

NIH Policy Manual

26101-18-1P - Acquisition of Real Property by Purchase

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Transmittal Notice

1. **Explanation of Material Transmitted:** This chapter is being revised to reflect organizational changes and update National Institutes of Health (NIH) policy and procedures for acquiring real property by purchase through the Federal Government of the United States.
2. **Filing Instructions:**

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A. Purpose

This chapter establishes the policy and procedures for the NIH to acquire and purchase real property on a fee simple interest basis on behalf of the Federal Government. The procedures do not address the authority or the source of funding to purchase real property.

B. Scope

This policy applies to all NIH entities involved with the acquisition of real property to support the NIH mission.

C. Policy

The following conditions must be met before the NIH may acquire real property:

1. The acquisition has been authorized by statute;
2. The signing official for the NIH has been delegated authority under the statute;
3. A Program Description and Justification Document (PDJD) has been approved by the Director, Office of Research Facilities Development and Operations (ORFDO) or his/her designee validating that the requirement cannot be satisfied in facilities currently available;
4. A Program of Requirements (POR) has been approved by the Director, ORFDO or his/her designee;
5. Funds have been appropriated;
6. An Acquisition Plan has been approved by the Director, Office of Acquisitions (OA), ORFDO;
7. A Site Evaluation Checklist has been completed and validates that the property being considered has the potential to meet the needs described in the approved POR;
8. A toxic/hazardous waste investigation report has been completed;
9. An Environmental Assessment (EA) or an Environmental Impact Statement (EIS), if necessary, has been completed;
10. A title insurance binder has been issued by a company approved by the Department of Justice (DOJ), and an abstract and title opinion have been obtained;
11. A favorable preliminary title opinion for the property ([40 U.S.C. 3111](#)) has been rendered by the DOJ;
12. Prior to starting negotiations to purchase real property:
 - a. At least two (2) formal, independent appraisal reports showing the estimated fair market value (FMV) of the property must be provided to the NIH;
 - b. The Seller and/or Seller's designated representative must be given the opportunity to accompany the NIH's appraisers during the inspection of the property;
 - c. The NIH shall establish an amount of just compensation through formal appraisal; and
13. The DOJ issues a favorable final title opinion.

D. Responsibilities

1. **NIH Institutes, Centers and Offices (ICOs)** are responsible for coordinating real property acquisition requirements with the Director, ORFDO.
2. **The Director, ORFDO:**
 - a. Is delegated authority to purchase real property consistent with NIH Delegation of Authority 04C: Real Property;
 - b. Facilitates obtaining the legislative authority for the acquisition consistent with 41 U.S.C. 14;
 - c. Obtains the Department of Health and Human Services (HHS) Capital Investment Board's approval, when applicable, to proceed with the acquisition; and

- d. In coordination with the Contracting Officer and the Office of General Counsel, ensures compliance with FMR § 102-73.225 – 73.260 and the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. 4651 – 4655.

3. The NIH Office of the General Counsel (OGC):

- a. Provides NIH legal guidance, review, and advice during the site evaluation and selection, pre-settlement, settlement, closing stages, and necessary follow-up;
- b. Prepares and assembles and/or reviews all sales contract documents and requests forwarded to the DOJ for preliminary and final title opinions; and
- c. Assists the DOJ in acting as the NIH's representative and agent in settlement action.

4. The NIH Office of Financial Management (OFM)/Financial Operations Division (FOD):

- a. Handles financial transactions as approved by the Office of Research Facilities Development and Operations (ORFDO);
- b. After the settlement date of the purchase, the OFMs/Central Services Business Operations Division (CSBOD), receives the following information from the ORFDO Lease Contracting Officer (LCO);
 - i. Name/Building Number/Location
 - ii. Real Property Unit Identification (RPUID) of the building
 - iii. Purchase price
 - iv. Purchase/Settlement Date
 - v. CAN number(s) used for the purchase
- c. OFM/CSBOD uses the information provided by ORFDO to set up an asset account in the Sunflower System to depreciate the building over 30 years of its useful life using a straight-line method.

5. Office of Acquisitions (OA), ORFDO:

- a. Designates a warranted Real Property Contracting Officer (CO) with authority to purchase real property to lead the coordination effort with all stakeholders for the purchase of real property;
- b. Ensures proper and timely completion of all aspects of a purchase and obtains required approvals;
- c. Reviews and provide comments regarding PORs;
- d. Serves as a member on the NIH ORFDO Site Evaluation Team which consists of members from the impacted ICO(s), ORFDO and ORS Divisions;
- e. In coordination with the ORFDO Division of Facilities Planning (DFP), acquires information from appropriate local or state authorities on approved usage zoning in the area under consideration before the site selection process begins;
- f. Obtains documentation concerning the property as requested by OGC and DOJ;

- g. Dependent upon the jurisdiction, coordinates with the ORFDO DFP and if applicable the National Capital Planning Commission (NCPC) or its counterpart organization as required;
- h. Procures services from the title company to support deed search, settlement, recordation, etc.;
- i. Prepares all documents for the purchase of real property, advertises the solicitation, and prepares a preliminary review and summary of the offers; and the
- j. CO will execute all required documents for purchase and transfer of real property to the government and provide the necessary purchase information to the NIH/OFM.

6. Division of Budget and Financial Management (DBFM), ORFDO:

- a. Ensures that funds for the purchase of real property and its related administrative and legal costs are authorized and appropriated, to include, but not limited to, appraisal fees, the real property purchase price, and advertising fees.

7. Division of Environmental Protection (DEP), ORFDO:

- a. Ensures compliance with the National Environmental Policy Act (NEPA) of 1969, as amended. Coordinates preparation of the Environmental Reviews in accordance with NEPA;
- b. Ensures compliance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) ([42 U.S.C. 9601](#) et seq); and other applicable federal, state, and local laws and regulations;
- c. Serves as a member and provides guidance to the Site Evaluation Team related to environmental factors to be considered in the site selection process;
- d. Ensures that the impact of contaminated property and/or remediation requirements are fully considered and incorporated into the NEPA-environmental analysis, assessment and compliance process;
- e. Provides technical consultation to identify, assess, and mitigate hazardous materials, wastes, and other risks;
- f. Obtains feedback from local or state authorities, when possible, on the environmental and safety conditions of the area under consideration before the site selection process begins; and
- g. Identifies, to the extent possible, existing, potential, or suspected environmental and safety conditions from either past activity on a site, or on neighboring sites, that may devalue the property, restrict its use, or create a liability for the NIH.

8. Division of Facilities Planning (DFP), ORFDO:

- a. Assists the OA as applicable in pre- and post-acquisition activities, including market survey and technical proposal evaluation;
- b. Coordinates with the Institute, Center, Office or Program requesting purchase of real property and supports stakeholder as applicable;
- c. Prepares a PDJD and POR;

- d. Be represented on the Site Evaluation Team;
- e. Acquires from appropriate local or state authorities, when possible, information on the geological and engineering conditions, including utilities, water/sewer, etc., in the area under consideration before the site selection process begins; and
- f. Identifies as applicable and to the extent possible, suspected geological, engineering, or historic conditions on the site, or on neighboring sites, that may devalue the property or restrict its use.

9. Division of Design and Construction Management (DDCM), ORFDO:

- a. Assists the OA as applicable in pre- and post-acquisition activities, including market survey and technical proposal evaluation;
- b. Supports the Site Evaluation Team; and
- c. Supports DFP in identifying suspected geological or engineering on the site, or on neighboring sites, that may devalue the property or restrict its use.

10. Division of Occupational Health and Safety (DOHS), Office of Research Services (ORS):

- a. Serves as a member of the Site Evaluation Team and provides guidance related to occupational health and safety factors in the site selection process;
- b. Participates in preoccupancy surveys;
- c. Reviews and provides comments on the POR and other documents as necessary for purchase of real property; and
- d. Reviews the facility design drawings provided by the ORFDO.

11. Office of Community Liaison (OCL), OD:

- a. Represents the NIH to promote and maintain effective communication between the NIH and the affected community (ies).

12. The Director, NIH:

- a. Provides concurrence to purchase the real property prior to award of the contract

E. Procedures

1. Institutes, Centers and Offices:

- a. Notifies the Director, ORFDO of the need to purchase real property to support its mission.

2. The Director, ORFDO:

- a. Verifies existing real property assets are not available to support ICO requirements.

- b. Submits the acquisition plan for the land purchase to the HHS Capital Investment Review Board for approval in coordination with the NIH Facilities Working Group (FWG);
- c. Submits documentation to support obtaining legislative authority to proceed with the acquisition consistent with 41 U.S.C. 14;
- d. Authorizes the Office of Acquisition to proceed with negotiations and acquisition for the purchase of real property;
- e. Coordinates review of the purchase with OGC to ensure compliance with FMR §102-73.255 through 73.260;
- f. Ensures that the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. 4651-4655 is followed; and
- g. Agrees or disagrees with the site selection and acquisition. If an agreement is not received, no further action will be taken until ORFDO decides to proceed.

3. The Office of Acquisitions (OA), ORFDO:

- a. Coordinates with internal and external stakeholders;
- b. Publishes the intent to purchase real property in the Federal Business Opportunities (FBO);
- c. Develops documents required for the purchase of real property;
- d. Oversees procurement of Title Evidence and appraisals, generally accomplished through a title company or other vendor;
- e. Conducts negotiations;
- f. Requests a preliminary title opinion from the Department of Justice through the Office of General Counsel;
- g. Requests for a preliminary title opinion will include:
 - i. statement of authority for the program
 - ii. scope of the program and establishment of need
 - iii. authority for acquiring the land
 - iv. appropriation for the purchase and a statement of the availability of funds
 - v. survey map which shows exterior boundaries, location of proposed Government construction, easements and rights-of-way, and general direction of flow of natural water courses (further, the survey should include enough of the surrounding land and improvements that the viewer would get a clear orientation to the land being purchased)
 - vi. authority for the purchase of real property
 - vii. appraisal
 - viii. offer to sell real property
 - ix. confirmation of negotiation
 - x. title insurance binder together with the agency reply to all title exceptions
 - xi. preliminary certificate of inspection and possession, and
 - xii. draft warranty deed.
- h. Generally, the title company hired by the Government issues all closing documents to the CO for signature;

- i. Arranges for completion of the Site Purchase Recommendation Report (Appendix 4);
- j. Submits the Site Purchase Recommendation Report to the Director, ORFDO for site selection and concurrence of the purchase; and
- k. Provides, if necessary, documentation to DFP to keep the affected community(ies) informed and to submit the proposed purchase of property within the National Capital Region (NCR) to the NCPC for final review;
 - i. The NCR includes Montgomery and Prince George's Counties in Maryland; Arlington, Fairfax, Loudoun, and Prince William Counties, and the independent cities within the outer boundaries thereof in Virginia or Maryland, and the District of Columbia.
 - ii. Purchases outside of the NCR will be submitted to the NCPC's counterpart organization, if one exists.
 - iii. At NIH remote sites, the ORFDO Regional Director is the point of contact for community interaction issues.

4. The Site Evaluation Team (SET), ORFDO:

- a. Conducts a site evaluation of all offered properties;
- b. On each property surveyed, the OA will obtain a signed Seller's Right of Entry Statement (Appendix 1) from the Seller, and the Site Evaluation Team will complete a Site Evaluation Checklist (Appendix 2);
- c. Ranks the offered properties from the most to the least advantageous to the NIH;
- d. Makes a recommendation to the ORFDO on whether to proceed with negotiations based on the appraisal reports of the FMV; and
- e. Confirms the site to be purchased.

5. The Property Seller:

- a. Each Seller of a property must submit to the OA, a Seller's Checklist (Appendix 3).

6. The Division of Budget and Financial Management (DBFM), ORFDO:

- a. Confirms that funds in the amount of the FMV have been committed. OA will prepare [SF-26](#) including all closing costs to the title company. This step should normally be completed within 5 working days of being notified of the FMV of the property to be purchased;
- b. Issues an 8(a) requisition to OA to utilize Building and Facilities funds for the purchase subject to DOJ rendering a title opinion; and
- c. Confirms that funds in the amount of the updated FMV have been obligated. The OA assigned Real Estate Contracting Officer will obligate funds using the appropriate contract method ([SF-26](#)).

7. The NIH Office of Financial Management (OFM):

- a. Makes payments based on invoices that are approved by ORFDO.

8. The Division of Environmental Protection (DEP), ORFDO:

- a. Arranges for all necessary environmental and safety reports on the selected properties;
- b. Conducts an Environmental Assessment (EA) of the FMV of the property to be purchased;
- c. Conducts an Environmental Impact Statement (EIS), if required; and
- d. Facilitates preparation of an EIS without performing an EA when necessary.

9. The Division of Facilities Planning (DFP), ORFDO:

- a. Arranges for all necessary geological and other engineering reports. This step should normally be completed within 12 months of the OA being notified of the FMV of the property to be purchased.

10. The Division of Design and Construction Management (DDCM), ORFDO:

- a. Supports the DFP's efforts to obtain geological and other engineering reports as necessary.

11. The Office of General Counsel (OGC), NIH:

- a. Submits a request to the DOJ for a preliminary title opinion or advises OA if additional information is required to comply with the requirements of the DOJ Title Standards;
- b. Prepares the Real Estate Purchase Agreement (Appendix 5) and any other relevant documentation;
- c. The DOJ, the OGC, and the OA will close the sale on the date scheduled for such purpose;
- d. Submits a request to the DOJ for a final title opinion;
- e. The OGC and/or the OA will record or arrange for recording the sale in the appropriate local recording office;
- f. Provides the OA all legal documentation and related materials; and
- g. In consultation with the OA, schedules the time, date, and location for closing the sale.

12. The Director, NIH:

- a. May accept a "voluntary offer to sell" made by a Seller at an offered price that is less than the updated FMV in compliance with [49 CFR Part 24.101](#), which implements the requirements in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended to include:
 - i. A determination was made that a specific site and no others will satisfy the requirements of the acquisition project, and only that site will be acquired;

- ii. The property to be acquired is not part of a project where all or substantially all the property within the area is to be acquired within specific time limits;
 - iii. The property will not be acquired in the event negotiations fail to result in an amicable agreement, and the Seller is so informed in writing; and
 - iv. The Seller is informed of the price range the NIH believes to be representative of the FMV of the property.
- b. If the property is not purchased under the voluntary procedures, the NIH will tender to the Seller of the property an offer to purchase that is most advantageous to the NIH.
- c. The offer to purchase the property shall be made in writing and should be at an amount not less than an amount consistent with Federal regulations or laws.
- d. The Seller will be given a reasonable opportunity to evaluate the offer and to present material which the Seller believes is relevant to determining the FMV of the property and to suggest modification in the proposed terms and conditions of the purchase.
- e. If the information presented by the Seller, or a material change in the character or condition of the property, indicates the need for new appraisal information, or if a significant delay has occurred since the time of the appraisal, the NIH will have the appraisal updated or obtain a new appraisal.
- f. The consummation of the purchase and sale of the property contemplated should take place at a mutually agreed upon time and date.

F. References

1. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646, 84 Stat. 1894 ([42 U.S.C. 4601](#) et seq.) and implementing regulations at [49 CFR Part 24](#). These authorities set forth the policy for acquisition of property by Federal agencies and fair and equitable treatment of persons displaced as a result of Federal and federally assisted programs.
2. [HHS Facilities Program Manual Volume I Chapter 2 Section 2-6](#) - Site Selection provides guidance to evaluate and select sites planned for owned and leased facilities.
3. Public Health Service Act, as amended, authority of the NIH to acquire real property ([42 U.S.C. 282\(b\)\(14\)\(A\)](#), [285a-2\(b\)\(6\)\(A\)](#), and [285b-3\(b\)\(2\)\(A\)](#)),
4. [National Environmental Policy Act \(NEPA\) of 1969](#), as amended, Pub. L. 91-190 (42 U.S.C. 4321). This law prescribes the consideration that must be given to the impact on the human environment.
5. National Historic Preservation Act of 1966, as amended, Pub. L. 89-665 ([16 U.S.C. 470](#) et seq.). This law requires an evaluation of the action to determine what impact the action will have on historic properties listed or if a property may be eligible for listing in the National Register of Historic Places. This Act also directs Federal agencies to preserve cultural heritage.
6. The Architectural and Historic Preservation Act ([16 U.S.C. 469 a-1](#) et seq.). This law directs Federal agencies to preserve significant scientific, prehistoric, historical and

archeological data.

7. "Title Standards 2001: A Guide for the Preparation of Title Evidence in Land Acquisitions by the U.S.A." DOJ, 2000.
8. [40 United States Code, Sec. 3111](#)
9. [40 C.F.R. Part 1500](#), Council on Environmental Quality regulations implementing NEPA.
10. [41 U.S.C.14.](#)
11. [NIH Delegation of Authority 04C Real Property Management](#)
12. [NIH Manual 1743 – Keeping and Destroying Records, "Keeping and Destroying Records](#), Appendix 1, NIH Records Control Schedule
13. . [Publications of the National Capital Planning Commission \(NCPC\)](#):
 - a. "Procedures for Intergovernmental Cooperation in Federal Planning in the National Capital Region;"
 - b. "Project Plans Submission Requirements;" and
 - c. "Environmental Policies and Procedures."

G. Definitions

1. **Appraisal** - a supported estimate or opinion, as of a certain date, of a defined value made by a person knowledgeable about the type of property being appraised and professionally qualified to prepare a complete, accurate appraisal report.
2. **Environmental Assessment (EA)** - the evaluation of the potential environmental impacts of a project or activity. An EA covers the same topical areas as an Environmental Impact Statement, but with less detail.
3. **Environmental Impact Statement (EIS)** - a full, detailed report that, pursuant to [Section 102\(2\) \(C\) of NEPA](#), identifies and analyzes the anticipated environmental impacts of a proposed action, reasonable alternatives to the proposed action, and mitigation measures for any adverse environmental effects.
4. **Fair Market Value (FMV)** - the most probable price in terms of current U.S. currency that a property should bring in a competitive and open market under all conditions requisite to a fair sale. The buyer and seller each act prudently, knowledgeably, in their own best interest, and assume the price is not affected by undue stimulus.
5. **Fee Simple Interest** – absolute ownership in real property.
6. **Program Description and Justification Document (PDJD)** - the formal documentation that describes a specific project and its programmatic justification.
7. **Program of Requirements (POR)** - the formal documentation that contains programmatic and detailed information on the technical and functional requirements of a specific project.
8. **Seller** - one who has the right of ownership, or a person who has legal authority (an Agent) to represent the person having the right of ownership, in the sale of real property.
9. **Site Evaluation Checklist** - the formal documentation, prepared by the Site Evaluation Team, identifying the key features of a site and possible physical problems.

10. **Site Evaluation Team (SET)** - This team consists of Subject Matter Experts (SMEs) within the ORFDO and the DOHS, ORS. The focal point of the SET is on the site inspection/investigation process.
11. **Acquisition Documents** - All documents required for DOJ to process the purchase of real property.

Appendix 1: Seller's Right of Entry Statement

Seller certifies that he/she hereby grants the National Institutes of Health (NIH), its employees, agents, contractors, consultants, and any other necessary technical support personnel, the right to enter upon the site during normal business hours, and at all other times upon reasonable notice to the Seller, and Seller grants the NIH the right to, at the expense of the NIH, make such audits, appraisals, inspections, tests (environmental and otherwise), and other investigations of the site, that the NIH, in its sole, reasonable discretion, deems necessary or desirable. In addition, the NIH shall, to the extent possible, repair any damage to the site caused by any tests or other activities granted herein by the Seller.

Seller certifies that he/she understands that information provided by the audits, appraisals, inspections, tests (environmental and otherwise) and any other investigations of the site may be released to the public.

Sellers Signature: _____

Date: _____

If Corporation/Partnership:

Title: _____

Appendix 2. Site Evaluation Checklist

Instructions

The following questions regarding environmental, health and safety matters are to be completed by a Site Evaluation Team. This checklist shall be completed during the initial site evaluation process prior to selecting up to two sites for purchase. The answers to the questions are to be based upon conditions viewed during a visit to the site. They are not to be based upon speculation of information provided by any third party. If the team lacks sufficient information to accurately answer a question, write "Unable to Determine". If the answer to a question is "yes", describe, in as much detail as possible, the reason for the answer. Attach any additional sheets as needed. All members of the Site Evaluation Team are required to sign this checklist.

PROJECT INFORMATION

1. Project Name:
2. Provide the names and titles of the persons completing this Checklist.
3. Provide the address of the site, including the county in which it is located.
4. If a building is to be constructed, what is its proposed size?
5. What are the projected number of occupants?

GENERAL SITE INFORMATION

6. Provide the names, telephone numbers and addresses of the site owner, the contact person, and the environmental manager. What is the acreage of the site?
7. Is the site subdivided into one or more legal lots of record? ____ Yes ____ No
8. Are there any buildings currently on the site? ____ Yes ____ No
 - If yes, describe their size, age, and method of heating, construction materials, and any unusual features.
 - If yes, describe the nature of the tenants' business.
 - Describe the nature of the business conducted on the property.
9. Does the site contain prime farmland? ____ Yes ____ No
10. Does the site have any unusual topographic features? ____ Yes ____ No
11. Does the site slope(s) appear to be greater than 15 percent? ____ Yes ____ No
12. Does the site require extensive grading or fill? ____ Yes ____ No
13. Do you have any reason to suspect that the site might be affected by geologic hazard?
____ Yes ____ No
14. Is the site located near a body of water, such as a river, lake, stream, swamp, etc?
____ Yes ____ No
15. Are utilities currently available on the site? ____ Yes ____ No
16. Is there a well or septic system on the site? ____ Yes ____ No

SURROUNDING PROPERTIES

17. What are the surrounding community land uses?

18. Are there any residences, hotels, motels, institutions, hospitals, convalescent homes, schools or child care facilities, etc., within 500 feet of the subject property?

_____ Yes _____ No

19. Is the site location within a planned unit development and/or is it subject to covenants and restrictions?

_____ Yes _____ No

20. Do you have any reason to suspect that the project is inconsistent with existing zoning and surrounding community land uses?

_____ Yes _____ No

21. Do you have any reason to suspect that the project is inconsistent with the local Master Plan (define) or proposed community long-range plans?

_____ Yes _____ No

ACCESS/TRANSPORTATION

22. Does the site have access constraints?

_____ Yes _____ No

23. Does the site have access to public rights-of-way?

_____ Yes _____ No

24. Is the site located near a congested intersection(s)?

_____ Yes _____ No

25. Does the site have access to public transportation?

_____ Yes _____ No

26. Based on the projected size and occupancy of the project, will there be impacts on public transit systems?

_____ Yes _____ No

HISTORIC SITES

27. Is the site/building located within an Historic District, on an historic site or on the National Historic Register?

_____ Yes _____ No

28. If there is a building on site, do you have any reason to suspect that it is architecturally significant?

_____ Yes _____ No

29. If there is a building on site, do you have any reason to suspect that it is greater than 50 years old?

_____ Yes _____ No

30. Are there curb cuts, footings, or other signs of former buildings on the site?

_____ Yes _____ No

31. Has NIH taken into account whether an historic property will be affected by this project?

_____ Yes _____ No

ENVIRONMENTAL ISSUES

32. During the site visit were any wildlife observed or was there evidence that wildlife might live on the site (e.g. nests, tracks, etc.)?

_____ Yes _____ No

33. Were any air emissions from the site observed, or is there reason to suspect that these occurred in the past?

_____ Yes _____ No

If yes, could you ascertain their source?

34. Were water discharges from the site observed, or is there reason to suspect that these occurred in the past?

_____ Yes _____ No

If yes, could you ascertain their source?

35. What is the source of drinking water for the site (e.g., wells, municipal water supply)?

36. Is there evidence of Underground Storage Tanks (USTs) such as vent pipes, fill caps, etc., on the site?

_____ Yes _____ No

If yes, did you see any evidence of spills from the tanks?

37. Were any aboveground storage tanks present on the site?

_____ Yes _____ No

If yes, did you see any evidence of spills from the tanks?

38. If there is a building on site, was it constructed prior to 1980?

_____ Yes _____ No

39. If there is a building on site, did you see any materials that you suspect contain asbestos?

_____ Yes _____ No

40. Is there any evidence suggesting the past use(s) of the site/building?

_____ Yes _____ No

41. Does the site/building contain electrical transformers?

_____ Yes _____ No

If yes, are the transformers labeled and do the labels indicate whether the transformers contain PCBs?

_____ Yes _____ No

If yes, do the labels indicate whether the transformers are owned and maintained by the local utility company?

_____ Yes _____ No

42. Does the site contain vegetation?

_____ Yes _____ No

If yes, was any of the vegetation stressed (i.e., wilting, dead, or otherwise unhealthy looking)?

43. Are there any stains on the soil or in the buildings?

_____ Yes _____ No

44. Is there any other evidence of spills?

_____ Yes _____ No

45. Are there any drums, cans, or other containers located on the site?

_____ Yes _____ No

If yes, did they contain labels describing their contents?

_____ Yes _____ No

If yes, what did they contain?

If yes, was there any evidence that they had leaked?

_____ Yes _____ No

46. Are there any chemicals stored on the site, including pesticides, paints, solvents, and/or cleaners?

_____ Yes _____ No

If yes, did you see any evidence of spills?

_____ Yes _____ No

47. Is there evidence of general dumping on the site?

_____ Yes _____ No

If yes, note the number of dumpsites.

If yes, note the kinds of materials at the site, if recognizable.

48. Is there evidence of drilling, clearing/grubbing, or dirt moving on the site?

_____ Yes _____ No

If yes, describe.

49. Are there any ponds, pits, swamps, ditches, or other locations with suspicious color or odor?

_____ Yes _____ No

50. Does the site have any special circumstances or indicators of significance which may cause it to have significant contamination?

_____ Yes _____ No

OTHER

Are there any other conditions or circumstances that might impact the proposed project, either positively or negatively?

_____ Yes _____ No

SIGNATURES

OA: Signature: _____ Date

DFP: Signature: _____ Date

DDCM: Signature: _____ Date

DOHS: Signature: _____ Date

IC: Signature: _____ Date

Appendix 3. Seller's Checklist

Instructions

The following questions regarding environmental, health and safety matters are to be answered by the current Seller of the property. If the current Seller lacks sufficient information, then the Seller should make appropriate inquiries of his/her employees or others having such knowledge.

The term “site” encompasses both the real property and any/all improvements on the real property.

If any question is answered in the affirmative, all relevant documentation in the current Seller’s possession is to be provided to NIH. Please describe in relevant detail the reason for your answer. Attach any additional sheets, as needed. Additional room is provided at the end of each section for responses.

PROJECT INFORMATION

1. Provide the property name and telephone number(s) and address(es) of the property Seller(s), the contact person(s), and the environmental manager.

2. Provide the names and titles of the persons completing this Checklist.
3. Provide the address of the site, including the county in which it is situated.
4. What is the acreage of the site? _____ acres
5. Describe the buildings on the site, including their size, age, method of heating, and construction materials.
6. Describe the nature of the previous businesses conducted on the site.
7. Provide copies of all certificates of occupancy for the buildings on the site. _____
Complete
8. Provide a copy of the current business license for the Seller of the site. _____
Complete
9. If there are any tenants in the building(s), describe the nature of their business(es).
10. Is the site in compliance with applicable zoning and similar local requirements?
_____ Yes _____ No
11. Provide copies of all zoning violations. _____ Complete
12. Provide copies of all special use permits, special exceptions, variances, and any other zoning and/or land use permits that are applicable to the site. _____ Complete
13. Are there any residences, hotels, motels, institutions, hospitals, convalescent homes, schools, child care facilities, etc., within 500 feet of the subject site?
_____ Yes _____ No
14. Has the surrounding community complained about the site regarding noise, traffic, etc?
_____ Yes _____ No
15. Provide copies of all permits authorizing storage and/or use of any hazardous substance on the site. _____ Complete

CLAIMS AND PROCEEDINGS

16. Is the site now, or has it been in the past, the subject of a lawsuit or an administrative proceeding with respect to environmental issues? This includes any consent decree, administrative order, compliance schedule or any agreement or informal understanding with any governmental authority.

_____ Yes _____ No

17. Is the site the subject of any threatened or intended lawsuit or administrative proceeding? This includes any citations, notices of violation, warnings, or complaints from any governmental authority.

_____ Yes _____ No

18. Is the site the subject of any proceedings under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, or Superfund) relating to the release or threatened release of a hazardous substance from the property?

_____ Yes _____ No

19. Have any violations of a law, regulation or permit relating to the site been reported to any governmental authority?

_____ Yes _____ No

20. Are there any violations that have not been so reported?

_____ Yes _____ No

21. Does anyone involved with the site, including the owner, operator, or manager(s), believe that circumstances may exist which could result in claims being asserted against the site?

_____ Yes _____ No

AIR POLLUTION REQUIREMENTS

22. Are there any sources of emissions from the site, including fugitive emissions?

_____ Yes _____ No

If yes, what is the source of the emissions?

23. Are there any emissions monitoring data?

_____ Yes _____ No

If yes, is the site in compliance?

_____ Yes _____ No

24. Are permits or other controls in compliance with air quality requirements?

_____ Yes _____ No

WATER POLLUTION REQUIREMENTS

25. Are there any wastewater discharges (including any stormwater runoff or seepage) from the site?

_____ Yes _____ No

26. Are there any effluent monitoring data?

_____ Yes _____ No

27. Are permits or other controls in compliance with water quality requirements?

_____ Yes _____ No

28. Are any structures located in any waterway, floodplain, coastal or wetlands area or other such specially-designated area?

_____ Yes _____ No

29. Has the owner or operator done any work to place or dredged fill materials in any waterway or wetlands area?

_____ Yes _____ No

30. Has the site had any spills of oil or hazardous substances (within the meaning of the Federal Water Pollution Control Act) into any waterway or wetlands area?

_____ Yes _____ No

31. Is oil handled on the property subject to being discharged into navigable waters and is there a Spill Prevention Control and Countermeasure Plan?

_____ Yes _____ No

32. Are injection wells located on the property?

_____ Yes _____ No

33. Is or has the site been subject to a remedial action plan imposed or required by any local, State, or Federal agency?

_____ Yes _____ No

WASTE REQUIREMENTS

Waste ("Waste or Wastes") is defined as any solid, liquid, semi-solid, or contained gaseous material that has been discarded, including hazardous substances. For the purpose of this Checklist, "other substances" means petroleum products, hazardous substances, asbestos, lead-based paint and lead in drinking water.

34. What types of Wastes or other substances have been or are generated by the site?

35. Have any Wastes or other substances been disposed of on the site by any person at any time?

_____ Yes _____ No

If yes, what was disposed of, when was it disposed of, and where was it disposed of?

36. Have arrangements been made to transport, treat, or dispose of any Wastes or other substances from the subject site n any other property?

_____ Yes _____ No

If yes, what was disposed of, when was it disposed of, and where was it disposed of?

37. Are any of the site's Wastes or other substances recycled, reclaimed or reused, whether by the property's owner or operator or any other entity?

_____ Yes _____ No

38. Are there any investigations or inquiries relating to Wastes or other substances from the site?

_____ Yes _____ No

39. Do you have any knowledge of any investigations or inquires relating to Wastes or other substances from adjoining properties?

_____ Yes _____ No

40. Is or has the site been subject to a remedial action plan imposed or required by any local, State, or Federal entity?

_____ Yes _____ No

41. Are there records of the location, quantity and chemical composition of all Wastes or other substances disposed of on site?

_____ Yes _____ No

If yes, provide those records. _____ Complete

SPILLS

42. Have there been any known or suspected spills or releases of hazardous materials on the site, including small incidental releases?

_____ Yes _____ No

If yes, describe the type of material that was released.

If yes, provide the location of each spill or release.

If yes, provide the date of each release.

If yes, provide the amount of material released each time.

If yes, describe any samples taken and provide any available sampling results.

If yes, describe any clean-up activities that took place, and provide any available documentation.

TANKS

43. What is the age, location, size, type, and contents of any Underground Storage Tanks (USTs) or aboveground tanks (ASTs) located on the site (collectively “tanks”)?

44. Have any tanks ever been removed from the site?

_____ Yes _____ No

45. When were the USTs last tested, and what were the results of those tests?

46. Is there any reason to know or suspect that the tanks have ever leaked, including during filling?

_____ Yes _____ No

47. Has any overfilling of tanks occurred?

_____ Yes _____ No

48. Are the tanks properly registered?

_____ Yes _____ No

If yes, provide copies of current registration certificates. _____ Complete

49. Do you have any knowledge of any USTs and/or ASTs on any adjoining properties?

_____ Yes _____ No

USE OR STORAGE OF CHEMICALS

50. Have polychlorinated biphenyls (PCBs) ever been used or located on the site, including in any structure or building?

_____ Yes _____ No

51. Have materials containing asbestos ever been used or located on the site, including in the structure of any building?

_____ Yes _____ No

52. Are chlorofluorocarbons (CFCs) in use or have they ever been used or located on the site, including in the structure of any building?

_____ Yes _____ No

53. Have any pesticides, insecticides, fungicides, herbicides, defoliants, desiccants, arsenic or plant growth regulators, etc. been used on the site?

_____ Yes _____ No

HEALTH AND SAFETY REQUIREMENTS

54. What is the source of the potable water to the site?

55. Are there any potable water wells within 500 feet of the subject site?

_____ Yes _____ No

56. Are there any reports (including oral reports) or logs of occupational injuries or illnesses sustained by the site's employees?

_____ Yes _____ No

57. Are there any reports (including oral) of complaints by building occupants regarding indoor air quality?

_____ Yes _____ No

58. Has the site ever been subject to an OSHA, state or local inspection?

_____ Yes _____ No

If yes, when, and what was the outcome?

REPORTS

59. Are there any Material Safety Data Sheets for hazardous materials used on the site?

_____ Yes _____ No

60. Are there any health or environmental effect studies, statements or assessments, internal audit or inspection reports, or risk analyses relating to environmental health or safety matters associated with the site?

_____ Yes _____ No

SELLER'S CERTIFICATION

Seller certifies that he or she understands that the information provided herein is material representation of fact upon which the Government, acting through the National Institutes of Health (NIH), will rely when making a site selection determination.

SELLER'S SIGNATURE:

TITLE _____
(If Corporation/Partnership)

DATE _____

Appendix 4. Site Purchase Recommendation Report

Format: The paper used shall be of size 8.5 x 11 inches. All pages should be numbered consecutively including all exhibits. The report shall contain tabulations, schedules, exhibits, and other data necessary to set forth all the site selection factors considered by the Site Evaluation team. In order to facilitate removal for study and review purposes, maps, photographs, and other exhibits included in the addenda shall be placed in 8.5" x 11" envelopes.

Outline: The report will be divided into four parts as outlined below. Within these parts, the outline may vary to the extent that the character and size of the project and the community in which it is to be located may be such as to call for additional data in some cases, and less data in others. Generally, however, all items must be considered by the Site Evaluation Team and included in the report. The omission of any item shall be explained in the report.

PART I - INTRODUCTION

1. **TITLE PAGE.** The Title Page shall include the same information that is shown on the cover, i.e., (1) the name of the project, and (2) the name of the city, county, and state.
2. **TABLE OF CONTENTS.**
3. **LETTER OF TRANSMITTAL.** The letter of transmittal shall be in the form of a memorandum from the Site Evaluation Team to the ORFDO. It shall contain the following information:
 - a. The identity of the project.
 - b. The date(s) on which the site investigation was made.
 - c. The identity of the two outstanding potential sites recommended by the Site Evaluation Team and the estimated acquisition, relocation and special preparation costs of each of those sites.
 - d. Total amount of funds available for site acquisition and relocation.
4. **AERIAL PHOTOGRAPH OR MAP.** This shows the delineated area. Also to be identified on the photo or map, Federal buildings, civic centers, the central business district of the city, urban renewal projects, in or on the periphery of the delineated area for all sites investigated, and the two recommended sites.

PART II - FACTUAL DATA

5. **SITE REQUIREMENTS.** This shall be a statement of the specific site requirements i.e., POR.
6. **THE SITE EVALUATION.**
 - a. The date on which the Site Evaluation Report was prepared.
 - b. The date of notification to planning agencies and local elected officials, a brief summary of results of consultation, and a listing of parties notified.
 - c. The date(s) on which the Site Evaluation was conducted.

- d. The name and official position of each member of the Site Evaluation Team.
(Include members from other ICs).
- e. Total number of offered, and unoffered but potential, sites inspected by the site team.

PART III - ANALYSIS AND CONCLUSIONS

7. SYNOPSIS OF PROPERTIES OFFERED FOR INSPECTION. In this section of the report, list the properties offered for inspection, stating the following for each property:

- a. Location
- b. Size (dimension and square footage).
- c. Name of offeror(s) and the capacity in which he/she (they) acted in making the offer.
- d. Name of purported owner(s).
- e. Asking price, if known.
- f. Whether the offered site is within the delineated area

8. ELIMINATION OF UNDESIRABLE SITES.

- a. A tabulation, giving the reasons for the elimination of undesirable sites, shall be prepared. Sites having similar adverse characteristics such as too remote, too small, unfavorable topography, too costly, unfavorable surroundings, etc., may be grouped under the appropriate classifications as reasons for elimination.
- b. All sites, except the two outstanding locations that meet the minimum site requirements as stated in the POR.

9. EVALUATION OF SOCIOECONOMIC FACTORS CONCERNING THE TWO RECOMMENDED SITES

- a. These sites shall be evaluated in terms of (a) accessibility by the general public by automobile, (b) accessibility by the agency's employees by: 1) public transportation and by 2) automobile, (c) accessibility by public transportation to low- and moderate-income housing, (d) availability of off-street parking, (e) safety for the facility and agency personnel, (f) unemployment rate, and (g) median family income, to satisfy E.O. 11412. Evaluation will include consultation with Federal agencies as appropriate.
- b. Summarize results of consultation with the Department of Housing and Urban Development regarding the availability of housing for employees with low and moderate incomes.
- c. Only the conclusion of 9.a and 9.b above are to be included in the narrative portion of the report.

10. RECOMMENDED SITES: Each of the recommended sites shall be discussed with respect to conformity to site specifications as set forth in the POR. The narrative concerning each of the recommended sites shall describe the dimensions of the site; its

shape and total area; street frontages, estimated cost, including severance damages, if any; and topographical characteristics; and shall discuss whether the recommended site is at a location or within an area for which civic officials have expressed a preference. Any consideration that will result in the expenditure of funds for retaining walls, rock excavation, construction, removal or relocation of utilities; demolition of structures; special construction features required in the proposed building due to topographical features; or sub-surface conditions shall be explained in detail. An estimate as to the cost of performing any and all necessary work of this type in connection with the construction of the proposed building or preparation of the site shall be furnished. The most significant advantages and disadvantages of each of the recommended sites shall be discussed. The discussion of the advantages and disadvantages of each site may consider the following, as well as other appropriate factors:

- a. Project-environmental impact evaluation.
- b. Neighborhood environment, and the existence of objectionable smoke, noise, dust, obnoxious odors, as to effect on project.
- c. Sub-surface conditions.
- d. The nature of existing on-site improvements and the number of owners and/or tenants to be relocated if the property is acquired. Include statements regarding the availability of decent, safe, and sanitary housing to accommodate those relocated.
- e. Location in relation to the central business district and the direction and rate of growth (decline) of that area.
- f. Zoning and planning considerations having a significant effect on the site and design of the building.
- g. Public sentiment.
- h. Flood plain evaluation.
- i. Historic properties evaluation.
- j. Only the conclusions of the evaluation of the above factors are to be included in the narrative portion of the report.

11. CORRELATION: The relative advantages and disadvantages of the recommended sites shall be weighed, due consideration being given to all factors pertinent to the selection of a site.

12. CONTAMINATION ASSESSMENTS: Discuss in summary form any available NEPA reports or documentation.

13. CONCLUSIONS AND RECOMMENDATIONS: Under this heading, the conclusion of the site team with respect to the first and second choice shall be stated.

14. APPROVAL BY THE ORFDO: The ORFDO shall indicate approval of the conclusions and recommendations of the Site Evaluation Team by signing the report. The report shall be forwarded to the NCPC for final approval.

PART IV - EXHIBITS AND ADDENDA

The following exhibits, appearing in the order listed below should be included in each Site Purchase Recommendation Report. In those instances where appropriate maps are not

available, such items may be excluded from the report, provided the reason for the exclusion is stated.

15. Photographs of two recommended sites.
16. Drawing showing types of improvements on the two recommended sites.
17. Site Evaluation Checklist and Seller's Checklist.
18. Development plan for each of the two recommended sites.
19. Copy of current report from State Historic Preservation Officer.
20. Copy of HUD's written report on housing for employees.
21. References: identity of persons, public records, and other sources providing data which was included in the report.
22. NEPA documentation available.
23. Other appropriate exhibits.

Appendix 5. Real Estate Purchase Agreement

National Institutes of Health

REAL PROPERTY PURCHASE AGREEMENT

This Real Property Purchase Agreement (the "Agreement") is entered into as of _____, 20____ (the "Effective Date") by and between the National Institutes of Health, As Agent For THE UNITED STATES OF AMERICA (the "Government") and _____ ("Seller").

1. Agreement to Sell

In consideration of the mutual covenants in this Agreement, Seller agrees to sell and convey to the Government and the Government agrees to purchase the following property:

(a) That certain tract of land, containing approximately _____ square feet of land, located in the City/Town of _____, County of _____, State of _____, described in Exhibit A, together with all right, title and interest, and appurtenances pertaining to such land, including without limitation all mineral rights, riparian rights, easements, and any right, title and interest of Seller in and to adjacent streams, stream beds, streets, alleys and rights-of-way (all of such land, rights and appurtenances are referred to as the "Land");

(b) All improvements, structures and fixtures located or under construction on the Land (collectively referred to as the "improvements");

(c) All equipment, machinery, vehicles, supplies, furniture and all other tangible personal property, excluding any items listed in Exhibit B, now owned by Seller and located on the Land or used or to be used in connection therewith or with the Improvements (collectively referred to as the "Personal Property");

(d) All contract rights and other intangible rights owned by Seller (including without limitation all permits, licenses, easements, warranties, guaranties, service contracts, and trade names that are related or appurtenant to the Land, Improvements, or Personal Property (such rights are collectively referred to as the "Intangible Property").

(e) All leases that cover any portion of the Land and/or the Improvements and are permitted under Section 12 (c) of this Agreement to be in effect at Closing, together with all rights of Seller, including all security deposits, under such leases (the "Continuing Leases").

The Land and the Improvements are sometimes collectively referred to herein as the "Real Property." The Real Property, the Personal Property, the Intangible Property and the Continuing Leases are sometimes collectively referred to herein as the "Property."

2. Purchase Price

The purchase price for the Property (the "Purchase Price") shall be _____ and _____/100 Dollars \$_____. If the Property contains fewer square feet of land than stated above, the Purchase Price shall be reduced.

3. Definition of Terms

(a) Capitalized terms used in this Agreement shall have the meanings defined in Section 3

(b) Below or elsewhere in this Agreement. The attached Index sets forth the location of definitions in this Agreement.

(c) As used in this Agreement, the following terms have the following meanings:

(1) "Affiliate" means (i) any Person for whose conduct Seller is or may be held responsible under any Environmental Law, or who is or may be held responsible under any Environmental Law for Seller's conduct, and (ii) any "affiliate" of Seller as defined in Volume 48, Code of Federal Regulations, Part 19.101 (Small Business and Small Disadvantaged Business Concerns Size Standards - Explanation of Terms).

(2) "Agency Letter" means, with respect to any Environmental Condition or Environmental Violation, a letter from the Government Entity or Entities charged with the enforcement of the applicable Environmental Laws stating that: (i) all Remediation Actions have been completed to the satisfaction of such Government Entity or Entities, and no further action will be required, with respect to such Environmental Condition or Environmental Violation; or (ii) no action will then or thereafter be required by such Government Entity or Entities with respect to such Environmental Condition or Environmental Violation.

(3) "Certification" means, with respect to any Environmental Condition or Environmental Violation, a report, issued by an independent environmental engineer satisfactory to the Government, stating that in the engineer's opinion, it is unlikely that any Remediation Action (beyond any Remediation Actions then completed) with

respect to the applicable Environmental Condition or Environmental Violation will be required by the Government Entity or Entities charged with the enforcement of applicable Environmental Laws. Unless the Government agrees otherwise, the conclusions set forth in any Certification shall be based on consultations by the engineer with such relevant Government Entity or Entities.

(4) "Claim" means any actual or threatened suit, proceeding, or claim of any kind that results or may result in any Liability, contingent or otherwise, being incurred by the Government or its successors in title to the Property. Without limiting the preceding sentence, "Claim" includes any intra-governmental or inter-governmental demand, directive, order, guideline, or requirement of any Government Entity other than the National Institutes of Health.

(5) "Displaced Person" means any Person (including Seller, if applicable) who must vacate the Property, or must move his, her or its personal property from the Property, as a direct result of (i) a notice to Seller of the Government's intent to acquire the Property, (ii) the delivery of an initial offer of just compensation from the Government to Seller or Seller's representative to purchase the Property, or (iii) the Government's acquisition of the Property; provided, however, that "Displaced Person" shall exclude, without limitation, any "person not displaced" as defined in 49 Code of Federal Regulations 24.2(g)(2) (Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs Definitions).

(6) "Environment" means soil, surface waters, groundwater, land, stream sediments, surface or subsurface strata, ambient air, and any environmental medium.

(7) "Environmental Condition" means any condition with respect to the Environment that (i) directly or indirectly involves or relates to the Property, and (ii) could or does result in any Liability of, or Claim against, Seller or the Government by any party. "Environmental Condition" includes, without limitation, any presence of Hazardous Materials at the Property, or at other property as a result of activity on or at the Property.

(8) "Environmental Law" means any Legal Requirement pertaining to the Environment or Hazardous Materials, whether such Legal Requirement exists as of the date hereof or is subsequently created.

(9) "Environmental Permit" means any permit, license, approval, consent, or authorization related to the Environment issued by a Government Entity.

(10) "Environmental Violation" means any violation of an Environmental Law.

(11) "Government Entity or Government Entities" means any government agency, department, office or other body or entity, including any judicial authority, at the Federal, State or local level.

(12) "Hazardous Material" means any pollutant; contaminant; toxic substance; hazardous waste; hazardous material; hazardous substance; petroleum or petroleum product; pesticide; radon; asbestos; or PCBs; and includes, without limitation, any materials defined in or regulated by any Environmental Law. Underground storage tanks shall be presumed to contain or to have contained Hazardous Materials unless Seller establishes otherwise.

(13) "Lease" means any lease, license, easement, or other agreement or right, written or oral, granting any Person any right to use or occupy any portion of the Real Property.

(14) "Legal Requirement" means any law, regulation, rule, code, directive, guideline, ordinance, by-law, order opinion, injunction, decision, determination, or other requirement of any Governmental Entity with jurisdiction over the Property.

(15) "Liability" means any liability, loss, demand, penalty, fine, settlement, damages (including foreseeable and unforeseeable consequential damages), response cost, remediation cost, or inspection cost, and any expenses (including with limitation all attorney and consultant fees, investigation expenses and laboratory and litigation costs) of whatever kind or nature, known or unknown, contingent or otherwise, and any interest thereon.

(16) "Notice" means a written notice given in accordance with Section 28 (h).

(17) "Person" means any individual or entity.

(18) "Release" means any releasing, spilling, leaking, seeping, pumping, putting, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping into the Environment.

(19) "Remediation Action" means any cleanup, removal or other action to correct or mitigate any Environmental Condition or violation of an Environmental Law.

(20) "Threat of Release" means a substantial likelihood of a Release that would violate any Environmental Law or which would require action to prevent or mitigate damage to the Environment that may result from such Release.

4. Time and Location of Closing

In consultation with the OA, the OGC will schedule the time, date, and location for closing the sale. The OA will attend the closing and provide necessary assistance at OGCs request. This step should normally be completed within 10 working days following receipt of the NCPC or its counterpart organization's final comments and recommendations on the purchase of the property.

The consummation of the purchase and sale of the property contemplated hereby should take place at a mutually agreed upon time on the latest of the following dates:

(a) The date sixty (60) days after expiration of the Study Period (i.e., a period of up to 270 days following the Effective Date of the Seller's agreement to sell and the Government's agreement to purchase);

(b) The date sixty (60) days after expiration of the title review period.

(c) The date sixty (60) days after completion of any required Remediation Action, or, if applicable, the date sixty (60) days after the Government agrees in writing that no Remediation Action is necessary; or

(d) The date sixty (60) days after completion of any casualty restoration; provided, however, that the Government may elect a date earlier than the date determined above if the NIH first gives Seller at least thirty (30) days' written notice, specifying the date.

5. Items to be Furnished by Seller

Within twenty (20) days after the Effective Date, Seller shall, at Seller's expense, deliver to the Government the following items:

(a) A current "as-built" survey of the Real Property together with a metes and bounds description of the Land, certified to the Government by a licensed surveyor acceptable to the Government in its reasonable judgment (the "Survey"). The Survey shall clearly show, without limitation, the location of the point of beginning and all boundary points and lines, all markers found or set, all improvements, flood plains, building setback lines, easements, access to surrounding, existing, dedicated streets, and all matters disclosed by the Title Commitment. The Survey shall also conform to any reasonable requirements provided by the Government to Seller, and shall be sufficient to allow the Title Company to issue the Title Policy required by this Agreement.

(b) A copy of the approved subdivision plat, including the Land, showing that the Land is composed entirely of one or more whole legal lots.

(c) Copies of all service contracts in effect with respect to all or any part of the Property, together with a schedule that identifies all service contracts and separately identifies any service contract that is not expressly terminable upon thirty (30) or fewer days notice. The Government shall have the right but not the obligation to assume any service contract.

(d) Copies of all warranties and guarantees covering the Improvements or any item of the Personal Property.

(e) An inventory of the Personal Property.

(f) Evidence of all ad valorem tax assessments of the Property for the five tax years prior to the Effective Date.

(g) A schedule setting forth all utility charges for the Property for the current and the two preceding calendar years.

(h) Copies of all certificates of occupancy and other governmental licenses, permits or approvals relating to any portion of the Property.

(i) Evidence that the Property is covered by insurance through the Closing Date as required in Section 8 (a).

(j) A set of "as-built" plans and specifications for the Improvements.

(k) A copy of Seller's deed to the Property.

(l) A copy of Seller's policy of title insurance, if any.

(m) A completed Seller's Checklist in the form supplied by the Government.

(n) Copies of all documents, records, correspondence and information in Sellers possession or control or available to it concerning (i) Environmental Conditions relevant to the Property or any activities thereon, including without limitation all spill control plans and environmental agency reports and correspondence, or (ii) on-site (or off-site to the extent related in any way to the Property) generation, treatment, storage, or disposal of Hazardous Materials. Seller shall have an ongoing obligation to provide to the Government copies of any additional such documentation or information that becomes available to Seller after the Effective Date, within five days after any such documentation or information becomes available to Seller.

(o) A current schedule (the "Rent Roll") showing (as of the last day of the month preceding the month in which falls the Effective Date) a list of all Leases and all subleases and any other Persons who occupy or have any right to occupy the Property (the "Tenants"), the space currently occupied by each Tenant, the commencement and termination dates of each Lease or other agreement or arrangement, the amount of monthly rent and other payments, the amount of delinquent rent (if any), the amount of the security deposit and any prepaid rent, the nature and amount of any concessions or allowances, and the number and period of any renewal options.

(p) Copies of all Leases.

(q) A written statement from each Tenant, other than (i) Tenants under Continuing Leases and (ii) Tenants listed in Exhibit C that such Tenant is not a Displaced Person and disclaims to seek compensation of any kind from the Government by reason of the Government's actual or proposed acquisition of the Property.

6. Inspection Right

(a) Before and after Closing, Seller shall make available to the Government for

inspection during normal Government business hours at (as Seller elects) Seller's offices, the Property or a government office, all books, records, data (including computer data and software in any form), financial statements, financial information, and supporting documents and instruments relating to the Property and its operation and maintenance (the "Data"). The Data shall include all information relating to the Property and its operation and maintenance possessed by, in the control of, or available to Seller, and shall include, without limitation, all lease applications, Tenant correspondence and credit reports. Upon Government request, Seller shall, at Seller's expense, promptly provide the Government with copies of any or all Data. The originals of all Data shall be included in the Personal Property.

(b) Before Closing, the Government may enter upon the Property during business hours, and at all other times upon reasonable Notice to Seller, and may, at the expense of the Government, make any audits, appraisals, inspections, tests, and other investigations of the Property, including any Contamination Assessment(s), that the Government deems necessary or desirable. Seller shall cooperate fully with and provide all access and information in Seller's possession or control that may be desirable for such investigations.

(c) Before Closing, the Government may cause an independent environmental contractor chosen by the Government in its reasonable discretion (an "Independent Contractor") to inspect, audit, and test the Property at the Government's expense for the existence of any Environmental Conditions and any Environmental Violations. Such inspection, audit, and/or testing is referred to herein as the "Contamination Assessment." The scope, sequence, and timing of the Contamination Assessment shall be at the sole discretion of the Government.

(d) To the extent possible, the Government shall repair, at its expense, any damage to the Property caused by any tests or other activities authorized under Section 6 (b) or 6 (c), if (i) the Government elects to make such repairs, (ii) such damage poses a safety hazard or interferes with Seller's use of the Property, or (iii) this Agreement is terminated for any reason other than Seller's default. To the extent repair is impossible or the Government fails to make any repair required under this Section 6 (d), Seller shall be entitled to pursue any available legal remedy for its actual damages.

(e) If the Contamination Assessment reveals, or at any time prior to the Closing Date, the Government otherwise becomes aware of, the existence on, in or at the Property of any Environmental Condition or any Environmental Violation, the Government shall give Seller Notice thereof, and:

(1) For thirty (30) days after Notice to Seller of such Environmental Condition or Environmental Violation, Seller shall have the right to present evidence to the Government that no Remediation Action is appropriate. No Remediation Action by Seller shall be required with respect to a particular Environmental Condition or Environmental Violation if (i) no Remediation Action is required to be undertaken with

respect thereto by any Environmental Law, as established to the reasonable satisfaction of the Government by an Agency Letter or a Certification, (ii) no Remediation Action is necessary, in the opinion of the Government, to avoid the possibility of a Claim against the Government arising out of the Environmental Condition or Environmental Violation, and (iii) the Environmental Condition or Environmental Violation does not affect or limit the market value or use of the Property.

(2) If Seller fails to establish, in accordance with the preceding paragraph, that no Remediation Action is required with respect to an Environmental Condition or Environmental Violation, the Government may in its discretion cause an Independent Contractor to provide a written estimate (the "Remediation Estimate") of the cost of all Remediation Actions necessary to remedy or cure the applicable Environmental Condition or Environmental Violation to the reasonable satisfaction of the Government. The Government shall, within fifteen (15) days after receipt by the Government, give Seller a copy of the Remediation Estimate.

(3) Either the Government or Seller may terminate this Agreement by Notice to the other within thirty (30) days of the terminating party's receipt of the Remediation Estimate if, either the cost of the Remediation Estimate is deemed excessive, or the time the Remediation Action would take is deemed excessive.

(4) If this Agreement is not terminable under Section 6 (e) (3), or if neither party elects to terminate this Agreement under Section 6 (e) (3), the Government may elect either (i) to proceed with Closing and assume responsibility for undertaking actions sufficient, in sole judgment of the Government, to remedy the applicable Environmental Condition or Environmental Violation, and to deduct from the Purchase Price an amount equal to the Remediation Estimate, in which case the Government shall refund or Seller shall pay, as applicable, the difference between the Remediation Estimate and the actual costs of all Remediation Actions when established; or (ii) to (A) postpone Closing by the period the Government, after consulting with an Independent Contractor, estimates is needed to accomplish all Remediation Actions necessary to correct the applicable Environmental Condition or Environmental Violation, and (B) require Seller to undertake and complete, prior to the postponed Closing, all such Remediation Actions to the reasonable satisfaction of the Government. If Seller fails to complete any Remediation Action when required by this Agreement, the Government may pursue any legal and equitable remedies against Seller, and/or postpone Closing one or more times by the period the Government, after consulting with an Independent Contractor, deems reasonably necessary to complete such Remediation Action.

(5) If any Remediation Action by Seller including the cleanup of Hazardous Materials, and applicable Environmental Laws do not establish a specific level of cleanup, the level of cleanup required by the Government shall not be more strict than the level then required, or reasonably expected by the Government to be required at a later date, by the Government Entities responsible for enforcing the applicable Environmental Laws, provided, however: (i) that the cleanup shall be sufficient so that the use of the Property

is not affected or limited by the remaining level of Hazardous Materials, (ii) that the level of cleanup required shall be sufficient that the market value of the Property will not be materially reduced by the remaining level of Hazardous Materials, and (iii) Seller shall provide an Agency Letter or Certification with respect to the cleanup. (f) The information produced in connection with any Contamination Assessment is intended to assist any future determination whether any Liabilities are attributable, wholly or in part, to any Environmental Conditions or violations of Environmental Laws existing as of and/or prior to the Closing Date or arising from conditions existing as of and/or prior to the Closing Date, but such information shall not be conclusive with respect to such issues. (g) Nothing in this Agreement shall be construed to excuse Seller from complying with all Environmental Laws, regardless of whether this Agreement is terminated.

7. Study Period

At any time during the period (the "Study Period") of two hundred and seventy (270) days following the Effective Date, the Government may, for any reason (or for no reason) in the Government's sole, absolute and unfettered discretion, terminate this Agreement by giving Notice to Seller. The Study Period shall be extended by one day for each day beyond the delivery deadline in Section 5 that Seller fails to deliver to the Government any of the items required by Section 5. The Government shall, after such termination of this Agreement, deliver to Seller a copy of any soils reports related to the Property prepared by or on behalf of the Government prior to or during the Study Period. Seller agrees that the Government's obligation to deliver any soils report is adequate consideration for this Agreement. Seller may not challenge the accuracy of any report or the reasonableness or soundness of any decision by the Government to terminate this Agreement pursuant to this Section.

8. Seller

Seller covenants and agrees with the Government that from the Effective Date through the Closing Date:

(a) Seller shall maintain in force (i) fire and extended coverage insurance upon the Property, including loss of rent coverage (if applicable), in an amount equal to the replacement cost of the Improvements and Personal Property, or in an amount which Seller gives Notice to the Government within ten (10) days after the Effective Date, if such amount is reasonable and customary for a prudent owner of similar property in the town, city, or county where the Property is located, and (ii) public liability insurance in the same amounts as Seller has customarily maintained with respect to the Property.

(b) Seller shall manage and maintain the Property in accordance with standard practices of a prudent manager of property similar to the Property in the town, city, or county where the Property is located.

(c) Except as specified on Exhibit D or permitted in Section 25, Seller shall maintain, repair and replace the Improvements in the same condition and repair as existed on the

Effective Date, except for normal wear and tear, and Seller shall not remove any Property except for items of Personal Property that are obsolete or are replaced with items of equal or better quality.

(d) Seller shall comply with all Environmental Laws and other Legal Requirements applicable to the Property.

(e) Without the prior written consent of the Government, Seller shall not enter into, amend, modify, or breach any Lease, or terminate any Continuing Lease. Seller shall cause all Leases, except any Continuing Leases, to be terminated at Seller's expense effective at least ten (10) days prior to Closing. Without limiting the Government's obligations under applicable law to any Displaced Person, Seller shall, at Seller's expense, cause the Property to be vacated, except for the occupancy of Tenants under Continuing Leases, at least ten (10) days prior to the Closing Date.

(f) Seller shall not take any action to affect title to the Property other than to satisfy the Government's title objections or to meet the requirements of the Title Company for issuance of the Title Policy.

9. Seller's General Representations

Seller represents and warrants to the Government as of the date that Seller executes this Agreement and shall be deemed to represent and warrant as of the Closing Date that:

(a) Seller owns legal and equitable fee simple title to the Property, and, to the knowledge of Seller, holds such title subject only to those matters listed in Exhibit E. This Agreement is a valid, binding and enforceable obligation of Seller. Seller has full corporate or partnership, as applicable, power and authority to enter into and perform its obligations under this Agreement. Seller has obtained any and all consents and approvals (including without limitation all third-party or governmental approvals) required for Seller to validly perform Seller's obligations under this Agreement.

(b) Except as disclosed on Exhibit F, there are no actions, suits or proceedings pending that affect any portion of the Property, involve the ownership or management of the Property, or affect Seller's ability to perform hereunder.

(c) All Data furnished to the Government by Seller, to the best of Seller's knowledge, is true and correct.

(d) There are no existing or threatened condemnation actions or special assessments affecting the Property.

(e) The Real Property is zoned, with a classification permitting the current use of the Real Property as of right to the best of Seller's knowledge; no change in the zoning of the Property is pending or contemplated. The Property is not subject to any existing or (to Seller's knowledge) pending or contemplated historic, landmark, or similar

designation. The Property is not subject to any Legal Requirement controlling or stabilizing rent.

(f) The Real Property has direct access to public streets, and public water, sewer, telephone, electric, and gas utilities are provided to the Real Property directly from adjacent public streets in quantities sufficient for the current use of the Property.

(g) Seller has not received any notice of any violation of any Legal Requirement pertaining to the Property that has not been complied with. The Property and the operation thereof are in full compliance with all Legal Requirements, and Seller has all permits and licenses required for the present use of the Property. The Property includes "wetlands" within the meaning of any Legal Requirement. To the best knowledge of Seller, no part of the Property has ever been graded, filled, or otherwise altered in violation of any Legal Requirement. To Seller's knowledge, the Property is not part of the habitat of any endangered or protected species as defined in any Legal Requirement.

(h) Seller has not received any notice from any insurance company of any defect or inadequacy in the Property that has not been corrected. (i) To Seller's knowledge, there are no unpaid bills or claims in connection with the construction or repair of the Improvements or other work performed or material purchased or services furnished in connection with the Improvements, except repair bills incurred in the ordinary course of the business, all of which shall be paid by Seller on or before the Closing Date.

(i) No portion of the Property (including, without limitation, rent or security deposits to be conveyed to the Government hereunder) shall be subject at the Closing to the burdens or obligations of any management agreement or understanding, or subject to any service contract that is not terminable by the Government upon thirty (30) or fewer days notice. (i) Copies of the Leases to be furnished by Seller to the Government for inspection shall be true and complete; (ii) there are no concessions, allowances, or agreements (written or oral) with any Tenant except as expressly noted in the Rent Roll; (iii) the Continuing Leases are in full force and effect and have not been modified or amended and no right of offset exists against the Seller and/or the landlord hereunder; (iv) there are no uncured defaults by the Seller and/or the landlord under any Lease, and to the knowledge of Seller there exists no default on the part of any Tenant under a Continuing Lease; (v) there are no outstanding construction or repair obligations on the part of the Seller and/or the landlord, or any amounts owed by the Seller and/or the landlord to any Tenant, under any Lease. (vi) There are no prepaid rents or security deposits under any Lease except as disclosed on the Rent Roll. (vii) No brokerage or other finder's fees are due in relation to any Lease.

(j) Prior to (i) Seller's receipt of any written expression of Government intent to acquire the Property, (ii) the delivery of any Government offer of just compensation for the Property to Seller, and (iii) Seller's execution of this Agreement, Seller must have elected to vacate the Property and have taken all necessary action to vacate the Property prior to the Closing Date by all Persons other than Displaced Persons listed in Exhibit

C.

(k) Exhibit C correctly sets forth each Displaced Person's name, address, and telephone number, legal basis for occupancy, date of initial occupancy, business or other activity on the Property, and number of any employees or family members occupying the Property.

10. Seller's Environmental Representation

Seller represents and warrants to the Government as of the date Seller executes this Agreement, and shall be deemed to represent and warrant as of the Closing Date, that:

(a) Independent of one another, Seller and each of its Affiliates have no liability under, have never violated, and are presently in compliance with all Environmental Laws applicable to the Property and any operations thereon, and, to the best of Seller's knowledge, there exist no Environmental Conditions with respect to the Property or any operations thereon, except as set forth on Exhibit G, Part 1.

(b) Except as set forth on Exhibit G, Part 2, (i) neither Seller, nor any Affiliate of Seller, nor to the best of Seller's knowledge any other person, has ever disposed of solid waste at the Property or has ever generated, manufactured, refined, transported, stored, handled, disposed, transferred, produced, or processed any Hazardous Materials at the Property (other than ordinary small quantities of household or office cleaning supplies and office supplies, such as photocopy supplies for ordinary office use, all of which have been used and disposed of in compliance with all Environmental Laws), and (ii) Seller and its Affiliates have no knowledge of the Release or Threat of Release of any Hazardous Material at or in the vicinity of the Property.

(c) No lien has been imposed on the Property by any Government Entity in connection with the presence on or off the Property of any Hazardous Material.

(d) Except as set forth on Exhibit G, Part 3, Seller and its Affiliates have not: (i) entered into or been subject to any consent decree, compliance order, or administrative order involving an Environmental Law with respect to the Property or activities thereon; (ii) received notice under the citizen suit provisions of any Environmental Law in connection with the Property or any operations thereon; (iii) received any request for information, notice, demand letter, administrative inquiry, or formal or informal complaint or claim with respect to any Environmental Condition relating to the Property or any operations thereon; or (iv) been subject to or threatened with any governmental or citizen enforcement action involving an Environmental Law with respect to the Property or any operation thereon. Seller and its Affiliates have no reason to believe that any of the above will be forthcoming.

(e) Seller has all Environmental Permits necessary for its activities and operations at the Property and for any past or ongoing alterations or improvements at the Property, which Environmental Permits are listed on Exhibit G, Part 4. Seller is in full compliance with

the terms and conditions of the Environmental Permits, and shall validly assign all Environmental Permits to the Government at Closing as part of the Intangible Property.

11. Title Commitment

(a) Within twenty (20) days after the Effective Date, Seller, at Seller's expense, shall cause a title company selected by the Seller (the "Title Company") to furnish to the Government (i) a current commitment to issue the Title Policy (the "Title Commitment"), showing the status of title to the Real Property, including all exceptions, including without limitation all easements, restrictions, rights-of-way, and covenants, if any, affecting the Real Property, and committing, at or below normal premiums, to issue the Title Policy to the Government at the Closing in the full amount of the Purchase Price; and (ii) complete and legible copies of all documents affecting title to the Property (the "Title Documents").

(b) All title exceptions on the Property, including liens that can be eliminated by payment of a liquidated sum, shall be eliminated by Seller at Seller's expense (i) before the Closing, or (ii) at Closing by applying such portion of the Purchase Price as may be necessary to cause the exception to be released of record.

(c) The state of title to the Property must be approved on behalf of the Government by the Land Acquisition Section, Environmental and Natural Resources Division of the United States Department of Justice. No exception to title shall be deemed acceptable unless approved by the Government by Notice to Seller. Seller shall have thirty (30) days after receipt of a title objection to endeavor in good faith to (i) cure such objection and present a Title Commitment free of the matter(s) objected to, or (ii) agree in writing to cure the objection at Closing through the application of part of the Purchase Price as provided in Section 11 (b) above. If Seller fails to cure any objection or agree to cure it at Closing, as applicable, the Government may terminate this Agreement by Notice to Seller given within twenty (20) days following the expiration of such thirty (30) day cure period. Any exceptions approved by the Government in writing are herein referred to as "Permitted Title Exceptions."

(d) Seller shall furnish a Closing Protection Letter from the title insurer to the Government assuming:

- (1) Liability for conduct of the insurer's agents;
- (2) Authority of closing agent to represent the Title Company.

12. Title to be Conveyed at Closing

At the Closing, Seller shall convey to the Government by general warranty deed, and by bill of sale and assignment where applicable, good, marketable, and enforceable fee simple title to all of the Property, free and clear of all liens, encumbrances, conditions, easements, and other matters affecting title to the Property, except for the following:

- (a) The lien for general real estate taxes for tax years after the tax year in which Closing

occurs.

(b) The Permitted Title Exceptions.

(c) The rights of Tenants, as tenants only, under Leases that are (i) designated on Exhibit H as surviving Closing, or (ii) approved by the Government, in writing, to survive Closing. The Government may grant or withhold such approval in its sole discretion.

13. Title Policy

(a) Seller shall furnish to the Government at Closing, at the Seller's expense, the September 28, 1991 version (or any subsequent version approved by the Government) of the standard ALTA U.S. Government form of Owner's Policy of Title Insurance modified to the extent necessary to conform to the requirements of this Agreement (the "Title Policy") issued by the Title Company, in the Government's favor in the full amount of the Purchase Price, insuring the Government's indefeasible fee simple title to the Property subject only to the Permitted Title Exceptions and the policy exceptions permitted under Sections 13 (b) - 13 (d).

(b) The Title Policy exception for matters that would be disclosed by a survey of the Real Property shall be deleted, and the exception for rights of parties in possession shall be limited to the rights of Tenants, as tenants only, under any Continuing Leases listed in the Title Policy.

(c) The Title Policy exception for the lien for taxes shall be deleted, or if agreed by the Contracting Officer may be limited to tax years after that in which the Closing occurs and endorsed "Not Yet Due and Payable".

(d) The Title Policy may contain any standard exceptions that have been approved by the Government for inclusion in all ALTA U.S. Government policies of title insurance.

14. Conditions to Closing

Without limiting any other provision of this Agreement, the obligation of the Government to consummate the transactions contemplated hereby is subject to each of the following conditions:

(a) The representations and warranties made by Seller herein shall be true on and as of the Closing Date as though such representations and warranties had been made on and as of the Closing Date.

(b) Seller shall have performed all obligations and complied with all conditions required by this Agreement to be performed or complied with by Seller on or prior to the Closing Date.

(c) Subject to the provisions of Section 25, the Property shall not have been adversely

affected in any material way as a result of any fire, flood, act of God, or the public enemy, unavoidable cause, accident or other casualty.

(d) The transactions to take place at Closing shall not be restrained or prohibited by any injunction or order or judgment rendered by any court or other governmental agency of competent jurisdiction, and no proceeding shall be pending in which any creditor of Seller or any other person seeks to restrain such transactions or otherwise to attach any of the Property.

15. Closing Procedure

(a) At the Closing, Seller shall deliver or cause to be delivered each of the following items to the Title Company or other escrow agent selected by the Government and reasonably acceptable to Seller (the "Escrow Agent"):

(1) A duly executed and acknowledged general warranty deed conveying the Real Property and the Improvements to the Government (the "Deed").

(2) The Title Policy.

(3) A duly executed bill of sale conveying the Personal Property to the Government.

(4) An instrument of assignment effectively assigning to the Government the Intangible Property.

(5) An affidavit of Seller showing Seller's federal tax identification number and stating whether Seller is a "foreign person" under Section 1445 of the Internal Revenue Code of 1986, as amended.

(6) All master keys to all locks on the Property (and an accounting for master keys in possession of others); the originals of all Data, the originals of all Continuing Leases; and a letter instructing all Tenants under continuing Leases to thenceforth pay all rent to the Government.

(7) A duly executed and acknowledged instrument of assignment, effectively assigning, transferring and setting over unto the Government all of the Seller's and/or the landlord's interest in all Continuing Leases, together with all security deposits and all rents, issues and profits accruing under the Continuing Leases after the Closing Date.

(8) A Rent Roll, updated to no less than three (3) days before Closing.

(9) Seller's certification that all representations and warranties made by Seller in this Agreement are true and correct on the Closing Date.

(10) A written disclaimer from any occupant of any part of the Property of any ownership interest in the Property, and (B) a written statement from each Person who

was a Tenant during the period beginning on the earliest of (i) the date of this Agreement, (ii) the date of the Government's initial notice of intent to acquire the Property, and (iii) the date of the Government's initial offer of just compensation, and ending on the Closing Date, stating sufficient facts to determine whether such Person is a Displaced Person.

(11) An estoppel certificate from each Tenant under a Continuing Lease confirming the matters described in Section 9 (k) with respect to its respective Continuing Lease..

(a) At Closing, the Government shall deliver to the Escrow Agent (i) a duly executed document assuming the obligations arising after Closing of the Seller and/or the landlord under any Continuing Leases, and (ii) the Purchase Price (adjusted by the net amount of closing credits and charges provided for in this Agreement) in the form of a federal wire transfer or Government check.

(b) Effective upon recording of the Deed, Seller shall deliver to the Government full and exclusive possession of the Property, subject only to the possession of Tenants under the Continuing Leases.

(c) Upon receipt of the adjusted Purchase Price and confirmation by the Government and Seller that the conditions to Closing are satisfied, the Escrow Agent shall record the original Deed in the appropriate land records. Upon recording of the Deed, the Escrow Agent shall deliver to the Government all other closing items received from Seller. Upon receipt of all required items, the Government shall authorize the Escrow Agent to release the Purchase Price. After making proper credits and charges for prorations, Seller's share of the costs of Closing, and the release of all liens, the Escrow Agent shall deliver the remaining balance of the Purchase Price to Seller, together with the assumption of Continuing Leases.

(d) The Deed, bill of sale, assignments, estoppel certificates, and any other closing documents required by this Agreement shall be in a form prepared by Seller and reasonably satisfactory to the Government. Seller shall submit the proposed form of all documents to the Government at least forty-five (45) days prior to Closing. The Government may elect at any time to take responsibility for drafting any document, in which case the document must be reasonably satisfactory to Seller.

(e) The Government and Seller shall deliver at Closing any additional documents and instruments that are (in the reasonable opinion of the Government's counsel, Seller's counsel, the Title Company, or the Escrow Agent) necessary to the proper consummation of this transaction.

16. Closing Costs and Prorations

(a) Property taxes for the current tax year and any other charges against the Property (other than special assessments or one-time taxes levied or assessed through the Closing Date, all of which shall be paid by Seller), rents under the Continuing Leases, all other

receipts generated from the Property, all utility and fuel charges and all other operating expenses relating to the Property shall be prorated between Seller and the Government effective as of the Closing Date based (where possible) on the actual amount of the expenses in question, and shall be paid or credited against the Purchase Price, as applicable, at the Closing. All prorations shall be determined by the Contracting Officer in his/her reasonable discretion based on a draft closing statement submitted to the Contracting Officer at least three (3) business days prior to Closing. All prorations shall be based on Seller retaining all benefits and burdens of the Property through the Closing Date. If, on the Closing Date, Seller has not received tax statements for the current tax year for the Property, taxes shall be prorated based upon the Contracting Officer's estimate, taking into account taxes for the immediately preceding tax year. After the Closing, upon receipt of bills for taxes or any other any item prorated at Closing based on an estimate of the bill, an accurate adjustment in the tax or other applicable proration shall be made, based upon the actual bill(s), by cash settlement between Seller and the Government.

(b) Seller shall deliver to the Government by way of a credit to the Government against the Purchase Price all prepaid rents and all security deposits made under the Continuing Leases on or before the Closing Date. After executing this Agreement, Seller shall not apply any security deposit under a Continuing Lease to any amount owed by the Tenant thereunder. If the rent for any Continuing Lease is delinquent on the Closing Date, the Government shall use reasonable efforts after the Closing Date to collect such rent on behalf of Seller. The Government shall not be required to institute any legal action to collect such rents. All rents collected after Closing (whether by Seller or the Government) shall be the property of the Government, to be applied first to pay rents which remain unpaid by the Tenant(s) in question for any period after the Closing Date, with any excess to be paid by the Government to Seller.

(c) Seller shall be responsible for all closing costs, including recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the Property and other expenses incidental to the transfer of title to the Government.

17. Claims Arising After Closing

Seller shall be responsible for all Claims and Liabilities with respect to the Property existing or accrued through the Closing Date or arising out of any acts or omissions of the Seller occurring through the Closing Date, and Seller agrees to hold the Government harmless and indemnify the Government from any such claims. The Government shall be responsible to the extent provided under applicable law, for all claims with respect to the Property based on events or circumstances occurring after the Closing Date, provided (i) Seller shall indemnify and hold the Government harmless for any payment that the Government makes under the Uniform Relocation Act listed in Exhibit C, and (ii) this Section does not limit Seller's liability under Section 18.

18. Environmental Liability

(a) The Government shall be responsible for:

(1) The amount of any Liability arising from (i) Hazardous Materials that are introduced to the Property after the Closing Date, or (ii) the post-Closing disposal of Hazardous Materials from the Property to the extent that the Hazardous Materials were present at Closing but the Liability is caused by the Government's Environmental Violation in performing the disposal; and

(2) the amount of any Liability arising or incurred with respect to an Environmental Condition, or Environmental Violation, that existed at or prior to Closing and of which Seller provided the Government Notice prior to Closing, if and to the extent that (i) Seller provided a Certification with respect to such Environmental Condition or Violation (but Seller shall be responsible to the extent a Government Entity shall order or require further action with respect thereto); or (ii) Seller provided an Agency Letter with respect thereto.

(b) Except to the extent that the Government is responsible under Section 18 (a), Seller shall be responsible for, and Seller shall indemnify and hold the Government harmless from and against, the following:

(1) All costs of all investigations, studies, and testing related to Hazardous Materials that were present at the Property at Closing, or were generated at or disposed of from the Property prior to Closing, and all costs to undertake and complete all remedial, removal, and other actions necessary to contain, clean up, and/or remove all such Hazardous Materials in accordance with applicable Environmental Laws; and

(2) All Claims and Liabilities that are asserted against or incurred by the Government after the Effective Date and arise from or relate in any way, directly or indirectly, to (i) any Hazardous Materials at or affecting the Property, or resulting from activities on the Property, (ii) the use, generation, storage, treatment or disposal of Hazardous Materials onto the Property from any other property or onto any other property from the Property, (iii) the past disposal of Hazardous Materials on the Property by any person, known or unknown, (iv) the removal, treatment, remediation, or disposal of Hazardous Materials on or from the Property, and (v) any personal injuries or property damages, real or personal, any violations of Environmental Laws or demands of Governmental Entities, and any lawsuit brought or threatened, settlement reached, or government order resulting from, arising out of or in any way related to Hazardous Materials at or from the Property.

(c) Seller's obligations in this Section 18 do not limit or replace any other obligations that Seller may have at common law or otherwise.

(d) The Government shall give Notice to Seller with respect to any Claim against the Government of which the Government receives actual notice, or if the Government receives actual notice of any Environmental Condition that the Government has reason to believe is likely to give rise to a claim for indemnity hereunder. Such Notice shall be given within sixty (60) days after the Government receives such notice or becomes aware of such a likelihood. Failure of the Government to comply with the notice

requirement of this paragraph shall not limit Seller's indemnity responsibility, except to the extent that such failure materially prejudices Seller's rights or materially increases its liabilities and obligations hereunder.

(e) Upon receipt of Notice that any Claim has been or may be asserted against the Government, Seller shall, if requested by the Government, promptly proceed to provide an appropriate defense, compromise, or settlement at Seller's expense. If the Government requests Seller to provide a defense, the Government shall have the right to participate in such defense and must approve any action by Seller that affects the interest of the Government. If the Government at any time elects in its absolute discretion to control such defense, the Government shall have the right to carry out and exclusively control such defense, compromise, or settlement, insofar as the Government is affected, and the cost thereof shall be immediately due and payable by Seller to the Government upon presentation of an invoice for such cost.

(f) There shall be no time limit on the Government's rights under this Section 18, except for any Federal statute of limitations that may apply to a cause of action to enforce this Section.

(g) A cause of action to enforce this Section shall not be deemed to arise before the Government has actual knowledge of the facts giving rise to the particular cause of action.

(h) Seller shall have an ongoing obligation to provide to the Government copies of any additional documentation described in Section 5 (g) above which becomes available to Seller after the Effective Date, within five (5) days after any such documentation becomes available to Seller. Seller shall have an ongoing obligation to inform the Government if Seller discovers that any representation by Seller in Section 10 was untrue, either when made or at Closing or has become untrue thereafter. Seller shall inform the Government of any such discovery within five (5) days after Seller makes such discovery.

19. Commissions

Seller shall indemnify and hold the Government harmless from and against all liabilities, costs, damages and expenses arising from any claims for brokerage or finders' fees, commissions or other similar fees in connection with the transactions provided for herein insofar as such claims shall be based upon actual or alleged arrangements or agreements made by Seller or on Seller's behalf.

20. Termination

If this Agreement is terminated by the Government pursuant to any of the provisions of this Agreement authorizing its termination, Seller and the Government shall have no further obligation or liabilities to the other under this Agreement except as provided in Section 6 (d), Section 7, Section 18, and Section 21. This Section shall not limit any liability of Seller for any breach of this Agreement, including without limitation any

untrue representation or warranty.

21. Default by Seller

If Seller fails to perform requirements under the agreement, the Government has multiple options to include terminating the agreement for the convenience of the Government, cancellation of the Request for Proposal, or in extreme situations seeking a condemnation. Condemnation is the sovereign power of the Federal Government, authorized by the Fifth Amendment to the U.S. Constitution, to take private property, such as real property, for public purposes upon the payment of "just compensation."

22. Default by Government

There is some authority for a contractor to recover bid preparation costs in very limited circumstances. Even so, a contracting agency need only establish a reasonable basis to support a decision to cancel an RFQ; in this regard, so long as there is a reasonable basis for doing so, an agency may cancel an RFQ no matter when the information precipitating the cancellation first arises, even if it is not until quotations have been submitted and evaluated. Quality Tech., Inc., B-292883.2, Jan. 21, 2004, 2004 CPD para. 29 at 2-3; DataTrak Consulting, Inc., B-292502 et al., September 26, 2003, 2003 CPD para. 169 at 5. It is well established that an agency's lack of funding for a procurement provides a reasonable basis for cancellation, as agencies cannot award contracts which exceed available funds. First Enter, B-221502.3, Mar. 24, 1986, 86-1 CPD para. 290 at 3. Procurement authorities are presumed to act in good faith and in order for GAO to conclude otherwise, the record must show that procuring officials intended to injure the protester. Cycad Corp., B255870, April 12, 1994, 94-1 CPD para. 253 at 5. A protester's mere inference of bad faith is insufficient.

23. Assignment of Agreement; Delegation

This Agreement may be assigned by the Government, but no assignment shall relieve the Government of liability hereunder unless Seller agrees in writing. The Government may delegate its inspection and other rights under this Agreement to its agents, representatives, and contractors.

24. No Assumption of Seller's Liabilities

The Government is acquiring only the Property and shall not be deemed a successor of Seller, except to the extent the Government expressly assumes, in writing, a specific obligation of Seller. After Closing, Seller shall indemnify and hold the Government harmless for any obligation of Seller not expressly assumed in writing by the Government.

25. Casualty and Condemnation

(a) If the Property is damaged by fire or other casualty before the Closing Date, Seller shall give immediate Notice thereof to the Government. Seller shall also promptly provide confirmation of insurance coverage. If the Property can be restored to substantially its condition prior to such casualty within a period of ninety (90) days thereafter (as the cost and time are estimated by the Government in its discretion),

Seller shall, at Seller's sole cost and expense, promptly restore the Property to substantially its condition prior to such fire or other casualty; and in such event, the Closing Date shall be extended as provided in Section 4 (a). If the Government estimates that such restoration cannot be completed within said ninety day period, then the Government may terminate this Agreement upon delivery of Notice to Seller within twenty (20) days following receipt by the Government of Notice of such casualty. If the Government does not elect to so terminate this Agreement, the Closing shall proceed with no reduction in the Purchase Price for the Property, but all rights and claims with respect to insurance proceeds (other than rent loss or business interruption insurance for periods through the Closing Date) paid or payable with respect to such casualty shall be assigned by Seller to the Government. If and to the extent the Government receives insurance proceeds in excess of the Government's cost to restore the Property, the Government shall reimburse Seller up to the amount of such excess for reasonable costs, incurred by Seller in connection with the casualty, to protect life and property, including without limitation costs to secure the Property.

(b) If any portion of the Property is condemned, or becomes the subject of any condemnation proceeding, prior to Closing, the Government may elect at its sole discretion to either (i) proceed to Closing without a reduction in the Purchase Price, in which case Seller shall assign all its interest in any condemnation proceeds to the Government, or (ii) terminate this Agreement by Notice to Seller.

26. Officials Not to Benefit

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

27. Covenant Against Contingent Fees

Seller warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Seller for the purpose of securing business. For breach or violation of this provision, the Government shall have the right to annul this Agreement without liability or in its discretion to deduct from the Purchase Price the full amount of such commission, percentage, brokerage, or contingent fee.

28. Miscellaneous

(a) All of the representations, warranties, covenants, and agreements of Seller and the Government, as well as any rights and benefits of the other party, shall survive the Closing and shall not be merged into the Deed or Closing.

(b) The covenants and agreements herein contained shall extend to and be obligatory upon the successors and assigns of the respective parties hereto.

(c) This Agreement embodies the entire agreement between the parties with respect to the transaction contemplated herein, and there are no other agreements, representations, or warranties between the parties with respect to the Property.

(d) Seller and the Government agree that each will, at any time and from time to time after the Closing Date, upon the request of the other party, execute, acknowledge and deliver, or will cause to be done, executed, acknowledged and delivered all further acts, deeds, assignments, transfers, conveyances, powers of attorney, and assurances reasonably required for the effective assigning, transferring, granting, conveying, assuring, and confirming to the other party in collecting and reducing to possession, any or all of the Property.

(e) This Agreement, and the rights and obligations of Seller and the Government hereunder, shall be governed by, and construed and interpreted in accordance with, Federal law and not the law of any State or locality; provided that as to all matters involving the common law of title to real property and the common law of vendor and purchaser of real property, the law of the State where the Property is located shall govern to the extent not inconsistent with Federal law. To the extent that a court or other tribunal looks to the laws of any State to determine or define the Federal law, it is the intention of the parties that such court or tribunal shall look only to the laws of the State where the Property is located. As used in this paragraph, "State" includes the District of Columbia, Puerto Rico and the U.S. Virgin Islands. Nothing in this Agreement shall affect the sovereign rights, including without limitation, condemnation rights and immunities of the Government.

(f) This Agreement may be executed in any number of counterparts, each of which shall be an original, but such counterparts together shall constitute one and the same instrument.

(g) References in this Agreement to "Sections" and "Subsections" refer to this Agreement unless otherwise indicated. Exhibits referred to in this Agreement are attached hereto and incorporated herein.

(h) All Notices under this Agreement shall be in writing and shall be deemed to be delivered on the earlier to occur of (i) the date of actual receipt of the Notice (regardless of how it is delivered), and (ii) whether or not actually received, two (2) days after the Notice has been deposited in the United States Mail, postage paid, registered or certified mail, return receipt requested, addressed to Seller or the Government, as the case may be, at the address set forth opposite the signature of such party hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

Address for Notices: [SELLER]

By:
Name:
Title:

Date executed by Seller:

THE UNITED STATES OF AMERICA

By:
Name:
Title: