

Notice of Award



MASSACHUSETTS
TECHNOLOGY
COLLABORATIVE

Grantee (name, address, phone, url)	Agreement No. JAI - 04 - __
	Solicitation Title (Number) Request for Applications For John Adams Innovation Institute Research Center Matching Grants RFA No. 2004-JAI-01
Name of Project/Description (the "Project")	Date of Authorization John Adams Institute Governing Board: MTC Executive Committee:
Director of Project/Title ("Grantee Representative")	Award Amount/Type \$/Grant
MTC Project Manager	Remarks
This document includes: Project Grant Agreement Attachment A: Project Plan (the "Project Plan") Attachment B: Project Budget (the "Project Budget") Attachment C: MTC's Sensitive Information Procedures	
MTC Official (Signature/Name/Title)	
Mitchell Adams, Executive Director	Date
JAI Official (Signature/Name/Title)	
Patrick Larkin, Director, John Adams Innovation Institute	Date
Grantee Official (Signature/Name/Title)	
	Date

**MASSACHUSETTS TECHNOLOGY COLLABORATIVE
PROJECT GRANT AGREEMENT
Standard Terms and Conditions**

ARTICLE I

The Massachusetts Technology Park Corporation, a public instrumentality of the Commonwealth of Massachusetts, doing business as the Massachusetts Technology Collaborative ("MTC") and administrator of the John Adams Innovation Institute (the "Institute") is offering financial assistance in the form of grants to Eligible Institutions (as defined in Section 2.2.1 of the Request for Applications (No. 2004-JAll-01), the "RFA") which have submitted a request for funding consistent with the goals set forth in the RFA and the Economic Stimulus Bill enacted by the Massachusetts Legislature and signed into law in January 2004. **[Insert Name of Grantee]** ("Grantee") has submitted an application for funding which was approved by the MTC **[Executive OR Board of]** Director(s) on _____.

Now, therefore, in reliance on the mutual representations, warranties and agreements herein contained, the parties agree as follows

ARTICLE II

Performance of Work

1. Manner of Performance. The Grantee shall perform all the work described in the Project Plan in Attachment A ("Project Plan"), or cause such work to be performed in an efficient and expeditious manner and in accordance with all the terms and provisions of this Project Grant Agreement. The Grantee shall perform the work, or cause such work to be performed, in accordance with current professional standards and with the diligence and skill expected in the Commonwealth for the performance of work of the type described in the Project Plan. The Grantee shall furnish such personnel and shall procure such materials, machinery, supplies, tools, equipment and other items as may reasonably be necessary or appropriate to perform the work in accordance with this Project Grant Agreement, the Project Plan and the Project Budget in Attachment B ("Project Budget").
2. Project Personnel.
 - a) The MTC Project Manager's ("Project Manager") and the Grantee Representative's responsibilities are to support effective communication between MTC and the Grantee and to report on the Project's progress. The Project Manager shall also be responsible for monitoring compliance with the terms of the Project Grant Agreement. The Grantee Representative shall also be responsible for reporting to the Project Manager on Project progress as set forth in Section 3 below.
 - b) The Grantee is solely responsible for all Project decisions and for developing the Project in accordance with the Project Plan. Any comments or suggestions provided by the Project Manager will be given solely for purposes of monitoring compliance with the terms of the Project Grant Agreement and shall not in any event be construed to be a representation or directive regarding Project decisions.
 - c) Each party will endeavor to maintain the same personnel on its project team, specifically with regard to the identity of the Project Manager and the Grantee Representative, to ensure the continuity of the Project by Grantee and the administration of this Project Grant Agreement by MTC.
3. Deliverables. In addition to the deliverables listed below, Grantee shall also provide those deliverables set forth in the Project Plan.
 - a) *Quarterly Progress Reports.* Grantee shall provide MTC with quarterly progress reports which highlight project activities, accomplished milestones and preliminary results of task items to reflect the stage of the progress on the project. Grantee shall also provide a financial reconciliation for the Grant monies provided for that quarter.

- b) *Annual Project Report.* Grantee shall provide MTC with an Annual Project Report detailing research and related activities for the Project. Grantee shall also provide a financial reconciliation for the Grant monies provided for the year.
 - c) *Information on Technology Transfer and Associated Economic Benefits.* As an ongoing obligation, when appropriate, Grantee shall provide MTC with information on the transfer of technology developed as a result of the Project and the associated economic benefits of such technology and the transfer of such technology.
 - d) *Financial Reconciliation.* As part of each Quarterly Progress Report and Annual Project Report, Grantee shall supply a financial reconciliation of the Grant monies provided for the prior quarter or year, as applicable. Such financial reconciliation shall provide reasonable documentation to provide evidence of costs incurred, including:
 - a. Direct Labor: for each employee, the name, title, number of hours worked and hourly rate;
 - b. Subcontractors/Consultants: copies of invoices for such subcontractors/consultants which have been reviewed and approved, in writing, by Grantee prior to submission to MTC;
 - c. Direct Costs/Travel: all direct costs and travel expenses shall be itemized on the invoice and supported by documentation such as vendor invoices, travel vouchers, expense receipts or other documentation as required by MTC.
4. Other Obligations.
- a) Provision of grant funding by MTC pursuant to this Grant Agreement is not intended to subject MTC to any contractual flowdown requirements imposed on Grantee by the federal government in the grant agreement between Grantee and the federal government.
 - b) The Grantee agrees to support MTC's Program evaluation activities, and MTC's goal to disseminate information regarding Grantee's experiences. To this end, the Grantee agrees that its key personnel and contractors will be available at reasonable times with advance notice to be interviewed by MTC or its authorized representatives for purposes of Program evaluation or case study development.
5. Contingencies. Funding under this Project Grant Agreement is specifically contingent on:
- a) Any necessary MTC internal approvals, including approvals of the MTC Board and JAIL Governing Board;
 - b) Notice to Grantee from the federal government confirming its receipt of the federal grant;
 - c) Execution of a grant agreement between Grantee and the federal government, and
 - d) Execution of this Project Grant Agreement with MTC
6. Term of Grant. The term of this Grant shall commence upon MTC's execution and shall expire on (Insert Date).

ARTICLE III

The Grant

7. Grant Amount. In consideration of this Project Grant Agreement and as full compensation for MTC's share of the costs for the performance of all work and in respect of all other direct and indirect costs, charges or expenses incurred in connection therewith, MTC shall pay to the Grantee a maximum amount of _____ dollars \$(_____) for the cost elements identified in the Project Budget to be funded with MTC funds, subject to the provisions and restrictions contained herein. The Grantee shall be compensated on a quarterly advance basis for the reasonable and necessary actual direct costs incurred in the performance of the work pursuant to the Project Plan and Project Budget, subject to the payment provisions set forth below.

8. Payments.

a) The Grant shall be disbursed in annual aggregate payments, divided into equal quarterly payments made in advance of each quarter, pursuant to the annual budgets provided by Grantee and set forth at Attachment B. In the event that MTC, in the sole exercise of its discretion, finds that Grantee's use of the proceeds is not consistent with the Project Plan or Project Budget and/or the Quarterly and Annual Reports and Financial Reconciliations are either not provided or insufficient, MTC may refuse to pay any prospective payments under the Grant.

b) *Allowable Charges.*

a. Direct Costs. The Grantee shall be permitted to charge the reasonable and necessary actual direct costs incurred to the extent required in the performance of the Project Plan and as specified on a line item of the Project Budget, including:

- i. Direct Labor: services performed by Grantee's employees under the terms of this Project Grant Agreement at the actual labor rate per hour as set forth in the Project Budget;
- ii. Subcontractors/Consultants: services provided by Grantee's subcontractors/consultants as set forth in the Project Budget;
- iii. Direct Materials: the cost of direct materials as set forth in the Project Budget;
- iv. Other Direct Costs: the cost of other direct materials as set forth in the Project Budget. (e.g., postage, telephone, publications, graphics, etc.); and
- v. Travel: the reasonable and necessary costs incurred for travel, lodging, meals and incidental expenses related to the services and as set forth in the Project Budget. Costs should generally not exceed the daily per diem rates published in the Federal Travel Regulations. Charges for the use of personal vehicles shall be limited to the Internal Revenue Service business standard mileage rate.

b. Indirect Costs. The Grantee shall be permitted to charge for certain indirect costs as set forth in its Project Budget. MTC shall provide funding to Grantee for indirect costs based on a rate equal to the applicable federal rate for overhead and general and administrative expenses established by the applicable federal granting authority. In order to be eligible for payment of indirect costs, Grantee is required to either (i) supply a copy of an appropriate document verifying the applicable federal granting authority's rate of overhead and general and administrative expenses; or (ii) where some rate other than the applicable federal rate is proposed overhead and general and administrative expenses, supply a budget worksheet of indirect costs, by account, for the proposed indirect cost rate.

c) *Payment Terms.* MTC shall pay the Grantee within forty-five (45) days after receipt of a properly documented invoice, unless MTC should determine that any such payment or any part thereof is otherwise not properly payable pursuant to the terms of this Project Grant Agreement or the Project Budget.

9. Invoices. The Grantee shall submit invoices on a quarterly basis in advance of each quarter. Invoices shall be addressed to MTC, "Attention: Grants Administrator." Such invoices shall make reference to the Agreement Number shown on the upper right hand corner of the Project Grant Agreement. The invoice shall set forth total project costs expected to be incurred for the following quarter based on the annual budget in Attachment B. These shall be broken down into MTC's funding share and Grantee's cost-share. They shall be in a format consistent with the cost categories set forth in the Project Budget.

10. Release by Grantee. The acceptance by the Grantee of the final Quarterly Payment shall release MTC from all claims and liability that the Grantee, its representatives and assigns might otherwise have relating to this Project Grant Agreement.

ARTICLE IV

Liability, Damages and Remedies

11. Warranties and Guarantees. Grantee warrants and guarantees that (a) it is duly authorized to enter into this Project Grant Agreement and the execution, delivery and performance thereof will not conflict with any other agreement or contract to which it is a party and will not, to the best of Grantee's knowledge, violate any law, regulation or order by which either is bound; (b) it is financially and technically qualified to perform the work required by the Project; (c) the entities with whom Grantee has contracted to perform the work required by the Project are financially and technically qualified to do so; and (e) it is familiar with and will comply with all general and special Federal, State, municipal and local laws, ordinances and regulations, if any, that may in any way affect the performance of this Project. Grantee further certifies that the Grantee has filed all Commonwealth tax returns, paid all Commonwealth taxes and complied with all laws of the Commonwealth relating to contributions and payment in lieu of contributions to the Employment Security System, and with all laws of the Commonwealth pertaining to Worker's Compensation.
12. Indemnification. To the fullest extent permitted by law, Grantee shall indemnify and hold harmless the Commonwealth, MTC, and each of their respective agents, officers, directors and employees (together with the Commonwealth and MTC, the "Covered Persons") from and against any and all liability, loss, claims, damages, fines, penalties, costs and expenses (including reasonable attorney's fees), judgments and awards (collectively, "Damages") sustained, incurred or suffered by or imposed upon any Covered Person resulting from (i) Grantee's breach of this Project Grant Agreement or any false representation of Grantee under this Project Grant Agreement, or (ii) any negligent acts or omissions or reckless or intentional misconduct of Grantee or any of Grantee's agents, officers, directors, employees or subcontractors. Without limiting the foregoing, Grantee shall indemnify and hold harmless each Covered Person against any and all Damages that may directly or indirectly arise out of or may be imposed because of the failure to comply with the provisions of applicable law by Grantee or any of its agents, officers, directors, employees or subcontractors.
13. Termination.
 - a) This Grant may be terminated by MTC at any time for breach of any term of the Project Grant Agreement. In such event, compensation shall be paid to the Grantee for the actual costs of the services performed and the reasonable and necessary actual direct costs incurred in the performance of the work pursuant to the Project Plan prior to the effective date of the termination.
 - b) MTC may terminate this Grant in the event of loss of availability of sufficient funds for the purposes of this Project Grant Agreement, or in the event of an unforeseen public emergency or other change of law mandating immediate MTC action inconsistent with making the Grant and/or performing its obligations under the Project Grant Agreement.
 - c) Termination of the Grant under this Section 14 shall be effected by letter sent by the terminating party to the other party setting forth the effective date of termination.
14. Force Majeure. Neither party shall be liable to the other, or be deemed to be in breach of this Project Grant Agreement for any failure or delay in rendering performance arising out of causes beyond its reasonable control and without its fault or negligence. Such causes may include, but are not limited to, acts of God or of a public enemy, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually severe weather. Date or times of performance including the Term of this Project Grant Agreement shall be extended to the extent of delays excused by this Section, provided that the party whose performance is affected notifies the other promptly of the existence and nature of such delay.
15. Insurance. The Grantee shall maintain the following levels and types of insurance.
 - a. *General.*
 - i. Each policy of insurance required by this Project Grant Agreement shall contain a provision endorsed to MTC that the insurance provided therein may not be canceled or materially modified (e.g., non-renewed or reduced) without sixty (60) days prior written notice to MTC.

- ii. Each requirement for the Grantee's insurance contained in this Section shall also be required by the Grantee of every subcontractor. Amounts of coverage for subcontractors may, however, with MTC's approval, be less than the amount of coverage for the Grantee. Additionally, the Grantee shall require its subcontractors to carry professional liability insurance in the minimum required amount of \$1,000,000 per claim, if applicable.
 - iii. The Grantee shall provide MTC, upon request, with certificates satisfactory to MTC concerning the effectiveness and the terms of the insurance required by this Project Grant Agreement. MTC shall be an additional insured on such policy or policies and shall be provided coverage at least as broad as the coverage provided to the named insured. MTC may also request the Grantee to provide it with copies of the actual policies for its review. Failure to provide and continue in force any insurance required by this Project Grant Agreement shall be deemed a material breach of this Project Grant Agreement for which MTC, at its sole discretion, may terminate this Agreement immediately or on such other terms as it sees fit.
- b) *Particular Insurance Requirements.* During the term of this Project Grant Agreement the Grantee shall procure and maintain at its expense the following forms of insurance protecting the Grantee and MTC against all claims, losses or expenses resulting from alleged, adjudicated or statutory liability for injury to persons or damage to property arising out of or in connection with the Grantee's performance hereunder:
- i. Commercial general liability insurance in a limit of not less than \$1,000,000 per occurrence for bodily injury and property damage, \$1,000,000 per occurrence for personal injury, \$2,000,000 general aggregate and \$2,000,000 completed operations aggregate written on an occurrence basis. The foregoing policy shall be primary and non-contributing with respect to any insurance carried by MTC and any other additional insured. The above requirements can be satisfied by an umbrella excess form of liability insurance written to provide coverage in excess of the underlying commercial general liability insurance policy; provided, that the umbrella terms and conditions are at least as broad as the underlying liability policies and for concurrent terms with the underlying commercial general liability insurance. Such insurance shall include:
 - 1. Contractual liability insurance covering all liability assumed under this Project Grant Agreement;
 - 2. Personal injury coverage; and
 - 3. Motor vehicle liability insurance covering use of any motor vehicle in connection with operations under this Project Grant Agreement with a combined single limit of \$1,000,000.
- c) *Miscellaneous Insurance Requirements*
- i. Any increase in limit of liability, or any type of insurance not described above, which the Grantee requires for its own protection or to comply with any statute, shall be its own responsibility and at its own expense. Should the Grantee obtain any increase in limits of liability or any type of insurance not described herein, except where MTC specifically agrees in writing in advance to pay the premiums, the cost shall be met by the Grantee. It shall be the responsibility of the Grantee to obtain any additional insurance required.
 - ii. The Grantee shall give prompt notice to MTC of all losses, damages, or injuries to any person or third persons of which the Grantee has notice which may in any way be related to the work or for which a claim might be made against Grantee or MTC. The Grantee shall promptly report to MTC all such claims of which the Grantee has notice, whether related to matters insured or uninsured. No settlement or payment, for any claim or loss, injury or damage or other matter as to which MTC may be charged with an obligation to make any payment or reimbursement, shall be made by the Grantee without the written approval of MTC.

- iii. The carrying of any of the insurance required hereunder shall not be interpreted as relieving the Grantee of any responsibility to MTC. The Grantee shall assist and cooperate with any insurance company in the adjustment or litigation of all claims arising under this Agreement.
- d) *Insurance Requirements for Public Agencies.* Notwithstanding the foregoing provisions of this Section 15, in the event the Grantee is a public agency (as defined in Chapter 7, Section 39A of the Massachusetts General Laws), then MTC agrees that Grantee may self insure with respect to the requirements specified in this Section 15 to the extent permitted by law as though Grantee were the insurer under all insurance required above. Grantee hereby waives all offsets and defenses that it may otherwise have under this Grant with respect to the insurance required to be maintained hereunder. The grant of the right to self insure is subject to the requirements that (i) the design professionals, contractors and subcontractors of Grantee carry insurance of the types and levels as required by this Section 15; (ii) that such insurance shall name MTC, and such other entities as MTC may request, as additional insureds, and (iii) no settlement or payment, for any claim or loss, injury or damage or other matter as to which MTC may be charged with an obligation to make any payment or reimbursement, shall be made by the Grantee without the written approval of MTC.

ARTICLE V

Assignability

16. Assignment and Subcontracting. The Grantee shall not assign or in any way transfer any interest in this Grant without the prior written consent of MTC, including subcontracting any services except as otherwise included in the Grantee's proposal. Grantee shall provide MTC with copies of all Project-related subcontracts within thirty (30) days of their execution.

ARTICLE VI

Access and Use of Project Data and Deliverables

17. Access and Use. Grantee agrees to license or otherwise make available to MTC in perpetuity, without charge, all materials prepared and produced for the Project by the Grantee.
18. Intellectual Property Rights. The Grantee will use its best efforts to obtain for the benefit of itself and MTC the broadest possible license and other rights to use for educational and research purposes any and all intellectual property constituting a portion of the Project. Grantee agrees to license or otherwise make available to MTC in perpetuity without charge for use for educational and research purposes any and all intellectual property in any form whatsoever which Grantee obtains as a result of its participation in this Project.

ARTICLE VII

Compliance with Certain Laws

19. No Violation. Grantee certifies that the Grant will be used only for allowable costs as provided in Article III and that such use of the Grant will not place Grantee in violation of, or be contrary to, the terms of any statute, regulation, order, contract, agreement or instrument by which the Grantee is bound including, without limitation, any financing agreement or arrangement for the Project.
20. Nondiscrimination. The Grantee shall not discriminate against any qualified employee or applicant for employment, or deny services to any individual because of race, color, national origin, ancestry, age, sex, religion, physical or mental handicap, or sexual orientation. The Grantee agrees to comply with all applicable Federal and State statutes, rules and regulations prohibiting discrimination in employment.
21. Audit. At any time period prior to the completion of the Project and as otherwise provided in this Section, MTC will have the right to audit Grantee's or its other agents' records to confirm the use of the Grant proceeds. If such audit reveals that any portion of the Grant was utilized for purposes not

permitted under this Project Grant Agreement, then Grantee shall refund to MTC the amount determined by such audit within thirty (30) days of Grantee's receipt of such audit and demand. Grantee shall maintain books, records, and other compilations of data pertaining to the Grant payments made under this Project Grant Agreement to the extent and in such detail as shall properly substantiate use of such payments. All such records shall be kept for a period of seven (7) years, starting on the first day after Final Payment under this Project Grant Agreement (the "Retention Period"). If any litigation, claim, negotiation, audit or other action involving the records is commenced prior to the expiration of the Retention Period, all records shall be retained until completion of the audit or other action and resolution of all issues resulting therefrom, or until the end of the Retention Period, whichever is later. MTC or the Commonwealth or any of their duly authorized representatives shall have the right at reasonable times and upon reasonable notice, to examine and copy the books, records, and other compilations of data of the Grantee which pertain to the provisions and requirements of this Grant. Such access may include on-site audits, review and copying of records.

22. Conflict of Interest. No officer, employee or consultant of MTC shall participate in any official action relating to this Project Grant Agreement which affects his/her personal financial interest or that of any corporation, partnership, or association in which (s)he is an employee, officer or trustee without prior written disclosure of the relevant facts to MTC's General Counsel. No officer, employee or consultant of MTC shall have any financial interest, direct or indirect, in this Project Grant Agreement or the proceeds thereof.
23. Lobbying. No Grant funds may be used for any activities to influence any matter pending before the Massachusetts General Court or for activities covered by the law and regulations governing "legislative agent" or "executive agent" set forth in the Massachusetts Lobbying Law, M.G.L. c.3, §39.
24. Public Records. As a public entity, MTC is subject to the Massachusetts Public Records Law and thus documents and other materials made or received by its employees are subject to public disclosure. All information received by MTC shall be deemed to be subject to public disclosure, except as otherwise provided in the procedures set forth in Attachment C hereto. By signing this Agreement, Grantee acknowledges, understands and agrees that the procedures set forth in Attachment C are applicable to any documents submitted by Grantee to MTC, including but not limited to any acknowledgements set forth therein, and that Grantee shall be bound by these procedures.

ARTICLE VIII

General Clauses

27. Choice of Law. This Project Grant Agreement shall be construed under, and governed by, the laws of the Commonwealth of Massachusetts without giving effect to its conflict of laws principles. The Grantee agrees to bring any Federal or State legal proceedings arising under this Grant in which the Commonwealth or MTC is a party in a court of competent jurisdiction within the Commonwealth of Massachusetts. This Section shall not be construed to limit any other legal rights of the parties.
28. Publicity.
 - a) The Grantee shall collaborate with MTC to prepare any press release and to plan for any news announcement concerning the Project. In addition, the Grantee shall notify MTC regarding any media interview in which the Project is referred to or discussed.
 - b) Grantee agrees to give appropriate credit to MTC and all other Project donors for their financial support in any and all press releases, publications, annual reports, video credits, dedications, and other public communications regarding the services performed pursuant to this Project Grant Agreement. MTC shall provide language for Grantee's use upon Grantee's request.
 - c) In conjunction with the proposal and other work under the Project Plan, Grantee will not represent that positions taken or advanced by the Grantee represent the opinion or position of MTC. It is recognized that during the course of the Project, the Grantee or its employees may from time to

time desire to publish information about the Project. In any such information, the Grantee shall credit MTC's funding participation in the Project. MTC shall have the right to review the materials before publication or distribution.

- d) The Grantee agrees that MTC shall have the right to make use of and disseminate, in whole or in part, all work products, reports, and other information produced in the course of the Project, and to use the information therein contained to produce summaries, case studies or similar information resources.

29. Waivers. All conditions, covenants, duties and obligations contained in this Project Grant Agreement can be waived only by written agreement between the parties hereto. Forbearance or indulgence in any form or manner by a party shall not be construed as a waiver, nor in any way limit the remedies available to that party.

30. Notice. All communications to MTC shall be mailed or delivered to the following address, or sent by facsimile to the following number with confirmation of receipt by voice, or sent by electronic mail with confirmation of receipt, to:

Massachusetts Technology Collaborative
75 North Drive
Westborough, MA 01581
508/879-0312 (phone)
508/898-2272 (fax)
Attn: Robert Kispert, Program Director (kispert@masstech.org)
With copy to: Matthew L. Schemmel, Senior Counsel (schemmel@masstech.org)

All communications to the Grantee shall be mailed or delivered to the following address, or sent by facsimile to the following number with confirmation of receipt by voice, or sent by electronic mail with confirmation of receipt, to:

(Insert Contact Name and Address)

31. Amendments, Entire Agreement and Attachments.

- a) All conditions, covenants, duties and obligations contained in the Project Grant Agreement may be amended only through a written amendment signed by the Grantee and MTC. The parties understand and agree that this Project Grant Agreement supersedes all other verbal and written agreements and negotiations by the parties regarding the matters contained herein. The following are attached and incorporated into this Project Grant Agreement:
- i. Attachment A – Project Plan and Deliverables
 - ii. Attachment B – Budget
 - iii. Attachment C – MTC's Sensitive Information Procedures
- b) The order of priority of documents to interpret this Project Grant Agreement shall be as follows: the printed language of this Project Grant Agreement, the language of the NFA, and the Grantee's application for funding, excluding any language stricken by MTC as unacceptable.

Attachment A

Project Plan and Deliverables

(Specific tasks, deliverables and timelines included here)

Attachment B

Project Budget

(From application– updated as necessary)

Attachment C**THE MASSACHUSETTS TECHNOLOGY COLLABORATIVE
POLICY AND PROCEDURES REGARDING SUBMISSION OF "SENSITIVE INFORMATION"**

The Massachusetts Technology Collaborative (referred to herein as "MTC") is subject to the requirements concerning disclosure of public records under the Massachusetts Public Records Act, M.G.L. c. 66 (the "Public Records Act"), which governs the retention, disposition and archiving of public records. For purposes of the Public Records Act, "public records" include all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, made or received by MTC. As a result, any information submitted to MTC by a grant applicant, recipient grantee, respondent to a request for response (including, but not limited to an RFQ, RFP and RFI), contractor, or any other party (collectively the "Submitting Party") is subject to public disclosure as set forth in the Public Records Act.

The foregoing notwithstanding, "public records" do not include certain materials or data which fall within one of the specifically enumerated exemptions set forth in the Public Records Act or in other statutes, including MTC's enabling act, M.G.L. Chapter 40J. One such exemption that may be applicable to documents submitted by a Submitting Party is for any documentary materials or data made or received by MTC that consists of trade secrets or commercial or financial information regarding the operation of any business conducted by the Submitting Party, or regarding the competitive position of such Submitting Party in a particular field of endeavor (the "Trade Secrets Exemption").

It is MTC's expectation and belief that the overwhelming percentage of documents it receives from a Submitting Party does not contain any information that would warrant an assertion by MTC of an exemption from the Public Records Act. Submitting Parties should therefore take care in determining which documents they submit to MTC, and should assume that all documents submitted to MTC are subject to public disclosure without any prior notice to the Submitting Party and without resort to any formal public records request.

In the event that a Submitting Party wishes to submit certain documents to MTC and believes such a document or documents may be proprietary in nature and may fall within the parameters of the Trade Secrets Exemption and/or some other applicable exemption, the following procedures shall apply:

1. At the time of the Submitting Party's initial submission of documents to MTC, the Submitting Party must provide a cover letter, addressed to MTC's General Counsel, indicating that it is submitting documents which it believes are exempt from public disclosure, including a description of the specific exemption(s) that the Submitting Party contends is/are applicable to the submitted materials, a precise description of the type and magnitude of harm that would result in the event of the documents' disclosure, and a specific start date and end date within which the claimed exemption applies. If different exemptions, harms and/or dates apply to different documents, it is the Submitting Party's responsibility to provide detailed explanations for each such document.
2. At the time of the Submitting Party's initial submission of documents to MTC, the Submitting Party must also clearly and unambiguously identify each and every such document that it contends is subject to an exemption from public disclosure as "Sensitive Information." It is the Submitting Party's responsibility to ensure that all such documents are sufficiently identified as "Sensitive Information," and Submitting Party's designation must be placed in a prominent location on the face of each and every document that it contends is exempt from disclosure under the Public Records Act.

Information submitted to MTC in any form other than a hard copy document will not be subject to the procedures set forth in this Attachment C. For example, information submitted by e-mail, facsimile and/or verbally will not be subject to these procedures and may be disclosed at any time without notice to the Submitting Party.

3. Documents that are not accompanied by the written notification to MTC's General Counsel or are not properly identified by the Submitting Party as "Sensitive Information" at the time of their initial submission to MTC are presumptively subject to disclosure under the Public Records Act, and the

procedures for providing the Submitting Party with notice of any formal public records request for documents, as set forth below, shall be inapplicable.

4. At the time MTC receives documents from the Submitting Party, any such documents designated by Submitting Party as "Sensitive Information" shall be segregated and stored in a secure filing area when not being utilized by appropriate MTC staff. By submitting a grant application, request for response, or any other act that involves the submission of information to MTC, the Submitting Party certifies, acknowledges and agrees that (a) MTC's receipt, segregation and storage of documents designated by Submitting Party as "Sensitive Information" does not represent a finding by MTC that such documents fall within the Trade Secrets Exemption or any other exemption to the Public Records Act, or that the documents are otherwise exempt from disclosure under the Public Records Act, and (b) MTC is not liable under any circumstances for the subsequent disclosure of any information submitted to MTC by the Submitting Party, whether or not such documents are designated as "Sensitive Information" or MTC was negligent in disclosing such documents.
5. In the event that MTC receives an inquiry or request for information submitted by a Submitting Party, MTC shall produce all responsive information without notice to the Submitting Party. In the event that the inquiry or request entails documents that the Submitting Party has previously designated as "Sensitive Information", the inquiring party shall be notified in writing that one or more of the documents it has requested has been designated by the Submitting Party as "Sensitive Information", and that a formal, written public records request must be submitted by the requesting party to MTC's General Counsel for a determination of whether the subject documents are exempt from disclosure.
6. Upon the General Counsel's receipt of a formal, written public records request for information that encompass documents previously designated by Submitting Party as "Sensitive Information", the Submitting Party shall be notified in writing of MTC's receipt of the public records request, and MTC may, but shall not be required to provide Submitting Party an opportunity to present MTC with information and/or legal arguments concerning the applicability of the Trade Secrets Exemption or some other exemption to the subject documents.
7. The General Counsel shall review the subject documents, the Public Records Act and the exemption(s) claimed by the Submitting Party in making a determination concerning their potential disclosure.

The General Counsel is the sole authority within MTC for making determinations on the applicability and/or assertion of an exemption to the Public Records Act. No employee of MTC other than the General Counsel has any authority to address issues concerning the status of "Sensitive Information" or to bind MTC in any manner concerning MTC's treatment and disclosure of such documents.

Furthermore, the potential applicability of an exemption to the disclosure of documents designated by the Submitting Party as "Sensitive Information" shall not require MTC to assert such an exemption. MTC's General Counsel retains the sole discretion and authority to assert an exemption, and he may decline to exert such an exemption if, within his discretion, the public interest is served by the disclosure of any documents submitted by the Submitting Party.

8. MTC shall provide the requesting party and Submitting Party with written notice of its determination that the subject documents are either exempt or not exempt from disclosure.
9. In the event that MTC determines that the subject documents are exempt from disclosure, the requesting party may seek review of MTC's determination before the Supervisor of Public Records, and MTC shall notify the Submitting Party in writing in the event that the requesting party pursues a review of MTC's determination.
10. In the event the requesting party pursues a review of MTC's determination that the documents are exempt from disclosure and the Supervisor of Public Records concludes that the subject documents are not exempt from disclosure and orders MTC to disclose such documents to the

requester, MTC shall notify the Submitting Party in writing prior to the disclosure of any such documents, and Submitting Party may pursue injunctive relief or any other course of action in its discretion.

11. In the event that MTC determines that the subject documents are not exempt from disclosure or the General Counsel determines that, under the circumstances and in his discretion, MTC shall not assert an exemption, MTC shall notify the Submitting Party in writing prior to the disclosure of any such documents, and Submitting Party may pursue injunctive relief or any other course of action in its discretion.

The Submitting Party's submission of documentation to MTC shall require a signed certification that Submitting Party acknowledges, understands and agrees with the applicability of the foregoing procedures to any documents submitted to MTC by Submitting Party at any time, including but not limited to the acknowledgements set forth herein, and that Submitting Party shall be bound by these procedures.

All documents submitted by Submitting Party, whether designated as "Sensitive Information" or not, are not returnable to Submitting Party.