed with the Construction Services. The Notice to Proceed – Construction is more particularly described in Article III below.

Parties mean the Government and the Exchange Partner.

Program of Requirements means the document titled "John A. Volpe National Transportation Systems Center Program of Requirements," which is attached to the Statement of Work.

This document contains privileged or confidential commercial or financial information that may be exempt from disclosure under FOIA.

(b)(6)

Property means the approximately fourteen (14) acres of land at 55 Broadway in Cambridge, Massachusetts. The Property is more particularly described in the legal description and plan attached hereto as Exhibit A. The Property includes both the New Facility Parcel and the Exchange Parcel.

Proposal means the proposal the Exchange Partner submitted in response to the Request for Proposals for the Volpe Center, as such proposal may have been amended and supplemented. The Proposal is hereby incorporated into this Agreement.

Proposed Gross Offer is Seven Hundred and Fifty Million Dollars ($750,000,000.00) [redacted] (b)(6)

Punch List is a comprehensive list of incomplete or defective work within the Work.

RFP means the Request for Proposals issued by the Government and titled "Exchange Transaction for the U.S. Department of Transportation Volpe National Transportation Systems Center Cambridge, MA."
Registry means the Middlesex South Registry of Deeds.

Relocation Services means that portion of the Work required to relocate the occupants and certain personal property of the Volpe Center to the New Facility in accordance with the Statement of Work.

Required Completion Date shall be no later than [redacted] calendar days from issuance of the final Notice to Proceed – Construction to Final Completion of the Work provided that such term shall include any extension of such date made in accordance with this Agreement. (b)(4)

Statement of Work means the document titled "Statement of Work," including the Program of Requirements and is attached hereto as Exhibit C and incorporated herein by reference.

Substantial Completion of the Work means the stage in the progress of the Work when the New Facility is complete in accordance with the Statement of Work except only for completion of minor items which do not impair the Government's ability to occupy and fully utilize the New Facility for its intended purpose. The required fixtures, furnishings and equipment must be complete and the systems for information technology, security and fire and life safety, as required by the Statement of Work, must be fully operational at this stage in the progress of the Work.

Value Equalization Amount is the Proposed Gross Offer less the sum of the firm-fixed-price of the Design Phase Services and the Final Settlement (as described in Exhibit E) of the Delivery of the New Facility. The Value Equalization Amount shall not be a negative value; therefore, the Government and Exchange Partner agree that at no point in this Agreement shall the maximum total price of the Design Phase Services and the Delivery of the New Facility be allowed to exceed the Proposed Gross Offer.

Volpe Center means the John A. Volpe National Transportation Systems Center occupying the Property.

Work means the Design Phase Services and Delivery of the New Facility.

This document contains privileged or confidential commercial or financial information that may be exempt from disclosure under FOIA.

[redacted] (b)(6)

ARTICLE II
EXCHANGE OBLIGATIONS AND CONSIDERATION

1. Completion of the Work. The Exchange Partner, at its sole cost and expense, shall design, construct, and deliver the New Facility on the New Facility Parcel in accordance with the Statement of Work, and all provisions of this Agreement. Completion of the Work is more particularly described in Article III below.

2. Completion of Response Actions for Exchange Parcel. The Exchange Partner, at its sole cost and expense, shall identify and implement all response actions required for the Exchange Parcel to be in compliance with the Massachusetts Environmental Laws. The Exchange Partner and the Government agree that compliance with the Massachusetts Environmental Laws can be achieved by (x) reporting to the Massachusetts Department of Environmental Protection (the "**MADEP**") any conditions at the Exchange Parcel identified by the Government or the Exchange Partner before the Closing that must be reported to the MADEP pursuant to the terms of Subpart C of the Massachusetts Contingency Plan, 310 CMR 40.0300, and (y) complying with any response action deadlines set forth in Subpart E of the Massachusetts Contingency Plan, 310 CMR 40.0500 concerning both such identified conditions and the three other conditions reported to the MADEP by the Government during 2016.

3. Conveyance of Exchange Parcel After the Exchange Partner's receipt of the Notice of Final Completion and Acceptance of the Work, confirmation from the appropriate Massachusetts regulatory authorities of the Exchange Partner's compliance with the Massachusetts Environmental Laws for the Exchange Parcel (in whatever form is customary for the MADEP to confirm the same, including, without limitation, making available on MADEP's website electronic filings made pursuant to the Massachusetts Contingency Plan, 310 CMR 40.0000) and the full payment of the Value Equalization Amount, the Government shall convey all of the Government's right, title and interest in and to the Exchange Parcel to the Exchange Partner in accordance with Article VII below. The Exchange Parcel shall be conveyed with the buildings, structures, fixtures and improvements located thereon including, without limitation, all personal property remaining on the Exchange Parcel on the date of the Closing. The Government acknowledges that if Exchange Partner delivers evidence of Exchange Partner's compliance with Massachusetts Environmental Laws with respect to the Exchange Parcel as provided for in this Article II, then all remedial action necessary to protect human health and the environment shall have been taken with respect to the Exchange Parcel and, therefore, the Government shall be able to make the representation set forth in the first sentence of Section IX.1(a) below and deliver the CERCLA Covenant identified therein and the Deed to the Exchange Partner subject only to satisfaction of the other preconditions to delivery of the Deed set forth in this Section II.3.

4. Value Equalization Amount Payment. The Value Equalization Amount shall be paid to the Government on the Closing in the form of a certified or cashiers check made payable to the United States of America or by federal wire transfer of immediately available funds. Notwithstanding the foregoing sentence, the Parties may mutually agree that all or any portion of the Value Equalization Amount may be in the form of services ancillary to the Work.

This document contains privileged or confidential commercial or financial information that may be exempt from disclosure under FOIA.

(b)(6)

ARTICLE III
DESIGN AND DELIVERY OF NEW FACILITY

1. Collaborative Approach. The Government and the Exchange Partner shall work together in a collaborative manner during all phases of the Work. The appropriate representatives of the Government and the Exchange Partner will meet on a periodic basis as further described in the Statement of Work in order to maintain open communication among the Parties. The time periods and deadlines provided in the Statement of Work are provided as outside dates and deadlines; however, the Parties agree to use commercially reasonable efforts to submit, review, and respond to information expeditiously, with the intent that stated time frames can be shortened where practicable without imposing additional cost or liability on any of the Parties.

2. Design Phase Services. The Exchange Partner shall perform all Design Phase Services in accordance with the Statement of Work. The Exchange Partner shall commence performance of the Design Phase Services within twenty-one (21) calendar days after the Effective Date. The Government has sole discretion to accept or reject all or part of any proposal by the Exchange Partner related to design. The Exchange Partner shall bring to the Government's attention all instances that it discovers or is made aware of any omission of information in the Statement of Work that affects the Exchange Partner's ability to perform the Design Phase Services and/or accurately estimate the cost of Delivery of the New Facility.

3. Professional Liability Insurance for Design Phase Services. The Exchange Partner shall require the architecture and engineering firm obtained to assist with the Design Phase Services to carry professional liability insurance coverage in the amount of $5,000,000 per occurrence covering any damages caused by an error, omission or any negligent acts. Certificates of Insurance for such insurance shall be delivered to the Government within seven (7) business days after the Effective Date.

4. Construction Services. The Exchange Partner shall perform all Construction Services in accordance with the Statement of Work. The Exchange Partner shall commence Construction Services within fifteen (15) calendar days following the Contracting Officer's issuance of any Notice to Proceed – Construction, which shall not be unreasonably withheld, and shall diligently perform the Work in a good and workmanlike manner, through the Government's issuance of the Notice of Final Completion and Acceptance of the Work. The Notice to Proceed – Construction shall be issued by the Government promptly following Government acceptance of the Construction Documents, agreement on the Final Target Cost and upon receipt of evidence of compliance with the bonding and insurance requirements set forth in Exhibit D. Notwithstanding the foregoing, the Parties acknowledge that the Work may be phased to accommodate concurrent design and construction, where appropriate, and the Parties will work to develop a phasing plan. If the Government, upon consultation with the Exchange Partner, determines that a portion of the Work may commence prior to completion of 100% Construction Documents, the Government may issue a partial or limited Notice to Proceed – Construction to allow the Exchange Partner to commence the portion of the Work designated in such partial or limited Notice to Proceed – Construction.

5. Exchange Partner Insurance. As a condition of this Agreement, the Exchange Partner shall provide and maintain, at its sole cost and expense, throughout the duration of this Agreement, the following insurance coverage:

This document contains privileged or confidential commercial or financial information that may be exempt from disclosure under FOIA.

[redacted] (b)(6)

(a) Workers' compensation insurance in the amount required by Massachusetts;

(b) Employers' liability coverage of at least $2,000,000. If occupational diseases are not covered by workers' compensation insurance, employers' liability coverage shall include occupational diseases;

(c) Broad form comprehensive commercial general liability insurance in the amount of at least $5,000,000 per occurrence. Such insurance shall include, but not be limited to, contractual liability, bodily injury and property damage;

(d) Excess umbrella liability insurance in the amount of at least $10,000,000; and

(e) Comprehensive automobile liability covering the operation of all automobiles used in connection with performing the applicable contract in the amount of at least $1,000,000 per person and $2,500,000 per occurrence for bodily injury and $1,000,000 per occurrence for property damage.

Certificates of insurance for the above-described insurance coverage shall be delivered to the Government on the Effective Date and shall name the "United States of America" as an additional insured. Exchange Partner shall furnish written notice to the Contracting Officer in writing thirty (30) calendar days in advance of the effective date of any reduction to or cancellation of the policy or as soon as Exchange Partner receives written notice of the same.

The insurance carrier is required to waive all subrogation rights against the Government.

6. Ownership of Design Documents and Construction Documents. The Design Documents and the Construction Documents, and all copies and any portions thereof, furnished to, or provided by the Exchange Partner shall become the property of the Government.

7. Change Orders.

(a) Only the Contracting Officer acting within the scope of their authority is empowered to execute Change Orders on behalf of the Government. Other Government personnel shall not—

(1) Execute Change Orders to the Work or otherwise amend this Agreement;

(2) Act in such a manner as to cause the Exchange Partner to believe that they have authority to bind the Government; or

(3) Direct or encourage the Exchange Partner to perform work that should be the subject of a Change Order.

The Contracting Officer shall not execute a Change Order that causes or will cause an increase in the maximum total price of the Design Phase Services and the Delivery of the New Facility to exceed the Proposed Gross Offer.

Change Orders, including changes that could be issued unilaterally, shall be negotiated before their issuance if this can be done without adversely affecting the interest of the Parties. If a cost

This document contains privileged or confidential commercial or financial information that may be exempt from disclosure under FOIA.

(b)(6)

increase could result from a Change Order and time does not permit negotiation of a price, at least a ceiling price shall be negotiated unless impractical.

(b) The Contracting Officer may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a Change Order, make unilateral changes in the Work within the general scope of the Agreement, including changes—

(1) In the specifications (including drawings and designs);

(2) In the method or manner of performance of the Work;

(3) In the Government-furnished property or services; or

(4) Directing acceleration in the performance of the Work.

Except as provided in this Section, no order, statement, or conduct of the Contracting Officer shall be treated as a change under this Section or entitle the Exchange Partner to an Equitable Adjustment.

(c) Except for changes identified as such in writing and signed by the Contracting Officer, the Exchange Partner shall notify the Contracting Officer in writing promptly, within fifteen (15) calendar days from the date that the Exchange Partner identifies any Government conduct (including actions, inactions, and written or oral communications) that the Exchange Partner regards as a change in the terms and conditions of the Agreement. On the basis of the most accurate information available to the Exchange Partner, the notice shall state—

(1) The date, circumstances, and source of the conduct regarded as a change;

(2) The name, function, and activity of each Government individual and Exchange Partner official or employee involved in or knowledgeable about such conduct;

(3) The identification of any documents and the substance of any oral communication involved in such conduct;

(4) In the instance of alleged acceleration of scheduled performance or delivery, the basis upon which it arose;

(5) The particular elements of performance for which the Exchange Partner may seek an Equitable Adjustment under this clause, including—

(i) What labor or materials or both have been or may be added, deleted, or wasted by the alleged change;
(ii) To the extent practicable, what delay and disruption in the manner and sequence of performance and effect on continued performance have been or may be caused by the alleged change;
(iii) What adjustments to price, schedule, and other provisions affected by the alleged change are estimated; and
(iv) The Exchange Partner's estimate of the time by which the Government must respond to the Exchange Partner's notice to minimize cost, delay or disruption of performance.

This document contains privileged or confidential commercial or financial information that may be exempt from disclosure under FOIA.

(b)(6)

(d) If any change under paragraph (b) increases or decreases the cost of, or time required for completion of the Work, whether or not changed by any such order, the Contracting Officer shall make an Equitable Adjustment and shall amend the Agreement in writing. However, no Equitable Adjustment for any change under paragraph (c) of this clause shall be made for any costs incurred more than twenty (20) calendar days before the Exchange Partner gives written notice as required.

(e) The Exchange Partner must assert its right to an Equitable Adjustment under this Section within thirty (30) calendar days after: i) receipt of a written Change Order under paragraph (b) of this clause or ii) the furnishing of a written notice under paragraph (c) of this clause, by submitting to the Contracting Officer a written statement describing the general nature and amount of the proposal for adjustment, unless this period is extended by the Contracting Officer. The statement of proposal for adjustment may be included in the notice under paragraph (c) of this clause. The Exchange Partner shall include in its proposal for adjustment an affirmation that:

(1) It has satisfied itself that the changes as described in the specifications and construction drawings is constructible using commercially practicable means and methods;
(2) It has satisfied itself that the requirement has been sufficiently described to enable it to estimate the change in cost or time with reasonable accuracy;
(3) It has disclosed to the Government all of its actual knowledge relating to omissions in the Statement of Work that may affect the Costs of Delivery of the New Facility;
(4) It acknowledges that the cost and time established for completion of the New Facility shall not be adjusted on account of cost or time attributable to discovered omissions in the Statement of Work required to be disclosed under this Clause; and
(5) All proposed costs are submitted in accordance with FAR Part 31.

It is the Exchange Partner's duty to include in proposals for Equitable Adjustment or other consideration all compensation to which it may be entitled, including cost and time. Unless otherwise explicitly stated in an amendment to the Agreement providing for such an adjustment, adjustments to the cost or time agreed upon therein shall be deemed to provide all adjustment to which the Exchange Partner is entitled, and shall constitute final settlement of the Exchange Partner's entitlement to adjustment on account of the change or other condition giving rise to the modification.

No proposal by the Exchange Partner for an Equitable Adjustment shall be allowed at any time on or after the Closing.

(f) Following submission of the notice required by paragraph (c) of this Section, the Exchange Partner shall diligently continue performance of the Work to the maximum extent possible. All directions, communications, interpretations, orders and similar actions of the Contracting Officer shall be reduced to writing promptly and copies furnished to the Exchange Partner and to the Contracting Officer. The Contracting Officer shall promptly countermand any action which exceeds the authority of the Contracting Officer. Nothing in this Section shall excuse the Exchange Partner from proceeding with the Work as changed, except when a Change Order or Equitable Adjustment would risk causing the maximum total value of the Design Phase Services and the Delivery of the New Facility to exceed the Proposed Gross Offer, in which case the Exchange Partner shall promptly alert the Contracting Officer.

This document contains privileged or confidential commercial or financial information that may be exempt from disclosure under FOIA.

(b)(6)

(g) The Contracting Officer shall promptly, within fifteen (15) calendar days after receipt of notice, respond to the notice in writing. In responding, the Contracting Officer shall either –

(1) Confirm that the conduct of which the Exchange Partner gave notice constitutes a change and when necessary direct the mode of further performance;

(2) Countermand any communication regarded as a change;

(3) Deny that the conduct of which the Exchange Partner gave notice constitutes a change and when necessary direct the mode of further performance; or

(4) In the event the Exchange Partner's notice information is inadequate to make a decision under subparagraphs (g)(i), (ii), or (iii) of this clause, advise the Exchange Partner what additional information is required, and establish the date by which it should be furnished and the date thereafter by which the Government will respond.

(h) If the Exchange Partner's proposal for adjustment includes the cost of property made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.

(i) The Equitable Adjustment shall not include increased costs or time extensions for delay resulting from the Exchange Partner's failure to provide notice or to continue performance as provided, respectively, in paragraphs (b) and (c) of this clause.

(j) Failure to agree to any Equitable Adjustment shall be a dispute under Article X, Section 5: Disputes.

8. Options. Upon execution of this Agreement the Government hereby exercises all Options identified in the Statement of Work.

9. Government's Construction Manager. The Government shall have the right to retain the Government's Construction Manager to act as an adviser to the Government on construction management matters until the Notice of Final Completion and Acceptance of the Work is issued by the Government. The Government's Construction Manager shall have the right to conduct reviews and inspections of the Work provided, however, that the Government's Construction Manager shall have no authority to bind the Government and/or request any changes to the Work. Any review or inspection by the Government's Construction Manager shall not be construed as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement. The cost of the Government's Construction Manager shall be borne solely by the Government.

10. Contract Requirements. Any and all entities performing services with respect to any part of the Work shall be subject to the terms and conditions set forth in Exhibit D and such terms and conditions shall be contained in any contract and subcontract entered into for purposes of performing the Work. In the event the Exchange Partner is the entity performing the Work or any portion thereof, the Exchange Partner shall comply with and be subject to all terms and conditions set forth in Exhibit D.

11. Substantial Completion of the Work. The Exchange Partner shall give written notice to the Contracting Officer at least ten (10) calendar days before the date the Work will be completed and

This document contains privileged or confidential commercial or financial information that may be exempt from disclosure under FOIA.

(b)(6)

ready for inspection and tests to determine if the Exchange Partner has achieved Substantial Completion of the Work. Inspection and tests will begin within ten (10) calendar days after the date specified in the Exchange Partner's notice unless the Government determines that the Work is not ready for inspection and so informs the Exchange Partner. When the Government agrees the Work is substantially complete, it will prepare and furnish to the Exchange Partner the Punch List, which shall be completed by the Exchange Partner prior to Final Completion of the Work. Failure to include an item on the Punch List does not alter the responsibility of the Exchange Partner to complete all Work in accordance with the Statement of Work.

12. Relocation to New Facility. The Exchange Partner shall perform and coordinate all work to complete the Relocation Services, as set forth in the Statement of Work. The Government shall cooperate with the Exchange Partner with respect to the Relocation Services following Substantial Completion of the Work.

13. Final Completion of the Work. The Exchange Partner shall give written notice to the Contracting Officer at least ten (10) calendar days before the date the Work will be completed and ready for final inspection and tests to determine if the Exchange Partner has achieved Final Completion of the Work. Final inspection and tests will begin within ten (10) calendar days after the date specified in the Exchange Partner's notice unless the Government determines that the Work is not ready for inspection and so informs the Exchange Partner. When the Government agrees there is Final Completion of the Work, the Government shall promptly deliver to the Exchange Partner the Notice of Final Completion and Acceptance of the Work. The Exchange Partner shall proceed expeditiously with the Work and shall achieve Final Completion of the Work by the Required Completion Date. The Exchange Partner understands that it bears the risk of delays and that except and only to the extent described in Section 16 of this Article, the Exchange Partner shall complete the Work by the Required Completion Date. Notwithstanding the foregoing, the Parties may mutually agree to extend the Required Completion Date.

14. Delays in Prosecuting the Work. If the Exchange Partner refuses or fails to prosecute the Work, or any separable part, with the diligence that will ensure its completion by the Required Completion Date (including any extension) including, without limitation, a failure to work in accordance with any schedule produced to comply with the Statement of Work, or fails to complete the Work or any portion thereof, the Government may provide the Exchange Partner with written notice of the delay. If the delay continues for thirty (30) calendar days following delivery of written notice from the Government or if an appropriate remedy for the delay has not been proposed within such thirty (30) day period and thereafter diligently completed in accordance with the proposed remedy, provided such remedy is completed by the Required Completion Date, the delay shall be an event of default by the Exchange Partner and the Government may seek damages, exercise any of its rights pursuant to this Agreement and/or terminate this Agreement. The rights and remedies of the Government in this Section are in addition to any other rights and remedies provided by law.

15. Costs Due to Government for Exchange Partner Delay. The Exchange Partner shall pay to the Government all actual costs incurred by the Government as a direct result of a delay by the Exchange Partner beyond the Required Completion Date. This amount shall be added to the Gross Proposed Offer and become a part of the Value Equalization Amount at the Closing.

16. Equitable Adjustment for Certain Delays. The Exchange Partner shall be entitled to an Equitable Adjustment in the form of an extension to the Required Completion Date for the following delays:

This document contains privileged or confidential commercial or financial information that may be exempt from disclosure under FOIA.

[redacted] (b)(6)

(a) A delay in completing the Work arising from unforeseeable causes beyond the control and without the fault or negligence of the Exchange Partner, including but not limited to acts of God, war, strikes or labor disputes or embargoes, or any other force majeure event; and

(b) A delay caused by the Government that impacts the Required Completion Date.

17. Beneficial Occupancy. The Parties agree that the Government may, in accordance with the Statement of Work, occupy and use space in the New Facility for Beneficial Occupancy prior to Final Completion of the Work provided that the Government shall not interfere with the performance of the Work and shall provide the Exchange Partner with written notice at least ten (10) calendar days prior to such occupancy or use. The Government shall make an inspection of the portion of the New Facility subject to Beneficial Occupancy and prepare a list of items to be completed prior to Final Completion of the Work. The Government shall be responsible for any damage caused by it to space that the Government occupies during any period of Beneficial Occupancy.

18. Warranty and Guaranty of the Work. The Exchange Partner warrants to the Government that all labor, materials, equipment and furnishings used in, or incorporated into the Work shall be of a good quality and free from defects, new (unless otherwise permitted by the Statement of Work), and free of liens and claims. The Exchange Partner further guarantees that the Work shall remain free of defects in workmanship and materials for a period of two (2) years from the date of the Notice of Final Completion and Acceptance of the Work provided that such two-year period shall run from the date of satisfaction of the Punch List and not from completion of Relocation Services. The Exchange Partner, at its sole cost and expense, shall repair or replace any and all portions of the Work that may be defective in workmanship or materials within such 2-year period.

19. Determinations of Cost of the New Facility. The Parties acknowledge that the amount of the Initial Target Cost has been mutually agreed upon between the Parties. All other determinations of costs for the Work and any shared savings shall be calculated in accordance with the provisions set forth in Exhibit E and Federal Acquisition Regulation (FAR) Part 31.

ARTICLE IV
CONDITION OF PROPERTY

1. "As-Is" Transaction. The Exchange Parcel will be conveyed in an "as is, where is" condition, without any representation or warranty whatsoever by the Government or its agents concerning the state of repair or condition of the Exchange Parcel, except as may otherwise be described within this Agreement. In addition, the Government makes no representation or warranty whatsoever concerning the condition of the New Facility Parcel.

2. Unknown Environmental Conditions on New Facility Parcel. In the event the Exchange Partner becomes aware of unforeseen or unknown environmental conditions on the New Facility Parcel that differ materially from information provided to the Exchange Partner as of the Effective Date and that increase the Exchange Partner's cost of, or time required for, performing any part of the Work under this Agreement, the Exchange Partner shall promptly provide written notice to the Contracting Officer. The Exchange Partner and the Government shall thereafter mutually agree on the manner of addressing such environmental condition and the Contracting Officer may make an Equitable Adjustment. The Exchange Partner has entered into this Agreement fully understanding this risk, however, and except as described in the preceding sentence or as otherwise set forth in this

This document contains privileged or confidential commercial or financial information that may be exempt from disclosure under FOIA.

[redacted] (b)(6)

Agreement, any unforeseen or unknown conditions and events shall not excuse the Exchange Partner from its obligations to perform the Work.

3. Differing Site Conditions on New Facility Parcel.

   (a) The Exchange Partner shall promptly, before proceeding with the Work and further disturbing the conditions, give a written notice to the Contracting Officer of subsurface or latent physical conditions on the New Facility Parcel of an unusual nature, which differ materially from information provided in this Agreement. No request by the Exchange Partner for an Equitable Adjustment for differing site conditions shall be allowed if the particular conditions are further disturbed or if the Exchange Partner does not provide written notice to the Contracting Officer.

   (b) The Contracting Officer shall investigate the site conditions promptly after receiving the notice. If the Contracting Officer agrees the conditions do materially so differ and cause an increase in the Exchange Partner's cost of, or the time required for, performing any part of the Work under this Agreement, an Equitable Adjustment shall be made.

   (c) No request by the Exchange Partner for an Equitable Adjustment for differing site conditions shall be allowed if made after the Closing.

4. Property Occupants. The buildings and structures situated on the Property as of Effective Date will be occupied and utilized by the Volpe Center until the completion of Relocation Services, except to the extent the Exchange Partner is granted early access to the Exchange Parcel pursuant to the applicable provisions of this Agreement. The Government agrees that it shall vacate all portions of the Exchange Parcel by the Closing.

5. Operations and Maintenance of Exchange Parcel. Notwithstanding anything to the contrary in this Agreement, the Government will continue to operate and maintain the Exchange Parcel in a manner that is consistent with the level of current operation and maintenance of the Property until the Closing and the Exchange Partner will not be responsible for any environmental matters related to such continuing operation and maintenance including without limitation (a) any existing or newly identified indoor air quality issues (such as the current Massachusetts Contingency Plan site associated with the Building 4 daycare center) or (b) any response actions associated with the current Massachusetts Contingency Plan sites referenced under Release Tracking Number ("RTN") 3-33952 or RTN3-33954. During the term of the Agreement the Government shall not record in the land records any document with respect to the Exchange Parcel without notice to the Exchange Partner, and the Government shall not record any Notice of Activity and Use Limitation with respect to the Exchange Parcel without the written consent of the Exchange Partner.

ARTICLE V
LIMITED REPRESENTATIONS

1. Limited Representations of the Exchange Partner. The Exchange Partner represents that it is a validly existing entity and in good standing in the Commonwealth of Massachusetts. The Exchange Partner further represents that it has full right, power and authority to execute and deliver this Agreement and to perform the covenants and obligations described herein. The individuals signing this Agreement and all other documents executed in connection with the covenants and obligations described herein shall be duly authorized to sign on the Exchange Partner's behalf and bind the Exchange Partner

This document contains privileged or confidential commercial or financial information that may be exempt from disclosure under FOIA.

[redacted] (b)(6)

thereto. This Agreement and all other executed documents shall be binding upon and enforceable against the Exchange Partner in accordance with their terms. The Exchange Partner represents that it has not entered into any agreement with a third party that may result in a valid claim against the Government for a finder's fee, brokerage commission or other like payment with respect to this Agreement.

2. Limited Representations of the Government. The Government has the full right, power and authority to execute and deliver this Agreement and perform the obligations described herein.

ARTICLE VI
ZONING
& INTERIM USE OF EXCHANGE PARCEL

1. Zoning. Verification of the present zoning on the Exchange Parcel and permitted uses thereunder shall be the responsibility of the Exchange Partner, and the Government makes no representation in regard thereto. The Government agrees to reasonably cooperate with the Exchange Partner's efforts to obtain State and local permits and approvals associated with the future development of the Exchange Parcel, including, without limitation, a modification to the zoning applicable to the land containing the Exchange Parcel and the New Facility Parcel, provided that the Government shall not be obligated to expend any out-of-pocket expense or be subject to liability in connection with the Exchange Partner's efforts described herein. Notwithstanding the foregoing, the Exchange Partner's obligation to meet the terms and conditions of the Agreement shall not be delayed as a result of the Exchange Partner's efforts to obtain such approvals for the future development of the Exchange Parcel. The Parties will seek to enter into an agreement with the City of Cambridge to provide the Exchange Partner with the authority to execute applications for rezoning, permitting and approvals and other related documentation.

2. Access to and Use of Exchange Parcel. In the event the Exchange Partner desires to use portions of the Exchange Parcel for purposes other than completion of the Work, during any period of time prior to the Closing, the Exchange Partner must provide a written request to the Contracting Officer detailing its desired use. The Government shall have the right in its sole discretion to grant or deny such written request. If the Government grants such request, the Contracting Officer shall issue an Interim Use License, which shall be similar to the document attached hereto as Exhibit F. Notwithstanding the foregoing, the Government hereby agrees that the Exchange Partner may perform additional subsurface due diligence explorations at the Exchange Parcel, and the Government shall issue an Interim Use License to Exchange Partner to conduct such explorations; provided, however, it is understood that the Government will not consider any request or permit any use that contemplates the storage or release of any hazardous substance or the use of any portion of the Exchange Parcel that interferes with any use or operation of the Volpe Center without providing acceptable mitigation. Prior to the issuance of any Interim Use License, the Exchange Partner shall, at its sole cost and expense, obtain and carry public liability insurance coverage for third-party bodily injury liability with limits of liability for bodily injury and third-party property damage liability for the entire term of the Interim Use License as specified in said license. Pursuant to the obligations of the Exchange Partner described in Section 2 of Article II and notwithstanding anything to the contrary within this Section 2 of Article VI, the Government will provide appropriate access to the Exchange Parcel for purposes of identification and implementation of response actions required for the Exchange Parcel to be in compliance with the Massachusetts Environmental Laws.

This document contains privileged or confidential commercial or financial information that may be exempt from disclosure under FOIA.

[redacted] (b)(6)

ARTICLE VII
CLOSING

1. Closing. The Closing will be scheduled at a mutually agreed upon place and date no later than thirty (30) calendar days following the later of (a) Notice of Final Completion and Acceptance of the Work and (b) confirmation from the appropriate Massachusetts regulatory authorities of the Exchange Partner's compliance with the Massachusetts Environmental Laws for the Exchange Parcel (in whatever form is customary for the MADEP to confirm the same, including, without limitation, making available on MADEP's website electronic filings made pursuant to the Massachusetts Contingency Plan, 310 CMR 40.0000), unless an earlier date is agreed upon by the Parties. In the event no such date is agreed upon in writing, the date for the Closing shall be on the thirtieth (30th) day, unless such thirtieth (30th) day is a weekend day or federal holiday, in which case, such date shall be the day after such weekend day or federal holiday.

2. Closing Deliveries. On the Closing:

   (a) Subject to any portion of the Value Equalization Amount that is to be satisfied in the form of services, as described in Section 3 of Article II (which shall be confirmed in a separate agreement), the Exchange Partner shall pay to the Government the Value Equalization Amount as described in this Agreement;

   (b) The Government will deliver to the Exchange Partner the executed and acknowledged Deed;

   (c) The Government shall deliver any mutually agreed upon grant or reservation of easements and, if applicable, the Government and the Exchange Partner shall each deliver any mutually agreed upon cross-easement agreement(s);

   (d) Any necessary apportionments shall be made between the Parties and calculated as of the close of business on the day prior to the date of the Closing; and

   (e) The Government shall deliver an owner's/seller's affidavit in form reasonably acceptable to the Government and the Exchange Partner's title company.

3. Recording. The Exchange Partner or its agent shall promptly record the Deed and any easements at the Registry following the Closing.

4. Fees and Closing Costs. The recordation and filing of conveyance documents with the Registry shall be paid for and arranged by the Exchange Partner. A copy of the recorded conveyance documents shall be provided to the Government. The Exchange Partner shall pay any deed excise taxes imposed by the Commonwealth of Massachusetts. The Exchange Partner shall also be solely responsible for all title insurance premiums and charges, title evidence charges, survey charges, and all fees, charges and expenses of any kind whatsoever arising out of or related to any due diligence activities undertaken by the Exchange Partner. The Exchange Partner shall pay all fees and expenses of its counsel and consultants retained in connection with this transaction.

5. Post-Closing Expenses. The Exchange Partner shall be responsible for all expenses relating to the Exchange Parcel including, without limitation, any real property taxes and assessments, allocable to the period beginning on the date of the Closing and thereafter.

This document contains privileged or confidential commercial or financial information that may be exempt from disclosure under FOIA.

[redacted] (b)(6)

ARTICLE VIII
SUCCESSORS AND ASSIGNS

The Exchange Partner shall not assign in whole or in part any of its responsibilities or obligations under this Agreement without the prior written approval of the Government. All obligations made by the parties under this Agreement will bind and inure any successors and assigns of the respective parties, or any other entity designated as successor or assign pursuant to any applicable law, whether or not expressly assumed by such successors or assigns.

ARTICLE IX
DISCLOSURES PERTAINING TO EXCHANGE PARCEL

Notices and covenants pertaining to the following will be included in the Deed.

1. Notice Regarding Hazardous Substance Activity. Pursuant to Section 120(h)(3)(A)(i) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA)(42 U.S.C. §9620(h)(3)(A)(i)), and based upon a complete search of agency files, the United States gives notice that "Exhibit ___" provides the following information: i) the type and quantity of hazardous substances that were known to have been released or disposed of or stored for one year or more on the Property; ii) the time such storage, release or disposal took place; and iii) a description of remedial action taken, if any.

   (a) CERCLA Covenant. The Government warrants that all remedial action necessary to protect human health and the environment has been taken before the date of conveyance of the Exchange Parcel. The Government warrants that it shall take any additional response action found to be necessary after the date of conveyance of the Exchange Parcel regarding hazardous substances located on the Exchange Parcel.

   (b) This covenant shall not apply—

      (1) In any case in which the Exchange Partner, its successor(s) or assign(s), or any successor in interest to the Exchange Parcel or part thereof is a Potentially Responsible Party (PRP) with respect to the Exchange Parcel immediately prior to the date of conveyance of the Exchange Parcel except if any such party is a Potentially Responsible Party (PRP) as a result of (x) implementing response actions required for the Exchange Parcel to be in compliance with the Massachusetts Environmental Laws or CERCLA and/or (y) entering into and performing actions permitted by an Interim Use License pursuant to the terms of this Agreement; or

      (2) To the extent that such additional response action or part thereof found to be necessary is the result of an act or failure to act of the Exchange Partner, its successor(s) or assign(s), or any party in possession after the date of conveyance of the Exchange Parcel that either:

         (i) Results in a release or threatened release of a hazardous substance that was not located on the Exchange Parcel on the date of conveyance of the Exchange Parcel; or

This document contains privileged or confidential commercial or financial information that may be exempt from disclosure under FOIA.

[redacted] (b)(6)

(ii) Causes or exacerbates the release or threatened release of a hazardous substance the existence and location of which was known and identified to the applicable regulatory authority as of the date of conveyance of the Exchange Parcel.

(c) In the event the Exchange Partner, its successor(s) or assign(s), seeks to have the Government conduct any additional response action, and, as a condition precedent to the Government incurring any additional cleanup obligation or related expenses, the Exchange Partner, its successor(s) or assign(s), shall provide the Government at least forty-five (45) calendar days written notice of such a claim. In order for the 45-day period to commence, such notice must include credible evidence that:

(1) The associated contamination existed prior to the date of conveyance of the Exchange Parcel; and

(2) The need to conduct any additional response action or part thereof was not the result of any act or failure to act by the Exchange Partner, its successor(s) or assign(s), or any party in possession.

(d) Access. The Government reserves a right of access to all portions of the Exchange Parcel for environmental investigation, remediation or other corrective action. This reservation includes the right of access to and use of available utilities at reasonable cost to the Government. These rights shall be exercisable in any case in which a remedial action, response action, or corrective action is found to be necessary after the date of conveyance of the Exchange Parcel, or in which access is necessary to carry out a remedial action, response action, or corrective action on adjoining property. Pursuant to this reservation, the Government, and its respective officers, agents, employees, contractors, and subcontractors shall have the right (upon reasonable advance written notice to the record title owner) to enter upon the Exchange Parcel and conduct investigations and surveys, to include drilling, test-pitting, borings, data and records compilation and other activities related to environmental investigation, and to carry out remedial or removal actions as required or necessary, including but not limited to the installation and operation of monitoring wells, pumping wells, and treatment facilities. Any such entry, including such activities, responses or remedial actions, shall be coordinated with record title owner and shall be performed in a manner that minimizes interruption with activities of authorized occupants.

2. Lead Based Paint Disclosure and Covenants

(a) Disclosure. The purchaser of any interest in real property on which a building was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to converting any portion of the Exchange Parcel to a residential dwelling.

(b) Covenant and Indemnification. Exchange Partner hereby acknowledges the required disclosure in accordance with the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C.

This document contains privileged or confidential commercial or financial information that may be exempt from disclosure under FOIA.

(b)(6)

4852d (Title X), of the presence of any known lead-based paint and/or lead-based paint hazards in target housing constructed prior to 1978 on the Property. The Property contains no improvements defined by Title X as target housing. However, in the event that any improvements on the Property are converted to residential use, the Exchange Partner covenants and agrees that in its use and occupancy of such Property it will comply with 24 CFR 35 and 40 CFR 745 and all applicable federal, state and local laws relating to lead-based paint; and that the Government assumes no liability for damages for Property damage, personal injury illness, disability, or death to the Exchange Partner, its successors or assigns, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use disposition, or other activity causing or leading to contact of any kind whatsoever with lead-based paint on the Property described in this deed, whether the Exchange Partner, and its successors or assigns, have properly warned or failed properly to warn the individual(s) injured. The Exchange Partner further agrees to indemnify, defend and hold harmless the Government from any and all loss, judgment, claims, demands, expenses or damages, of whatever nature which might arise or be made against the United States of America, due to, or relating to the presence of lead-based paint hazard on the Property, any related abatement activities, or the disposal of any material from the abatement process. The Exchange Partner further covenants and agrees that it will comply with all federal, state, local, and any other applicable law regarding the lead-based paint hazards with respect to the Property.

3. Notice of Presence of Asbestos Containing Material. The Exchange Partner acknowledges that it has been informed by the Government that the Property contains asbestos-containing materials, and that the Exchange Partner has been provided with the following notice and warning by the Government. The Exchange Partner will be subject to the following terms and conditions:

(a) The Exchange Partner is warned that the Property contains asbestos-containing materials. Asbestos is a hazardous material. Unprotected exposure to asbestos fibers has been determined to significantly increase the risk of cancer, mesothelioma, and asbestosis. These diseases can cause serious bodily harm resulting in disability or death.

(b) The Exchange Partner is deemed to have relied solely on its own judgment in assessing the overall condition of all or any portion of the Property, including any asbestos hazards or concerns.

(c) No warranties, either express or implied, are given with regard to the condition of the Property including, without limitation, whether the Property does or does not contain asbestos or is or is not safe for a particular purpose. The failure of the Exchange Partner to have inspected or to be fully informed as to the condition of all or any portion of the Property shall not constitute grounds for any claim or demand against the Government.

(d) The description of the Property as set forth herein and any other information provided to the Exchange Partner with respect to the Property was based on the best information available to the Government and is believed to be correct, but any error or omission shall not constitute grounds or reason for any claim by the Exchange Partner against the Government, including, without limitation, any claim for allowance, refund or deduction from the purchase price for such Property.

(e) The Government assumes no liability for damages for personal injury, illness, disability or death to the Exchange Partner or to Exchange Partner's employees, invitees, or any other person subject

This document contains privileged or confidential commercial or financial information that may be exempt from disclosure under FOIA.

[redacted] (b)(6)

to the Exchange Partner's control or direction, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos on the Property.

(f) The Exchange Partner further agrees that in its use and occupancy of the Property, it will comply with all federal, state, and local laws, ordinances, orders and regulations relating to asbestos.

4. Land Use Restrictions. Reference is made to Notice of Activity and Use Limitation dated May 12, 2011 and recorded in the Registry in Book 56856, Page 206 ("Existing AUL"). Upon the reasonable request of the Exchange Partner, provided that the Government shall not be obligated to expend any out-of-pocket expense, the Government will promptly execute (i) such documents required to amend or release the Existing AUL to allow for the transactions and the development of improvements as contemplated by this Agreement and (ii) any commercially reasonable new Notice of Activity and Use Limitation(s) prepared on behalf of the Exchange Partner as part of response actions associated with the Exchange Parcel being in compliance with the Massachusetts Environmental Laws. Further, the Government shall not add to, or record prior to or contemporaneously with, the Deed any use restrictions with respect to the Exchange Property unless (i) previously unknown hazardous substances are discovered on the Exchange Parcel after the Effective Date and (ii) such use restriction is previously approved by Exchange Partner.

ARTICLE X
DISPUTES, FAILURE TO PERFORM, CASUALTY PRIOR TO CLOSING AND INDEMNIFICATION

1. Exchange Partner Default and Notice to Cure. In the event the Exchange Partner fails to comply with any condition, covenant or obligation of this Agreement, and such failure continues following thirty (30) calendar days written notice from the Government or if an appropriate remedy for such failure has not been proposed within such thirty (30) day period and thereafter diligently completed in accordance with the proposed remedy, such failure shall be an event of default by the Exchange Partner and the Government shall be entitled to seek damages, exercise its rights under this Agreement and/or terminate this Agreement.

2. Bankruptcy. If the Exchange Partner or the Guarantor is or becomes insolvent or files a voluntary petition under any federal or state bankruptcy code, then it shall be considered a failure to comply with this Agreement.

3. Remedies for Exchange Partner Default. In the event the Government terminates this Agreement for Default as set forth in this Article, the Government may take over the Work, and take possession of and use any materials, appliances and plant equipment on the Property necessary for completing the Work. Alternatively, the Government may require the Exchange Partner to remove any part or all of the materials, supplies, equipment, tools and construction equipment being used for the Work within seven (7) calendar days after written notice.

   If the Exchange Partner fails to perform all obligations under this Agreement, the Government shall not be obligated to convey the Exchange Parcel.

This document contains privileged or confidential commercial or financial information that may be exempt from disclosure under FOIA.

[redacted] (b)(6)

4. General Liability. Notwithstanding any other provision to the contrary, neither Party shall be entitled to any damages whatsoever, under any circumstances, for lost profits, lost opportunities and/or economic or other consequential damages associated with or resulting from actions or inactions of the other Party, including without limitation damages that cause or result from the Exchange Partner's ability or inability to sell, lease, convey, permit, encumber, develop or construct on the Exchange Parcel. The Exchange Partner hereby irrevocably waives, releases and discharges the Government from all such claims, demands or suits and shall indemnify and hold the Government harmless for all claims, demands or suits that allege such damages. In no event shall the Exchange Partner seek title to any portion of the Property as a remedy.

5. Disputes.

   (a) Informal Resolution. Prior to initiating any formal dispute, the Parties will attempt to resolve disagreements informally using, if applicable, an Equitable Adjustment. Any disagreement that cannot be resolved at the project manager level by the Parties shall be referred to the Government's Regional Commissioner of Public Buildings Service, who shall meet personally in a timely manner to discuss and attempt to resolve the dispute within three (3) business days after such meeting or such other time period agreed to in writing by the Parties.

   (b) Alternative Dispute Resolution. The Parties may use any alternative means of dispute resolution set forth in 5 U.S.C. § 571, or other mutually agreeable procedures, for resolving disputes.

   (c) Contract Disputes Act. If a disagreement cannot be informally resolved or resolved with such alternative means of dispute resolution, the Parties understand and agree that this Agreement is subject to the Contract Disputes Act of 1978, 41 U.S.C. 7101-7109 et seq., as amended.

   (d) Continuation of Work during Dispute Resolution. The Exchange Partner shall proceed diligently with performance of this Agreement pending final resolution of any dispute.

6. Casualty on Exchange Parcel Prior to Closing. In the event of any loss or damage to all or any portion of the Exchange Parcel caused by fire or any other casualty occurring prior to the Closing, the Government shall have no responsibility to restore and/or repair any such loss or damage and the Exchange Partner shall continue to be bound by and obligated to satisfy all of the terms and conditions under this Agreement without any credit and/or reduction of any kind. In the event of any such loss or damage to all or any portion of the Exchange Parcel, due to no fault of the Exchange Partner, the Government will consider making an adjustment to the Proposed Gross Offer.

7. Casualty on New Facility Parcel Prior to Closing. In the event of any loss or damage to all or a portion of the New Facility prior to Substantial Completion of the Work, the Exchange Partner shall restore the New Facility, at the Exchange Partner's sole cost and expense, so that it will satisfy the terms and conditions of this Agreement

8. Indemnification. The Exchange Partner shall defend, indemnify and hold the Government harmless from any claims, defenses, demands, damages, liabilities, loss or other costs and/or expenses, including fines and penalties, arising out of the performance of the Exchange Partner's obligations under this Agreement, except to the extent attributable to the negligence or willful misconduct of the Government, including, without limitation, any claim of damage or loss by any contractor or subcontractor, any claim of damage or loss resulting from any hazardous substance introduced, discharged or disturbed and any claim of damage or loss resulting from an accident or injury.

This document contains privileged or confidential commercial or financial information that may be exempt from disclosure under FOIA.

[redacted] (b)(6)

ARTICLE XI
GUARANTY

The Exchange Partner shall execute and deliver the Guaranty no later than the Effective Date. In the event the Guaranty is not executed and delivered to the Government on or prior to such date, such failure shall be an event of default by the Exchange Partner and the Government shall be entitled to terminate this Agreement.

ARTICLE XII
GENERAL PROVISIONS

1. Notices. All notices and other communications required or permitted to be given under this Agreement shall be given in writing (at the addresses set forth below) by any of the following means: i) personal service; ii) facsimile transmission (if confirmed by sending a copy by any other method, except electronic mail, specified herein); iii) electronic mail; iv) delivery by any reputable overnight courier service; or v) registered or certified mail, postage prepaid, return receipt requested. Any notice or other written communication sent pursuant to (i), (ii) or (iii) hereof shall be deemed received upon such personal service or upon dispatch by electronic means; any notice or other written communication if sent pursuant to (iv) hereof shall be deemed received one (1) business day following delivery by such courier; and any notice or other written communication sent pursuant to (v) hereof shall be deemed received five (5) business days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service.

To Government:
U.S. General Services Administration
Attn: John Kelly
Thomas P. O'Neill, Jr. Federal Building
10 Causeway Street, Room 1100
Boston, MA 02222
Phone: 617-565-8094
Email: johnkelly@gsa.gov

To Exchange Partner:
Massachusetts Institute of Technology
[redacted] (b)(6)

With a copy to:

This document contains privileged or confidential commercial or financial information that may be exempt from disclosure under FOIA.

[redacted] (b)(6)

[redacted] (b)(6)

2. Binding Agreement. The terms and conditions of this Agreement and its attachments and exhibits apply to and bind the successors and assignees of the Parties.

3. Anti-Deficiency Act. Nothing in this Agreement shall be interpreted to require obligations or payments by the United States in violation of the Anti-Deficiency Act (31 U.S.C. Section 1341).

4. Amendment. This Agreement may not be amended, modified, extended, revised or otherwise altered, nor may any party hereto be relieved of any of its liabilities or obligations hereunder, except by a written instrument duly executed by the Contracting Officer and the Exchange Partner.

5. Governing Law. Notwithstanding the place where this Agreement may be executed by any of the parties hereto, the Parties expressly agree that all terms and provisions hereof shall be construed and enforced in accordance with federal law as now adopted and as may be hereafter amended. To the extent issues not governed by federal law impact matters under this Agreement, including but not limited to matters of conveyance of real and personal property, the laws of the Commonwealth of Massachusetts shall be deemed to apply to such matters.

6. Order of Precedence. Different requirements within this Agreement shall be deemed inconsistent only if compliance with both cannot be achieved. In case of inconsistency between this Agreement and its exhibits and the Proposal, the following order of precedence shall apply.

   (a) This Agreement including all exhibits (except for the Statement of Work including the Program of Requirements)

   (b) Statement of Work (except for the Program of Requirements)

   (c) Program of Requirements

   (d) Proposal

   Notwithstanding the foregoing, in the event the Contracting Officer approves, in writing, any deviation from the Statement of Work or the Program of Requirements, the deviation shall be incorporated into the applicable document.

7. No Recording. The Exchange Partner agrees that neither this Agreement nor any memorandum thereof may be recorded.

8. Audit. The Government, at reasonable times and upon reasonable advance notice, shall have the right to review and have access to all records of the Exchange Partner relating to the Work for a period of three (3) years following the Closing.

This document contains privileged or confidential commercial or financial information that may be exempt from disclosure under FOIA.

[redacted] (b)(6)

9. Captions. The captions in this Agreement are inserted for convenience of reference only and in no way define, describe or limit the scope or intent of this Agreement or any of the provisions hereof.

10. Drafts. This Agreement shall not be binding or effective until executed and delivered by both the Government and the Exchange Partner.

11. Number and Gender. All words used herein in singular number shall extend to and include the plural number, where the context so requires. All words used herein in the plural number shall extend to and include the singular number, where the context so requires. All words used herein in any gender, whether male, female or neuter, shall extend to and include any and all genders as may be applicable in any particular context.

12. Integration. This Agreement, including the Recitals and the exhibits attached to this Agreement and referenced in this Agreement, constitutes the entire agreement and understanding of the Parties with respect to the subject matter hereof and supersedes all prior agreements, offers, counteroffers, agreements and understandings of the Parties regarding said subject matter, whether written or oral, all of which are hereby merged into and superseded by this Agreement. It is understood and agreed by the Parties, however, that the Government has relied on the Proposal in entering into this Agreement and that the Proposal is incorporated into this Agreement by reference.

13. Waiver. Except as expressly provided herein, no waiver by any party or refusal of the other party to comply with its obligations under this Agreement shall be deemed a waiver of any subsequent failure or other refusal to so comply by such other party. No waiver shall be valid unless in writing signed by the party to be charged and then only to the extent therein set forth.

14. Severability. If any term or provision of this Agreement or application thereof to any person or circumstance shall, to any extent, be found by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each other term or provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

15. Binding Effect; No Third Party Beneficiaries. This Agreement shall be binding upon and shall inure to the benefit of the Parties, and the representations, warranties, covenants and agreements contained herein are made and entered into for the sole protection and benefit of the Parties and no other person, persons, entity or entities shall have any right of action hereon or right to claim any right or benefit from the terms contained in this Agreement or be deemed a third party beneficiary hereunder.

16. Currency. All amounts to be paid hereunder shall be paid in immediately available U.S. funds.

17. Time. Time is of the essence in the performance of each of the Parties' respective obligations contained herein.

18. Survival. Rights, interests and obligations of the Parties which by their nature survive the Closing or termination of this Agreement including, without limitation, all warranties and indemnities shall remain in full force and effect after the Closing or any termination of this Agreement and the same shall inure to the benefit of and be binding upon the respective successors and assigns of the Parties.

This document contains privileged or confidential commercial or financial information that may be exempt from disclosure under FOIA.

(b)(6)

19. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed to be an original, but all of which taken together shall constitute one and the same Agreement. For purposes of the execution of this Agreement, the signature of a party on a counterpart hereof transmitted by facsimile or electronic mail shall be binding with the same force and effect as if it was manually affixed to a hard copy original of this Agreement.

20. Construction. Neither party shall be considered the drafter of this Agreement or any of its provisions for the purposes of any statute, case law or rule of interpretation or construction, that would or might cause any provision to be construed against the drafter of this Agreement.

21. Non-Discrimination. The Exchange Partner covenants for itself, its successors and assigns and every successor in interest to the Exchange Parcel, or any part hereof, that the Exchange Partner and such successors and assigns shall not discriminate on the basis of race, color, sex, religion, sexual orientation or national origin in the performance of the Work.

22. No Member or Delegate of Congress or Resident Commissioner Part of Agreement. No member of or Delegate of Congress or Resident Commissioner shall be admitted to any share or part of this Agreement or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this Agreement if made with a corporation for its general benefit.

[SIGNATURE PAGE FOLLOWS]

This document contains privileged or confidential commercial or financial information that may be exempt from disclosure under FOIA.

(b)(6)

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed on their behalf as of the day and year first written above.

EXCHANGE PARTNER:

MASSACH[redacted] TECHNOLOGY

BY: [redacted] (b)(6) [redacted]

NAME: [redacted]

TITLE: [redacted]

GOVERNMENT:

UNITED STATES OF AMERICA
Acting by and thr[redacted]neral Services Administration

BY: [redacted] (b)(6) [redacted]

NAME: John Kelly

TITLE: Director

This document contains privileged or confidential commercial or financial information that may be exempt from disclosure under FOIA.

(b)(6)

EXHIBIT A
Legal Description and Plan of Property

Certain parcels of land located on the Northerly side of Broadway, the Westerly side of Third Street, the Southerly side of Potter Street, the Westerly side of Fifth Street, the Northerly side of Munroe Street, the Southerly side of Binney Street and the Easterly side of the Pedestrian walkway formally known as Sixth Street as shown on "Volpe Center ALTA/ACSM Land Survey" plan in Cambridge, Massachusetts, dated 3/24/2014, revised 4/7/15, 5/14/15 & 5/21/15 by Dunn McKenzie Inc. and described as follows:

Beginning at an iron rod (set) at the Southwesterly corner of said land on the Northerly sideline of Broadway and the Easterly sideline of the Pedestrian walkway formally known as Sixth Street as shown on said plan, thence

N29-29-46E, a distance of 469.21 feet along the Easterly sideline of the Pedestrian walkway formally known as Sixth Street to an iron rod (set) at the point of curvature, thence

Northerly, along a curve to the left having a radius of 326.71 feet, an arc distance of 126.35 feet along the Pedestrian walkway formally known as Sixth Street to an iron rod (set) at the point of tangency, thence

N09-32-12E, a distance of 200.30 feet along the Pedestrian walkway formally known as Sixth Street to an iron rod (set) at the Southerly sideline of Binney Street, thence

S80-28-35E, a distance of 870.58 feet along the southerly sideline of Binney Street to an iron rod (set) at the point of curvature at the intersection of Third Street, thence

Easterly and Southerly along a curve to the right having a radius of 20.00 feet, an arc distance of 36.00 feet to an iron rod (set) at Third Street, thence

S22-39-46W, a distance of 129.47 feet along the Westerly sideline of Third Street to a drill hole (set) at the corner of Munroe Street, thence

N80-27-42W, a distance of 460.66 feet along the Northerly sideline of Munroe Street to a cut spike (set) in an asphalt walk at Fifth Street, thence

S09-32-02W, a distance of 383.32 feet along the Westerly sideline of Fifth Street to a drill hole (set) in the concrete walk at Potter Street, thence

S60-31-14E, a distance of 382.25 feet along the Southerly sideline of Potter street to a drill hole (set) in the sidewalk at Third Street, thence

S27-08-43W, a distance of 382.25 feet along the Westerly sideline of Third Street to a drill hole (set) at the point of curvature, thence

Southerly and Westerly along a curve to the right having a radius of 20.00 feet, an arc distance of 32.24 feet to a granite bound found at Broadway, thence

N60-30-18W, a distance of 374.92 feet along the Northerly sideline of Broadway to a drill hole (set), thence

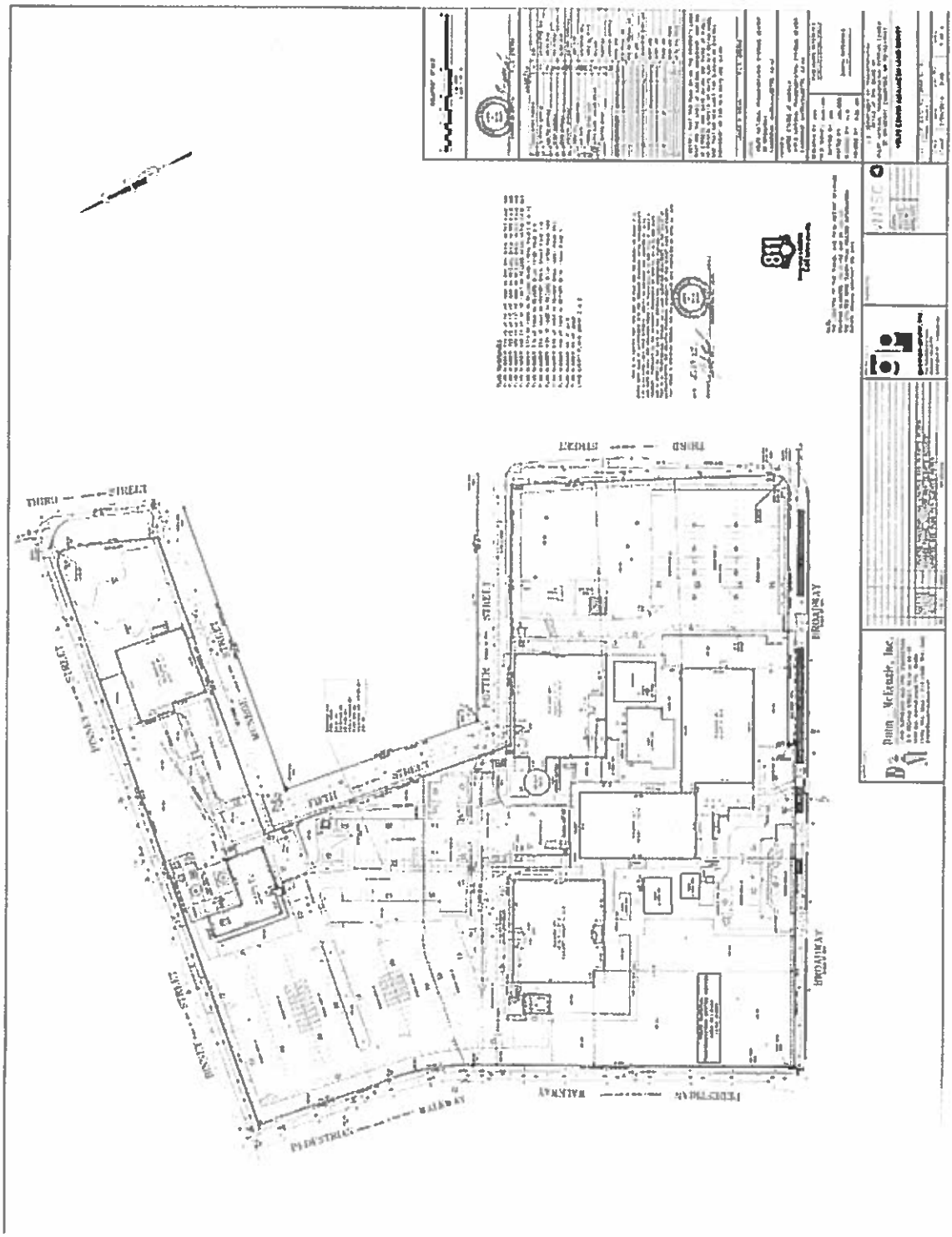
S29-29-42W, a distance of 12.00 feet along the Northerly sideline of Broadway to an iron rod (set), thence

N60-30-18W, a distance of 471.11 feet along the Northerly sideline of Broadway to the first mentioned iron rod (set) at Broadway and the Pedestrian walkway formally known as Sixth Street at the point and place of beginning.

Said lot contains 611,612 square feet more or less. (Approximately 14.04 acres)

This document contains privileged or confidential commercial or financial information that may be exempt from disclosure under FOIA.

[redacted] (b)(6)



This document contains privileged or confidential commercial or financial information that may be exempt from disclosure under FOIA.

(b)(6)

EXHIBIT B
Plan of the New Facility Parcel

[The site plan from the Exchange Partner's Proposal will be included in Final Agreement here. See RFP Section F.4.1: Site Plan and Massing Plan.]

(See Attached)

This document contains privileged or confidential commercial or financial information that may be exempt from disclosure under FOIA.

(b)(6)

(b)(4)

[redacted]

This document contains privileged or confidential commercial or financial information that may be exempt from disclosure under FOIA.

(b)(6)

EXHIBIT C
Statement of Work with Program of Requirements, dated March 28, 2016 as amended by Amendment 001 dated 5 August 2016, all of which is incorporated herein by this reference.

This document contains privileged or confidential commercial or financial information that may be exempt from disclosure under FOIA.

(b)(6)

EXHIBIT D
Contract Requirements

Any and all entities performing the Work shall be subject to the terms and conditions of this Agreement as applicable and the terms and conditions set forth below. Such terms and conditions shall be contained in any contract and subcontract entered into for purposes of performing the Work (a "**Contract**"). In the event the Exchange Partner is the entity performing the Work, the Exchange Partner shall comply with and be subject to all terms and conditions set forth in this Exhibit D. The Exchange Partner shall maintain proof of satisfaction of the insurance and bonding requirements set forth in this Exhibit. Any capitalized term not defined in this Exhibit shall have the meaning given to it in Article I of this Agreement.

1. Government Right of Entry. The Exchange Partner shall include in any Contract a notice that at all times during and after performance of the Work, the Government or other party designated by the Government may enter upon the New Facility Parcel from time to time to review and inspect the Work.

2. Payment and Performance Bonds.

   (a) The general contractor shall be required to maintain payment and performance bonds, which bonds shall be maintained during the full term of the general contractor's Contract. Payment and performance bonds shall be i) for an aggregate amount equal to not less than one hundred percent (100%) of the Contract amount and ii) cover all indemnification obligations, liquidated damages obligations and corrective work associated with the general contractor's Contract.

   (b) The Exchange Partner shall furnish executed bonds required under any Contract, including any necessary reinsurance agreements, to the Government, prior to the issuance of the Notice to Proceed – Construction for the applicable portion of the Work. The bonds shall be in the form of firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other reasonably acceptable security such as postal money order, certified check, cashier's check, irrevocable letter of credit, or, in accordance with Treasury Department regulations, certain bonds or notes of the United States.

3. Insurance. Each Contract shall include a provision requiring the party responsible for any part of the Work performed on the New Facility Parcel to provide and maintain during the entire performance of the Contract, in addition to any insurance required by law:

   (a) Workers' compensation insurance in the amount required by Massachusetts;

   (b) Employers' liability coverage of at least $2,000,000, provided, however, that where appropriate to encourage small business participation such amount may be reduced subject to Contracting Officer approval. If occupational diseases are not covered by workers' compensation insurance, Employers' liability coverage shall include occupational diseases;

   (c) Broad form comprehensive commercial general liability insurance in the amount of at least $5,000,000 per occurrence. Such insurance shall include, but not be limited to, contractual liability, bodily injury and property damage;

This document contains privileged or confidential commercial or financial information that may be exempt from disclosure under FOIA.

(b)(6)

(d) Comprehensive automobile liability covering the operation of all automobiles used in connection with performing the applicable contract in the amount of at least $1,000,000 per person and $2,500,000 per occurrence for bodily injury and $1,000,000 per occurrence for property damage.

The general contractor shall also carry excess umbrella liability insurance in the amount of at least $10,000,000.

Certificates of insurance for insurance maintained by the Exchange Partner and the general contractor shall be delivered to the Government within five (5) business days following the date of each respective Contract and shall name the "United States of America" as an additional insured.

The Exchange Partner and/or general contractor shall obtain and maintain copies of Certificates of Insurance of all subcontractors showing the stated insurance amount, but it shall be acceptable for such policies to name the Exchange Partner or the general contractor as an additional insured and they need not name the Government.

The insurance carrier is required to waive all subrogation rights against the Government.

4. General Provisions. The Government considers the provisions below important and consistent with its priorities. Therefore, the Exchange Partner shall include in any contract:

(a) FAR 52.215-10 Price Reduction for Defective Certified Cost or Pricing Data;
(b) FAR 52.215-11 Price Reduction for Defective Cost or Pricing Data – Modifications;
(c) FAR 52.215-12 Subcontractor Cost or Pricing Data;
(d) FAR 52.215-13 Subcontractor Cost or Pricing Data – Modifications;
(e) FAR 52.215-15 Pension Adjustments and Asset Reversions;
(f) FAR 52.215-17 Waiver of Facilities Capital Cost of Money;
(g) FAR 52.215-18 Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions;
(h) FAR 52.215-19 Notifications of Ownership Changes;
(i) FAR 52.215-22 Limitation on Pass-Through Charges – Identification of Subcontract Effort,
(j) FAR 52.215-23 Limitations on Pass-Through Charges;
(k) FAR 52.219-8 Utilization of Small Business Concerns;
(l) FAR 52.229-1 Federal, State, and Local Taxes;
(m) FAR 25.1 Buy American – Supplies; and,
(n) FAR 25.2 Buy American – Construction Materials.

Furthermore, to the fullest extent practical the Exchange Partner shall include in any contract the following:

(a) FAR 22.5 Use of Project Labor Agreements for Federal Construction Projects;
(b) FAR 52.209-6 Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment; and
(c) FAR 52.225-13 Restrictions on Certain Foreign Purchases.

The clauses herein incorporated by reference shall have the same force and effect as if they were given in full text. The full text of a clause may be accessed electronically at this address: http://www.acquisition.gov/comp/far/index.html.

This document contains privileged or confidential commercial or financial information that may be exempt from disclosure under FOIA.

(b)(6)

5. Accounting Records Clause. The Exchange Partner shall include similar provisions to Section 2.3 of Exhibit E of this Agreement in its contractor agreements which require its contractor and subcontractor to keep Records (as defined in Exhibit E) and to permit audits by the Government as is required of the Exchange Partner.

This document contains privileged or confidential commercial or financial information that may be exempt from disclosure under FOIA.

(b)(6)

EXHIBIT E
Determinations of Cost of the New Facility

1. Definitions. All capitalized terms not defined in this Exhibit are defined in Article I of this Agreement.

2. This Agreement shall include Design Phase Services and the Delivery of the New Facility. The Government and Exchange Partner agree that at no point in this Agreement shall the maximum total price of the Design Phase Services and the Delivery of the New Facility be allowed to exceed the Proposed Gross Offer.

2.1 Design Phase Services. Design Phase Services, including costs for all pre-construction services, all architectural and engineering design and construction services, constructability reviews, and other related services necessary to prepare the Construction Documents, to cause the Government to issue any Notice to Proceed – Construction, and as defined in the Statement of Work, shall be a firm-fixed-price in the amount of $ [redacted] (b)(4) The amount set forth represents all costs in accordance with Part 31 of the Federal Acquisition Regulation (FAR) in effect on the date of this Agreement necessary to complete the Design Phase Services, including, but not limited to the cost of work performed by subcontractors and consultants, indirect costs, fees, expenses, taxes, and profit. This amount is fixed, and shall not change throughout the performance of this Agreement except in the event of a Change Order or Equitable Adjustment subject to the provisions of Article III.

2.2 Delivery of the New Facility. The Delivery of the New Facility, including costs for Construction Services and Relocation Services, shall be a fixed-price incentive structure, including a Guaranteed Maximum Price and Shared Savings subject to the terms below:

(a) Costs means allowable direct costs in accordance with FAR Part 31 in effect on the date of this Agreement; marked up costs paid to subcontractors shall be deemed direct costs of the Exchange Partner.

(b) **Target Cost** means the estimated Costs of the Delivery of the New Facility. The **Initial Target Cost** incorporated into the Agreement at the Effective Date is $ [redacted] (b)(4); a **Firm Target Cost** shall be negotiated during the Design Phase Services (at approximately 75% construction documents); a **Final Target Cost** is negotiated upon acceptance of the Construction Documents. The Firm Target Cost may exceed the Initial Target Cost by mutual agreement. The Final Target Cost must be less than or equal to the Firm Target Cost.

(c) *Contingency Allowance*. **Contingency Allowance (CA)** is stipulated to be 5% of the Target Cost. During the establishment of the Firm Target Cost, the stipulated 5% shall be applied to the Firm Target Cost to calculate the CA. If the Final Target Cost is less than the Firm Target Cost, the CA will be reduced accordingly to 5% of the Final Target Cost.

(d) *Fee and Target Fee Percentage*. The Exchange Partner's **Fee** includes indirect costs, general conditions, and profit. The **Target Fee Percentage** shall be [redacted] (b)(4). During the establishment of the Firm Target Cost, the Target Fee Percentage shall be applied to the Firm Target Cost to calculate the Fee. If the Final Target Cost is less than the Firm Target Cost, the Fee will be reduced accordingly to the Target Fee Percentage of the Final Target Cost.

This document contains privileged or confidential commercial or financial information that may be exempt from disclosure under FOIA.

[redacted] (b)(6)

(e) *Guaranteed Maximum Price.* The **Guaranteed Maximum Price** (GMP) equals the sum of the Target Cost, the CA, and the Fee. The Exchange Partner shall guarantee the maximum price (the GMP) upon negotiation of the Firm Target Cost and the Final Target Cost.

(f) *Firm Target Cost.*

(1) *Submission Requirements for Firm Target Cost Proposal.* During the design phase (at approximately 75% construction documents), and at a time agreed by the Government the Exchange Partner shall submit the following:

(i) A detailed statement of all firm-fixed-price work packages in the performance of the Delivery of the New Facility to date;
(ii) A proposed Firm Target Cost;
(iii) Sufficient data to support the accuracy and reliability of the estimate;
(iv) An explanation of the difference between the proposed Firm Target Cost and the Initial Target Cost; and
(v) The Exchange Partner's affirmation that:

(A) It has satisfied itself that the New Facility as described in the specifications and construction drawings is constructible using commercially practicable means and methods;
(B) It has satisfied itself that the requirement has been sufficiently described to enable it to estimate the Costs of Delivery of the New Facility with reasonable accuracy;
(C) It has disclosed to the Government all of its actual knowledge relating to omissions in the Statement of Work that may affect the Costs of Delivery of the New Facility;
(D) It acknowledges that the Firm Target Cost and time established for completion of the New Facility shall not be adjusted on account of cost or time attributable to discovered omissions in the Statement of Work required to be disclosed under this Clause; and
(E) All proposed costs are submitted in accordance with FAR Part 31.

(2) *Establishment of the Firm Target Cost.* The Parties shall negotiate a Firm Target Cost based on the data provided under Paragraph (f) of this Section.

(i) The Firm Target Cost shall be multiplied by the stipulated 5% to calculate the CA in accordance with Paragraph (c) of this Section.
(ii) The Firm Target Cost and Target Fee Percentage shall be used to calculate the Fee in accordance with Paragraph (d) of this Section.
(iii) The Firm Target Cost shall be used to calculate the GMP in accordance with Paragraph (e) of this Section.

The Firm Target Cost shall be established and incorporated into the Agreement upon the Contracting Officer's written acceptance of the negotiated Firm Target Cost. The Contracting Officer shall not accept a Firm Target Cost proposal that does not include the written affirmation described under Paragraph (f)(1)(v) of this Section.

(g) *Final Target Cost.*

This document contains privileged or confidential commercial or financial information that may be exempt from disclosure under FOIA.

(b)(6)

(1) *Submission Requirements for Final Target Cost Proposal.* Upon acceptance of the Construction Documents, and at a time agreed by the Government, the Exchange Partner shall submit the following:

(i) A detailed statement of all firm-fixed-price work packages in the performance of the Delivery of the New Facility to date;
(ii) A proposed Final Target Cost;
(iii) Sufficient data to support the accuracy and reliability of the estimate;
(iv) An explanation of the difference between the proposed Final Target Cost and the Firm Target Cost used to establish the GMP; and
(v) The Exchange Partner's affirmation that:

(i) It has satisfied itself that the New Facility as described in the specifications and construction drawings is constructible using commercially practicable means and methods;
(ii) It has satisfied itself that the requirement has been sufficiently described to enable it to estimate the Costs of Delivery of the New Facility with reasonable accuracy;
(iii) It has disclosed to the Government all of its actual knowledge relating to omissions in the Statement of Work that may affect the Costs of Delivery of the New Facility;
(iv) It acknowledges that the Final Target Cost and time established for completion of the New Facility shall not be adjusted on account of cost or time attributable to discovered omissions in the Statement of Work required to be disclosed under this Clause; and
(v) All proposed costs are submitted in accordance with FAR Part 31.

(2) *Establishment of the Final Target Cost.* The Parties shall negotiate a Final Target Cost based on the data provided under Paragraph (g) of this Section; provided, that the Final Target Cost, CA and Fee may not exceed the GMP. If the proposed Final Target Cost is less than the Firm Target Cost:

(i) The CA shall be reduced in accordance with Paragraph (c) of this Section.
(ii) The Fee shall be reduced in accordance with Paragraph (d) of this Section.
(iii) The GMP shall be reduced in accordance with Paragraph (e) of this Section.

The Final Target Cost shall be established and incorporated into the Agreement upon the Contracting Officer's written acceptance of the final negotiated Target Cost. The Contracting Officer shall not accept a Final Target Cost proposal that does not include the written affirmation described under Paragraph (g)(1)(v) of this Section.

(h) The Contracting Officer may issue a partial or limited Notice to Proceed – Construction, in accordance with Article III, Section 4 of the Agreement, at any time after the Firm Target Cost has been established.

(i) *Adjustment of Target Cost and GMP.* The Target Cost and GMP shall be subject to adjustment for changes and any other conditions giving rise to entitlement to an adjustment under this Agreement.

(1) The CA shall not be adjusted for changes and any other conditions giving rise to entitlement to an adjustment under this Agreement.

This document contains privileged or confidential commercial or financial information that may be exempt from disclosure under FOIA.

(b)(6)

(2) The Target Fee Percentage negotiated in Paragraph (d) of this Section shall be used as a maximum rate for determining fee for changes and any other conditions giving rise to entitlement to an adjustment under this Agreement.
(3) The GMP shall be adjusted in accordance with Paragraph (e) of this Section.

The Target Cost, GMP, and Fee shall be adjusted down for deletions to the scope of the Delivery of the New Facility.

(j) *Conversion to Firm-Fixed-Price Prior to Final Settlement.*

(1) *Submission Requirements for Conversion to a Firm-Fixed-Price.* If the Parties agree to convert from a fixed-price incentive structure to a firm-fixed-price for the Delivery of the New Facility prior to the issuance of the final Notice to Proceed – Construction, or at the request of the Government, the Exchange Partner shall submit the following:

(i) A proposed firm-fixed-price proposal for the completion of the Delivery of the New Facility, which shall include all markups, including profit.
(ii) A detailed statement of any Costs incurred in the performance of the Delivery of the New Facility up to date.

(2) *Establishment of Firm-Fixed-Price Contract*

(i) *Prior to issuance of the Notice to Proceed – Construction.* The Parties may negotiate and establish a firm-fixed-price for the Delivery of the New Facility prior to the issuance of the Notice to Proceed – Construction based on the data provided under Paragraph (j)(1); provided that the firm-fixed-price shall not exceed the GMP. The Government shall have the right, but not the obligation, to issue the Notice to Proceed – Construction at the firm-fixed-price within one hundred twenty (120) calendar days of the establishment of such price.
(ii) *After issuance of the Notice to Proceed – Construction.* At any time prior to Final Settlement (as such term is defined below), the Government may request that the Exchange Partner provide a firm-fixed-price proposal for the completion of Delivery of the New Facility in accordance with Paragraph (j)(1). Within sixty (60) calendar days of such request, the Exchange Partner shall provide such data. Within sixty (60) calendar days of receipt of the Exchange Partner's proposal, the Government shall have the right, but not the obligation, to convert this Agreement to a firm-fixed-price at the proposed fixed price or as otherwise negotiated by the Parties; provided that the firm-fixed-price, plus any costs incurred in the performance of Delivery of the New Facility, shall not exceed the GMP. If this Agreement is not converted to firm-fixed-price, then the Final Settlement of the Exchange Partner's compensation shall be determined in accordance with Paragraph (l).

(3) If this Exchange Agreement is converted to a firm-fixed-price structure, the Exchange Partner shall submit a revised schedule of values for Delivery of the New Facility allocating the unexpended balance of the fixed price to the itemized work activities remaining uncompleted.

(k) *Determination of Costs of Delivery of the New Facility.* Determination of the Costs of Delivery of the New Facility shall be the sum of all Costs incurred by the Exchange Partner in the Delivery of the New Facility, the proposed fixed price for performance of remaining work, if any, less the

This document contains privileged or confidential commercial or financial information that may be exempt from disclosure under FOIA.

(b)(6)

residual value of any Exchange Partner retained inventory. In order to make such determination, the Government may require an audit of the Exchange Partner's records and/or the Exchange Partner's proposal. Establishment of the Costs of Delivery of the New Facility shall be subject to reconciliation between the Government and the Exchange Partner. In the event that the Parties are unable to reach agreement, the Contracting Officer may unilaterally determine the Costs of Delivery of the New Facility, and such determination shall be subject to the clause titled "Disputes."

(l) *Final Settlement.* The **Final Settlement** amount shall consist of the Costs of the Delivery of the New Facility, the Fee, and the Exchange Partner's Shared Savings, if any; provided that in no event shall the Final Settlement exceed the GMP.

(1) *Submission Requirements for Final Settlement Proposal.* The Exchange Partner shall submit a Final Settlement proposal within one hundred twenty (120) calendar days of Substantial Completion of the Work to determine the Costs of Delivery of the New Facility, which shall include the following:

(i) A detailed statement of all Costs incurred by the Exchange Partner in the Delivery of the New Facility;
(ii) A firm-fixed-price proposal for the performance of the remaining work, if any, that may be necessary to complete the Delivery of the New Facility;
(iii) An executed release of claims, which must describe any and all exceptions, including a description of any outstanding claims; and
(iv) Any other relevant data that the Government may reasonably require.

(2) *Determination of the Shared Savings.* If the Costs of Delivery of the New Facility are less than the Final Target Cost, the Exchange Partner is entitled to 50% of the difference between the Final Target Cost and the Costs of Delivery of the New Facility, as **Shared Savings** by means of a reduction in the Proposed Gross Offer.

(3) *Costs of Delivery of the New Facility in excess of the Final Target Cost.* If the Costs of Delivery of the New Facility are in excess of the Final Target Cost, the Exchange Partner is entitled to additional compensation for the Costs of Delivery of the New Facility above the Final Target Cost in an amount not to exceed the CA. An adjustment of the Fee shall not be included.

(4) *Costs of Delivery of the New Facility and Fee in excess of the Guaranteed Maximum Price.* If the sum of the Costs of Delivery of the New Facility plus the Fee is equal to or greater than the GMP, the Exchange Partner is not entitled to any compensation greater than the GMP.

(m) *Work Packages.* The Contractor and the Government may agree to develop firm-fixed-price work packages that stand alone from the remainder of the Work. The Parties must agree bilaterally to the scope, schedule and pricing for any such work package. If such work package reduces the scope of the Delivery of the New Facility, the Target Cost shall be reduced, and the Contingency Allowance (CA), Fee and GMP shall be adjusted accordingly. These work packages shall include specific completion milestones.

This document contains privileged or confidential commercial or financial information that may be exempt from disclosure under FOIA.

[redacted] (b)(6)

(n) *Subcontracts*. No subcontract placed under this Agreement may provide for cost-plus-a-percentage of cost. Any costs incurred by the Exchange Partner as a result of such a subcontract shall not be included in the Costs of Delivery of the New Facility or the Final Settlement.

(o) *Open Book Access*. At any time prior to converting to a firm-fixed-price, the Government and its representatives, including designated auditors and accountants, shall have the right, but not the obligation, to attend any and all project meetings and shall have access to any and all records maintained by the Exchange Partner relating to the New Facility. The Exchange Partner shall include this requirement for open book access by the Government in its subcontracts for the New Facility.

(p) *Termination*. If this Agreement is terminated, the Exchange Partner shall not be entitled to Shared Savings.

2.3 Accounting Records Clause

(a) The Exchange Partner shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement; the accounting and control systems shall meet Generally Accepted Accounting Principles (GAAP) and provide for the following:

(1) There is proper segregation of direct costs and indirect costs.
(2) There is proper identification and accumulation of direct costs by Agreement or Contract.
(3) There is a labor time distribution system that charges direct and indirect labor appropriately.

(b) The Government and the Government's accountants or Government's authorized representative shall be afforded access to and shall be permitted to audit and copy the Exchange Partner's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Agreement, and the Exchange Partner shall preserve these for a period of three years after the Closing, or for such longer period as may be required by law.

(c) The records subject to audit, examination, and copying include, but are not limited to, accounting records, written policies and procedures, subcontract files (including all proposals from all bidders, and bid recaps, etc.), estimates and takeoff sheets, correspondence, change order files (including all proposals and estimates, supporting documentation, and documentation covering negotiated pricing regardless of whether the work was performed on a lump-sum, cost plus, or unit price basis), backcharge logs and related supporting documentation, general ledger entries detailing cash and trade discounts, insurance rebates, and discounts, purchase orders, leases, contracts, commitments, notes, daily diaries, superintendents reports, drawings, and all other documents and sources of information and matters which may, in the Governments sole discretion, have any bearing on, or pertain to any matters, rights, duties, obligations related to the Agreement documents (all of the above hereinafter referred to as "Records"). The foregoing Records shall be subject to inspection and audit by the Government or its authorized representative for, but limited to evaluating and verifying:

(1) Exchange Partner compliance with requirements of the Agreement;
(2) Compliance with pricing Change Orders, or claims submitted by the Exchange Partner or any of its subcontractors at any tier, vendors and suppliers.

This document contains privileged or confidential commercial or financial information that may be exempt from disclosure under FOIA.

[redacted] (b)(6)

In addition, Records subject to audit and examination shall also include those records necessary to evaluate and verify all direct and indirect costs, including overhead and payroll tax and fringe benefit allocations, as they may apply to costs associated with the Agreement.

(d) If requested by the Government, the Exchange Partner shall promptly deliver to the Government or its designee copies of all Records related to the Agreement, in a form acceptable to the Government. The Exchange Partner shall provide to the Government or its authorized representative such Records maintained in an electronic format in a computer readable format on data disks or suitable alternative computer data exchange formats.

(e) The Exchange Partner shall include similar provisions in its contractor agreements which require the contractor and subcontractor to keep Records and to permit audits by the Government as is required of the Exchange Partner.

(f) The Government shall have access to the Exchange Partner's facilities, shall be allowed to interview all current and former employees to discuss matters pertinent to the Agreement, and shall have access to all necessary Records and to be provided adequate work space, in order to conduct audits and examinations.

(g) If any audit or examination of the Exchange Partner's Records discloses total findings resulting in overpricing by the Exchange Partner to the Government in excess of one-quarter percent of the total Agreement costs, the Exchange Partner shall immediately reconcile the overpricing with the Government.

(h) The Government shall be entitled to audit all amendments to the Agreement, including lump-sum amendments, to determine whether the proposed costs, as represented by the Exchange Partner and any of its contractors, are in compliance with the Agreement. If it is determined that the costs proposed under an amendment, including lump-sum amendments, are not in compliance with the Agreement, the Government reserves the right to adjust the amount previously approved and included in the amendment.

(i) These requirements regarding accounting records shall not mitigate, lessen nor change any other requirements in the Agreement regarding audits, payment submissions, records, or records retention.

This document contains privileged or confidential commercial or financial information that may be exempt from disclosure under FOIA.

(b)(6)

ATTACHMENT **Initial Pricing Form**

LINE	ITEM (SEE NOTES BELOW TABLE)	PRICE
1	Firm-fixed-price (FFP) for Design Phase Services	$ (b)(4) [redacted]
2a	Initial Target Cost	$ (b)(4) [redacted]
2b	Contingency Allowance percentage	5%
2c	Estimated Contingency Allowance (2a x 2b)	$ (b)(4) [redacted]
2d	Target Fee Percentage	(b)(4) [redacted]%
2e	Estimated Fee (2a x 2d)	$ (b)(4) [redacted]
2f	Estimated maximum price for the Delivery of the New Facility (2a + 2c + 2e)	$ (b)(4) [redacted]
3	Estimated maximum total price of the Design Phase Services and the Delivery of the New Facility (1 + 2f)	$ 510,038,648.93

NOTES:

Line 1: The firm-fixed-price for Design Phase Services shall be $ (b)(4) [redacted] as negotiated prior to award of the Exchange Agreement.

Line 2a: The Initial Target Cost includes the exercised optional allowances for procurement and installation of furniture and equipment, Relocation Services, and Art-in-Architecture as carried in the Cost Estimating Workbook included in Volume III, Tab 3 of the Exchange Partner's Proposal

Line 2b: The Contingency Allowance percentage is stipulated by the Government to be 5%.

Line 2c: During the establishment of the Firm Target Cost, the stipulated 5% Contingency Allowance Percentage shall be applied to the Firm Target Cost to calculate the Contingency Allowance. If the Final Target Cost is less than the Firm Target Cost, the CA will be reduced accordingly.

Line 2d: Target Fee Percentage shall be [redacted]%, as negotiated prior to award of the Exchange Agreement. (b)(4)

Line 2e: During the establishment of the Firm Target Cost, the Target Fee Percentage shall be applied to the Firm Target Cost to calculate the Fee. If the Final Target Cost is less than the Firm Target Cost, the Fee will be reduced accordingly; however, the Target Fee Percentage shall remain the same.

Line 2f: When the Firm Pricing Form and the Final Pricing Form are completed, "estimated maximum price" will be replaced with Guaranteed Maximum Price (GMP). The Exchange Partner shall guarantee the maximum price for the Delivery of the New Facility (the GMP) upon negotiation of the Firm Target Cost and the Final Target Cost.

Line 3: The Government and Exchange Partner agree that at no point in this Agreement shall the maximum total price of the Design Phase Services and the Delivery of the New Facility be allowed to exceed the Proposed Gross Offer.

This document contains privileged or confidential commercial or financial information that may be exempt from disclosure under FOIA.

[redacted] (b)(6) [redacted]

EXHIBIT F
Form of Interim Use License for Exchange Parcel

THIS INTERIM USE LICENSE AGREEMENT (this "**License Agreement**") is entered into as of this _____ day of _____, 201___ by and between THE UNITED STATES OF AMERICA, acting by and through the U.S. GENERAL SERVICES ADMINISTRATION (the "**Government**") and _____ _____ ("**Licensee**").

RECITALS

WHEREAS, the Government is the owner of certain real property comprised of approximately fourteen (14) acres of land located at 55 Broadway in Cambridge, Massachusetts and shown on the survey attached hereto as "Exhibit __" (the "**Property**"); and

WHEREAS, The Government and Licensee have entered into an Exchange Agreement dated _____, 201__; and

WHEREAS, Licensee has requested permission from the Government to enter upon a portion of the Property to _____, and the Government is willing to grant to Licensee a license to enter upon the Property for the purposes, and subject to the restrictions, limitation and conditions specified herein; and.

WHEREAS, the Government will grant Licensee a license to enter upon and use the portion of the Property cross-hatched on the survey attached hereto as "Exhibit __" (the "**License Area**") for the purposes described in this License Agreement, subject to the restrictions, limitations and conditions described herein.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. Grant of License. The Government hereby grants to Licensee a temporary right and license to enter upon and occupy the License Area for the permitted uses described herein.

2. Permitted Uses. The Licensee may use the License Area for _____ (the "**Permitted Uses**"). It is understood that the work shall be performed in a professional manner, and any damage to the Property shall be corrected by the Licensee.

3. Term. Licensee shall have the right to enter upon and occupy the License Area during the period of time commencing on _____ (the "**Commencement Date**") and terminating on _____ (the "**Termination Date**") for the Permitted Uses.

4. Indemnification and Release. Except to the extent attributable to the negligence or willful misconduct of the Government, Licensee shall at all times (both during and after the term of the license granted herein) indemnify, defend and hold the Government, as well as any and all of its agents, contractors and employees, harmless and indemnified from any and all actions, petitions, orders, claims, charges, and/or demands made, brought or instituted by any and all private parties and/or any and all public agencies or authorities, together with any and all expenses, including attorney's fees, costs, losses, damages, liabilities or penalties assessed against or incurred by any of them, arising out of or in

This document contains privileged or confidential commercial or financial information that may be exempt from disclosure under FOIA.

(b)(6)

connection with Licensee's use of or entry upon the License Area including, without limitation, Licensee's failure to abide by the terms set forth herein and/or any act or omission, negligent or otherwise, on the part of Licensee or any of its agents, servants, employees or invitees. Licensee does hereby forever waive, release, relinquish, remise and discharge the Government, its agents, employees, successors and assigns from any and all losses, costs or expenses (including reasonable attorneys' fees), damages, demands, liabilities, claims, actions, causes of action, suits, or judgments (collectively, "Claims") whatsoever of every name and nature, in law and in equity, including without limitation those related in any manner to:

(a) Any accident or injury to, or death of, any person, or any damage to property occurring on, in or in the vicinity of the property/building , or any part thereof, arising out of the presence in and use by the Licensee and/or its employees and contractors of the property/building ; or any condition of the property/building or any portion thereof caused by the Licensee or its employees or contractors; or

(b) Any failure of the Licensee or its employees or contractors to perform or comply with the terms of this License Agreement or the terms of any statute, law, regulation or ordinance affecting the Licensee's use of the property/building, which the Licensee, its agents, employees, or contractors ever had, now have or might have (and whether or not asserted) against the Government and its agents, employees, successors or assigns arising from, pursuant to, or bearing any relationship whatsoever to the License Agreement or the property/building, except only for Claims arising out of the gross negligence of the Government.

5. Insurance.

(a) Licensee agrees to procure and maintain: Workers' Compensation Insurance affording protection under the Worker's Compensation Law of the Commonwealth of Massachusetts; Employer's Liability Insurance with limits of liability of not less than $2,000,000.00; Commercial General Liability Insurance with limits of liability of not less than $5,000,000.00 combined single limit for bodily injury, personal injury and property damage as a result of any one occurrence; and Comprehensive automobile liability covering the operation of all automobiles used in connection with this License Agreement in the amount of at least $1,000,000 per person and $2,500,000 per occurrence for bodily injury and $1,000,000 per occurrence for property damage. [*The insurance protection set forth above may be modified depending on the Permitted Use.*]

(b) Prior to the commencement of any activities pursuant to or in connection with any such entry by Licensee or its employees, servants, agents or invitees. Licensee shall furnish to the Government certificates evidencing such insurance, naming the United States of America as an additional insured, and stipulating that such insurance will not be materially reduced or canceled unless thirty (30) days prior written notice of such change or termination is given to the Government at:

U.S. General Services Administration
Attn: _____
Thomas P. O'Neill, Jr. Federal Building
10 Causeway Street, Room _____
Boston, MA 02222

6. Maintenance of the License Area. Licensee agrees i) not to unreasonably disturb the Government's use of the License Area during the term of this License Agreement and ii) to relinquish use of the

This document contains privileged or confidential commercial or financial information that may be exempt from disclosure under FOIA.

(b)(6)

License Area upon the Termination Date. Licensee further agrees i) that no waste or damage shall be committed upon or to the License Area by or on behalf of Licensee, nor shall Licensee make any alterations, changes, improvements or installations therein or thereto following the Commencement Date; ii) that the License Area shall be used solely by or on behalf of Licensee for the Permitted Uses; iii) that the License Area shall not be used by or on behalf of Licensee for any unlawful purpose; and iv) that Licensee shall not dump, store, dispose of or in any way introduce any environmental contaminant in or on the License Area or commit or suffer to be committed in, on or about the License Area any act which would require the filing of official notice under any applicable environmental law. [*This section may be modified depending on the Permitted Use.*]

7. Surrender of the License Area. On or before the Termination Date, Licensee shall remove any and all goods and effects from the License Area that were brought to the License Area by Licensee pursuant to this License Agreement. If Licensee shall fail to effect the removal described in this Section, such goods and effects shall be deemed abandoned. Thereafter, the Government may remove such goods and effects and, at the Government's sole option: i) store the same for the account of Licensee in any place selected by the Government; ii) sell the same on such terms and conditions the Government shall determine in the Government's sole discretion; or iii) discard of such goods and effects in any manner or fashion as the Government shall deem appropriate in the Government's sole discretion. [*This section may be modified depending on the Permitted Use and length of term of this License Agreement.*]

8. Compliance with Laws. Licensee shall, at its sole cost and expense, throughout the term of this License Agreement: i) obtain and maintain as necessary all permits, licenses and approvals required by any governmental authority with jurisdiction thereof for use by Licensee, its employees, agents, invitees and licensees of the License Area for the use permitted in this License Agreement and ii) comply with all applicable laws and regulations, and with the terms and conditions of all permits, licenses and approvals issued to Licensee in connection with its use of the License Area.

9. Defaults and Remedies. If at any time during the term of this License Agreement, Licensee fails to perform or observe any term, covenant or condition contained in this License Agreement to be performed or observed by Licensee, and such failure continues for a period of ten (10) calendar days after the Government gives written notice to Licensee specifying the nature of the default claimed (unless such default shall be of such a nature that it cannot be completely cured within such 10-day period and Licensee commences to cure such default during such 10-day period and thereafter continues curing the same with reasonable diligence); then, notwithstanding anything in this License Agreement to the contrary, in any such instance, the Government shall have the right, in its sole and absolute discretion, to terminate this License Agreement by written notice to Licensee and such termination shall be effective on the date specified in such notice.

10. Representations and Warranties of the Licensee. The Licensee has all of the requisite power and authority to deliver this Agreement and the releases and indemnifications contemplated herein. This License Agreement has been duly executed and delivered by the Licensee and constitutes the legal, valid and binding obligation of the Licensee enforceable in accordance with its terms. The execution and delivery of this License Agreement by the Licensee does not, and the consummation of the transactions contemplated by this License Agreement and the compliance with its terms, conditions and provisions by the Licensee will not conflict with or result in a breach of or constitute a default (or an event which might, with the passage of time or the giving of notice or both, constitute a default) under any of the terms, conditions or provisions of any agreement or instrument to which the Licensee is a party or by which the Licensee may be bound or affected, or any judgment or order of

This document contains privileged or confidential commercial or financial information that may be exempt from disclosure under FOIA.

(b)(6)

any court or governmental department, commission, board, agency or instrumentality, domestic or foreign, or any applicable law rule or regulation.

11. Entry. The Government, its employees, agents and contractors shall have the right at reasonable times to enter upon the License Area without charge.

12. Condition of License Area. Licensee acknowledges and understands that the Government makes no representation or warranty, either expressed or implied, with respect to the License Area, its present condition or its fitness or suitability for any particular purpose. Accordingly, the License Area is being accepted by Licensee in an "as-is, where-is" condition, with all faults associated therewith.

13. Miscellaneous Provisions.

(a) No Assignment. Licensee understands that this License Agreement and the license granted herein shall in no event be assignable by Licensee.

(b) No Third Party Beneficiaries. Nothing in this License Agreement, expressed or implied, is intended to confer upon any person, other than each of the parties hereto, any benefits, rights or remedies under or by reason of this License Agreement.

(c) Entire Agreement. This License Agreement and any exhibits attached hereto and hereby incorporated herein set forth all of the agreements, promises, covenants, conditions and undertakings between the parties with respect to the subject matter hereof, and supersede all prior and contemporaneous agreements and understandings, express or implied, oral or written. The Recitals are hereby incorporated into this License Agreement.

(d) Amendment. No waiver or modification of any of the terms of this License Agreement shall be valid unless in writing and signed by each of the parties hereto.

(e) No Waiver or Release. Failure of the Government to exercise any right or remedy or option provided for herein (or any delay of the Government in exercising any right or remedy or option provided for herein) shall not be deemed to be a waiver of any of the covenants or obligations of the Licensee hereunder or the right of the Government to enforce the same.

(f) Partial Invalidity. In the event any one or more of the provisions contained in this License Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, the remainder of this License Agreement shall be valid and enforceable to the fullest extent permitted by law.

(g) Authorization. The Licensee has all of the requisite power and authority to deliver this License Agreement and the releases and indemnifications contemplated herein.

(h) Notices. All notices and other communication which is required or permitted by this License Agreement shall be in writing and delivered to the appropriate address below by personal service, certified first class U.S. mail (postage prepaid, properly addressed, return receipt requested), or by reputable overnight delivery service such as Federal Express or United Postal Service, or by electronic mail.

To Government:

This document contains privileged or confidential commercial or financial information that may be exempt from disclosure under FOIA.

[redacted] (b)(6)

U.S. General Services Administration
Attn: _____
Thomas P. O'Neill, Jr. Federal Building
10 Causeway Street, Room _____
Boston, MA 02222
Phone: _____
Facsimile: _____
Email: _____

To Licensee:
Name: _____
Attn: _____
Address: _____
City: _____
Phone: _____
Facsimile: _____
Email: _____

14. Governing Law. The construction and effect of the terms of this License Agreement shall be determined in accordance with federal law.

15. Counterparts. This License Agreement may be executed in counterparts, each of which will constitute an original, but all of which, when taken together, will constitute but one agreement. Executed copies hereof or any amendments hereto may be delivered by facsimile or electronic mail and upon receipt will be deemed originals and binding upon the parties hereto, regardless of whether originals are delivered thereafter.

[SIGNATURE PAGE FOLLOWS]

This document contains privileged or confidential commercial or financial information that may be exempt from disclosure under FOIA.

(b)(6)

EXECUTED AS A SEALED INSTRUMENT under federal law on the date first written above.

LICENSEE:

_____,

a _____

BY: _____

NAME: _____

TITLE: _____

GOVERNMENT:

UNITED STATES OF AMERICA
Acting by and through the U.S. General Services Administration

BY: _____

NAME: _____

TITLE: _____

This document contains privileged or confidential commercial or financial information that may be exempt from disclosure under FOIA.

(b)(6)

EXHIBIT G
Form of Deed

KNOW ALL BY THESE PRESENTS, that the UNITED STATES OF AMERICA, acting by and through the Administrator of the U.S. GENERAL SERVICES ADMINISTRATION (the "**Grantor**"), under and pursuant to the powers and authority contained in 40 U.S.C. Section 581(c)(1), having an address of U.S General Services Administration, New England Region, Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, Boston, Massachusetts 02222, for and in consideration of _____ _____ DOLLARS AND _____ /100 ($ _____) does hereby GRANT, GIVE, REMISE, AND RELEASE, without warranty or representation of any kind or nature, express or implied, unto _____, having a mailing address at _____ _____ (the "**Grantee**") all such right, title and interest as Grantor has in and to that certain real property located at 55 Broadway in Cambridge, Massachusetts and is more particularly described in "Exhibit __" attached hereto and incorporated herein ("the **Property**").

The Property is conveyed subject to any and all existing reservations, easements, restrictions, covenants, and rights, recorded or unrecorded, including those for roads, highways, streets, railroads, power lines, telephone lines and equipment, pipelines, drainage, sewer and water mains and lines, public utilities, and rights-of-way including, but not limited to, any easements, reservations, rights, and covenants described herein; any state of facts that would be disclosed by a physical examination of the Property; and any and all other matters of record.

1. Condition of Property. The Property is conveyed 'as is' and 'where is' without any representation, warranty or guarantee of any kind or nature, express or implied, including, without limitation, any representation, warranty or guarantee as to quantity, quality, character, condition, size, or kind, or that the same is in any particular condition or fit to be used for any particular purpose. The Grantor has made no representation or warranty concerning the condition or state of repair of the Property that has not been fully set forth in this Deed. Reference is made to Notice of Activity and Use Limitation dated May 12, 2011 and recorded in the Middlesex South Registry of Deeds in Book 56856, Page 206.

2. Easements. The Property is conveyed subject to and with the benefit of the terms, conditions and restrictions of a cross easement agreement (or reservation of rights) for access and utilities, recorded herewith. [*This section will be appropriately modified to address any mutually agreed upon grant or reservation of easements and/or cross-easement agreement.*]

3. Notice & Covenant Regarding Hazardous Substance Activity. Pursuant to Section 120(h)(3)(A)(i) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA)(42 U.S.C. §9620(h)(3)(A)(i)), and based upon a complete search of agency files, the United States gives notice that "Exhibit __" provides the following information: i) the type and quantity of hazardous substances that were known to have been released or disposed of or stored for one year or more on the Property; ii) the time such storage, release or disposal took place; and iii) a description of remedial action taken, if any.

   (a) CERCLA Covenant. The Grantor warrants that all remedial action necessary to protect human health and the environment has been taken before the date of conveyance of the Property. The Grantor warrants that it shall take any additional response action found to be necessary after the date of conveyance of the Property regarding hazardous substances located on the Property.

This document contains privileged or confidential commercial or financial information that may be exempt from disclosure under FOIA.

(b)(6)

(b) This covenant shall not apply—

(1) In any case in which the Grantee, its successor(s) or assign(s), or any successor in interest to the Property or part thereof is a Potentially Responsible Party (PRP) with respect to the Property immediately prior to the date of conveyance of the Property except if any such party is a PRP as a result of (x) implementing response actions required for the Exchange Parcel to be in compliance with the Massachusetts Environmental Laws or CERCLA and/or (y) entering into and performing actions permitted by a license issued by the Grantor; or

(2) To the extent that such additional response action or part thereof found to be necessary is the result of an act or failure to act of the Grantee, its successor(s) or assign(s), or any party in possession after the date of conveyance of the Property that either:

(i) Results in a release or threatened release of a hazardous substance that was not located on the Property on the date of conveyance of the Property; or
(ii) Causes or exacerbates the release or threatened release of a hazardous substance the existence and location of which was known and identified to the applicable regulatory authority as of the date of conveyance of the Property.

(c) In the event the Grantee, its successor(s) or assign(s), seeks to have the Grantor conduct any additional response action, and, as a condition precedent to the Grantor incurring any additional cleanup obligation or related expenses, the Grantee, its successor(s) or assign(s), shall provide the Grantor at least forty-five (45) days written notice of such a claim. In order for the 45-day period to commence, such notice must include credible evidence that:

(1) The associated contamination existed prior to the date of conveyance of the Property; and

(2) The need to conduct any additional response action or part thereof was not the result of any act or failure to act by the Grantee, its successor(s) or assign(s), or any party in possession.

(d) Access. The Grantor reserves a right of access to all portions of the Property for environmental investigation, remediation or other corrective action. This reservation includes the right of access to and use of available utilities at reasonable cost to the Grantor. These rights shall be exercisable in any case in which a remedial action, response action, or corrective action is found to be necessary after the date of conveyance of the Property, or in which access is necessary to carry out a remedial action, response action, or corrective action on adjoining property. Pursuant to this reservation, the Grantor, and its respective officers, agents, employees, contractors, and subcontractors shall have the right (upon reasonable advance written notice to the record title owner) to enter upon the Property and conduct investigations and surveys, to include drilling, test-pitting, borings, data and records compilation and other activities related to environmental investigation, and to carry out remedial or removal actions as required or necessary, including but not limited to the installation and operation of monitoring wells, pumping wells, and treatment facilities. Any such entry, including such activities, responses or remedial actions, shall be coordinated with record title owner and shall be performed in a manner that minimizes interruption with activities of authorized occupants.

This document contains privileged or confidential commercial or financial information that may be exempt from disclosure under FOIA.

(b)(6)

4. Covenant and Indemnification Regarding the Presence of Lead Based Paint. The Grantee hereby acknowledges the required disclosure in accordance with the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. 4852d (Title X), of the presence of any known lead-based paint and/or lead-based paint hazards in target housing constructed prior to 1978 on the Property. The Property contains no improvements defined by Title X as target housing. However, in the event that any improvements on the Property are converted to residential use, the Grantee covenants and agrees that in its use and occupancy of such Property it will comply with 24 CFR 35 and 40 CFR 745 and all applicable federal, state and local laws relating to lead-based paint; and that the Grantor assumes no liability for damages for Property damage, personal injury illness, disability, or death to the Grantee, its successors or assigns, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use disposition, or other activity causing or leading to contact of any kind whatsoever with lead-based paint on the Property described in this deed, whether the Grantee, and its successors or assigns, have properly warned or failed properly to warn the individual(s) injured. The Grantee further agrees to indemnify, defend and hold harmless the Grantor from any and all loss, judgment, claims, demands, expenses or damages, of whatever nature which might arise or be made against the United States of America, due to, or relating to the presence of lead-based paint hazards on the Property, any related abatement activities, or the disposal of any material from the abatement process. The Grantee further covenants and agrees that it will comply with all federal, state, local, and any other applicable law regarding the lead-based paint hazards with respect to the Property.

5. Notice of the Presence of Asbestos Containing Materials. The Grantee acknowledges that it has been informed by Grantor that the Property contains asbestos-containing materials, and that the Grantee has been provided with the following notice and warning by the Grantor. The Grantee will be subject to the following terms and conditions:

   (a) The Grantor is warned that the Property contains asbestos-containing materials. Asbestos is a hazardous material. Unprotected exposure to asbestos fibers has been determined to significantly increase the risk of cancer, mesothelioma, and asbestosis. These diseases can cause serious bodily harm resulting in disability or death.

   (b) The Grantee is deemed to have relied solely on its own judgment in assessing the overall condition of all or any portion of the Property, including any asbestos hazards or concerns.

   (c) No warranties, either express or implied, are given with regard to the condition of the Property including, without limitation, whether the Property does or does not contain asbestos or is or is not safe for a particular purpose. The failure of the Grantee to have inspected or to be fully informed as to the condition of all or any portion of the Property shall not constitute grounds for any claim or demand against the Grantor.

   (d) The description of the Property as set forth herein and any other information provided to the Grantee with respect to the Property was based on the best information available to the Grantor and is believed to be correct, but any error or omission shall not constitute grounds or reason for any claim by Grantee against the Government, including, without limitation, any claim for allowance, refund or deduction from the purchase price for such Property.

   (e) The Grantor assumes no liability for damages for personal injury, illness, disability or death to the Grantee or to the Grantee's employees, invitees, or any other person subject to the Grantee's control or direction, or to any other person, including members of the general public, arising from

This document contains privileged or confidential commercial or financial information that may be exempt from disclosure under FOIA.

(b)(6)

or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos on the Property.

(f) The Grantor further agrees that in its use and occupancy of the Property, it will comply with all federal, state, and local laws, ordinances, orders and regulations relating to asbestos.

TO HAVE AND TO HOLD the Property with all privileges and appurtenances thereunto belonging to the Grantee.

This document contains privileged or confidential commercial or financial information that may be exempt from disclosure under FOIA.

(b)(6)

IN WITNESS WHEREOF, the UNITED STATES OF AMERICA, acting by and through the Administrator of the General Services Administration has caused these presents to be duly executed for and in its name and behalf by _____, U.S. General Services Administration, New England Region who has this _____ day of _____, 201___ hereunto set his hand and seal.

UNITED STATES OF AMERICA
Acting by and through the Administrator of the U.S. General Services Administration

BY: _____

NAME: _____

TITLE: _____

ACKNOWLEDGEMENT

Commonwealth of Massachusetts
County of _____ ss

In _____, in said County and State, on this _____ day of _____ 201___ before me personally appeared _____, U.S. General Services Administration, Boston, Massachusetts, duly empowered and authorized, proved to me through satisfactory evidence of identification, which was a U.S. General Services Administration ID Card, to be the person whose name is signed on the preceding instrument and by him duly executed, to be his free act and deed in his capacity as _____, U.S. General Services Administration, Boston, Massachusetts.

_____

_____, Notary Public

My commission expires _____.

This document contains privileged or confidential commercial or financial information that may be exempt from disclosure under FOIA.

(b)(6)

EXHIBIT H

Guaranty

This **GUARANTY** (this "**Guaranty**") is made as of the 18th day of January, 2017 by MASSACHUSETTS INSTITUTE OF TECHNOLOGY, a charitable corporation chartered under the provisions of Chapter 183 of the Acts of 1861 of the General Court of the Commonwealth of Massachusetts on April 10, 1861 (the "**Guarantor**") in favor of the UNITED STATES OF AMERICA, acting by and through the U.S. GENERAL SERVICES ADMINISTRATION (the "**Government**") in consultation with the U. S. DEPARTMENT OF TRANSPORTATION.

WHEREAS, the Government and Massachusetts Institute of Technology (the "**Exchange Partner**") have entered into an Exchange Agreement dated as of the date hereof (the "**Exchange Agreement**");

WHEREAS, as a condition to entering into the Exchange Agreement with the Exchange Partner, the Government requires Guarantor to guarantee the full performance of the Exchange Partner's obligations under the Exchange Agreement; and

WHEREAS, the Guarantor desires to guarantee such obligations.

NOW THEREFORE, for valuable consideration and as an inducement to the Government to enter into the Exchange Agreement with the Exchange Partner, Guarantor hereby agrees as follows:

1. Guarantor hereby unconditionally and absolutely guarantees the payment and performance of all of the obligations of the Exchange Partner under the Exchange Agreement and shall be subject to all the terms and conditions described therein. In the event the Exchange Partner fails to satisfy any obligation under the Agreement, the Guarantor shall be responsible for satisfying such failure(s) so that the obligations of the Exchange Partner under the Exchange Agreement are fully satisfied.

2. This is a continuing guarantee and shall remain in operation until all obligations of the Exchange Partner under the Exchange Agreement have been satisfied and performed in full. This Guaranty is in addition to and not in substitution of any other security that the Government may at any time hold for the payment and performance of such obligations and may be enforced without first having recourse to any such security and/or without taking any other steps against the Exchange Partner.

3. No failure on the part of the Government to exercise and no delay in exercising any right under this Guaranty shall operate as a waiver of the Government's rights hereunder.

4. The execution, delivery and performance by Guarantor of this Guaranty are within the power of Guarantor and have been duly authorized by all requisite corporate or partnership action, as appropriate.

5. Guarantor shall not assign or transfer any of its rights, benefits and obligations under this Guaranty without the prior written approval of the Government.

(b)(6)

(a) Notwithstanding the place where this Guaranty may be executed by any of the parties hereto, the parties expressly agree that all terms and provisions hereof shall be construed and enforced in accordance with federal law as now adopted and as may be hereafter amended.

(b) Any disputes which may arise in connection with this Guaranty shall be settled under the dispute resolution provisions of the Exchange Agreement.

(c) All notices, requests, demands, and other communications under this Guaranty shall be deemed to have been duly given (i) to Guarantor, if delivered in accordance with the delivery requirements set forth in Section 1 of Article XII of the Exchange Agreement, to the address below and (ii) to the Government, if delivered in accordance with the requirements set forth in Section 1 of Article XII of the Exchange Agreement, to the address set forth therein.

To Guarantor:

Massachusetts Institute of Technology
(b) (6)
[redacted]

With a copy to:

Massachusetts Institute of Technology
(b) (6)
[redacted]

[SIGNATURE PAGE FOLLOWS]

(b)(6)

IN WITNESS WHEREOF, Guarantor has caused this Agreement to be duly executed as of the day and year first written above.

GUARANTOR:

(b) (6)

[redacted]

Page 55

(b)(6)