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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

SAN DIEGO NAVY BROADWAY  
COMPLEX COALITION,  
  
Plaintiff,  
  
vs.  
  
UNITED STATES DEPARTMENT  
OF THE NAVY, et al.,  
  
Defendant.

CASE NO.07-CV-0909 W (POR)

**ORDER (1) GRANTING NAVY'S  
EX PARTE APPLICATION TO  
FILE LEASE UNDER SEAL (DOC.  
NO. 34) AND (2) GRANTING  
IN-PART AND DENYING IN-  
PART THE PARTIES' CROSS-  
MOTIONS FOR SUMMARY  
JUDGMENT (DOC. NOS. 30, 31)**

Pending before the Court are cross motions for summary judgment by Defendant United States Department of the Navy (the "Navy") and Plaintiff San Diego Navy Broadway Complex Coalition (the "Plaintiff"). Additionally, the Navy's has submitted an ex parte application to file an unredacted copy of the Lease under seal.

The Court decides the matters on the papers submitted and without oral argument. See S.D. Cal. Civ. R. 7.1(d)(1). For the reasons addressed below, the Court **GRANTS** the Navy's ex parte application (Doc. No. 34), and **GRANTS IN-PART** and **DENIES IN-PART** the cross-motions for summary judgment (Doc. Nos. 30, 31).

1 I. BACKGROUND

2 The following factual summary is undisputed and repeated from the Court's  
3 previous order.

4 On October 4, 2005, the Navy solicited proposals for the development of a  
5 portion of what is known as the Broadway Complex in San Diego. Manchester Pacific  
6 Gateway, LLC ("Manchester") was one of the proposers who submitted proprietary and  
7 confidential financial and commercial information. On November 22, 2006, the Navy  
8 awarded the solicitation to Manchester, and the parties entered into a Real Estate  
9 Ground Lease for Broadway Complex, Lease No. N6247307RP07P24 (the "Lease").

10 On January 10, 2007, Plaintiff submitted a Freedom of Information Act ("FOIA")  
11 request to the Navy for a complete and unredacted copy of the Lease. The Navy denied  
12 the request. After an unsuccessful administrative appeal, Plaintiff filed this lawsuit  
13 against the Navy and Donald C. Winter, in his official capacity as Secretary of the Navy.  
14 The Complaint asserts claims for violation of FOIA and the Administrative Procedure  
15 Act ("APA").

16 The Navy responded to the Complaint by filing a summary-judgment motion.  
17 The motion sought dismissal of the APA claim and Defendant Winter. The Navy also  
18 sought to establish that its redactions to the Lease were appropriate under FOIA's  
19 Exemption 4. In filing the motion, the Navy submitted, among other things, a redacted  
20 copy of the Lease. The Navy further argued that if the Court needed additional  
21 information, the Navy should be allowed to submit "additional declarations and  
22 descriptions from Defendants, potentially produced to the Court under seal of [sic] for  
23 in camera review," rather than an "in camera inspection of the entire unredacted  
24 Lease." (*Navy's August 17, 2007 P&A* [Doc. No. 6-2], 18:8–10.)

25 On January 9, 2008, the Court granted the Navy's motion as to Plaintiff's APA  
26 claim and defendant Winter. With respect to the FOIA claim, the Court found the  
27 Navy's redactions in the Lease to time periods in sections 5.3 and 8.1, and financial  
28 figures in sections 5.2.4, 5.3, 5.4, 5.6.1 and 5.6.2 appropriate under Exemption 4. (*See*

1 Doc. No. 18, 5:1–15.) The record, however, was insufficient to support the Navy’s  
2 redactions to the remaining sections. The Court, therefore, continued the motion to  
3 give the Navy an opportunity to file the additional declarations and descriptions.

4 On March 21, 2008, after having reviewed the Navy’s sealed declarations, the  
5 Court denied summary judgment on the FOIA claim, finding that Navy failed to  
6 establish that the remaining redactions fell within FOIA’s Exemption 4, and that the  
7 attached declarations failed to show how disclosure of the redacted provisions would  
8 harm Manchester’s competitiveness. The Court ordered the parties to file the pending  
9 cross-motions for summary judgment and the Navy to file an unredacted copy of the  
10 Lease under seal.

## 11 12 **II. LEGAL STANDARD**

13 Summary judgment is appropriate under Rule 56(c) where the moving party  
14 demonstrates the absence of a genuine issue of material fact and entitlement to  
15 judgment as a matter of law. See Fed. R. Civ. P. 56(c); Celotex Corp. v. Catrett, 477  
16 U.S. 317, 322 (1986). A fact is material when, under the governing substantive law, it  
17 could affect the outcome of the case. Anderson v. Liberty Lobby, Inc., 477 U.S. 242,  
18 248 (1986); Freeman v. Arpaio, 125 F.3d 732, 735 (9th Cir. 1997). A dispute about a  
19 material fact is genuine if “the evidence is such that a reasonable jury could return a  
20 verdict for the nonmoving party.” Anderson, 477 U.S. at 248.

21 A party seeking summary judgment always bears the initial burden of establishing  
22 the absence of a genuine issue of material fact. Celotex, 477 U.S. at 323. The moving  
23 party can satisfy this burden in two ways: (1) by presenting evidence that negates an  
24 essential element of the nonmoving party’s case; or (2) by demonstrating that the  
25 nonmoving party failed to make a showing sufficient to establish an element essential  
26 to that party’s case on which that party will bear the burden of proof at trial. Id. at  
27 322–23. If the moving party fails to discharge this initial burden, summary judgment  
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1 must be denied and the court need not consider the nonmoving party's evidence.  
2 Adickes v. S.H. Kress & Co., 398 U.S. 144, 159–60 (1970).

3  
4 **III. DISCUSSION**

5 FOIA was enacted “to promote honest and open government” and “to ensure  
6 public access to information created by the government. . . .” Wood v. FBI, 432 F.3d  
7 78, 82 (2nd Cir. 2005) (citations omitted). Because FOIA favors a policy of disclosure,  
8 the statutory exemptions are construed narrowly, resolving all doubts in favor of  
9 disclosure. Lion Raisins v. U.S. Dept. of Agriculture, 354 F.3d 1072, 1079 (9th Cir.  
10 2004).<sup>1</sup>

11 Exemption 4 of FOIA exempts the disclosure of certain trade secrets and  
12 commercial or confidential information. Frazer v. U.S. Forest Serv., 97 F.3d 367, 370  
13 (9th Cir. 1996). For this exemption to apply, the information must be (1) commercial  
14 or financial, (2) obtained from a person or by the government, and (3) that is privileged  
15 or confidential. GC Micro Corp. v. Def. Logistics Agency, 33 F.3d 1109, 1112-13 (9th  
16 Cir. 1994); 5 U.S.C. § 552(b)(4).

17 Relevant in evaluating whether Exemption 4 applies is if the information “would  
18 customarily not be released to the public by the person from whom it was obtained.”  
19 Critical Mass Energy Project v. Nuclear Regulatory Comm’n, 975 F.2d 871, 874  
20 (D.C.Cir. 1992). This, however, is not the only factor. The “court must also be satisfied  
21 that non-disclosure is justified by the legislative purpose which underlies the  
22 exemption.” Id. (citing Nat’l Parks and Conservation Ass’n v. Morton, 498 F.2d 765,  
23 767 (D.C. Cir. 1974)).

24 In general, Exemption 4 serves both a governmental and private interest. It  
25 serves the government interest by encouraging individuals to provide certain kinds of

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27 <sup>1</sup>The Navy contends that “Congress also enacted **broad exclusions**, exemptions, and  
28 exceptions to FOIA’s general rule in order to protect information that is privileged or protected  
from public review.” (Navy’s P&A [Doc. No. 31-2], 5:19–20.) This statement appears to be  
at odds with Lion Raisins’ instruction that the statutory exemptions are construed narrowly.

1 confidential information that will assist the Government in making intelligent, well  
2 informed decisions. Critical Mass, 975 F.2d at 874. Private interests are served by  
3 protecting those who submit financial or commercial data to government agencies from  
4 the competitive disadvantages that would result from publication. Id.

5 The Ninth Circuit has adopted the National Parks' test for determining whether  
6 commercial or financial information is "confidential." Frazee, 97 F.3d at 370; see also  
7 GC Micro, 33 F.3d at 1112-13. The test provides that information is "confidential" if  
8 disclosure "is likely to have either of the following effects: (1) to impair the  
9 Government's ability to obtain necessary information in the future; or (2) to cause  
10 substantial harm to the competitive position of the person from whom the information  
11 was obtained." Frazee, 97 F.3d at 370 (quoting Nat'l Parks, 498 F.2d at 770).

12 "Where the Government withholds documents pursuant to one of the  
13 enumerated exemptions of FOIA, 'the burden is on the agency to sustain its action.'"  
14 Lion Raisins, 354 F.3d at 1079. The government may rely on affidavits to establish that  
15 an exemption applies. Lewis v. Internal Revenue Serv., 823 F.2d 375, 378 (9th Cir.  
16 1987). The affidavits, however, must demonstrate that the affiants are knowledgeable  
17 about the information sought and must include sufficient detail about the documents  
18 to allow the court to make an independent assessment of the government's claim. Lion  
19 Raisins, 354 F.3d at 1072 (Relying on affidavit that included "detailed and specific  
20 descriptions of each category of information included" on the document.).

21 Furthermore, FOIA requires that even if some materials from the requested  
22 record are exempt from disclosure, "any reasonably segregable information from those  
23 documents must be disclosed after redaction of the exempt information unless the [non-  
24 ]exempt portions are inextricably intertwined with exempt portions." Johnson v. Exec.  
25 Office for United States Attorneys, 310 F.3d 771, 776 (D.C. Cir. 2002) (internal  
26 quotations omitted).

27 Based on the Court's previous orders, the Navy's redactions to the following  
28 portions of the Lease are at issue: the Development Fee in Section 5.2.5 of the Lease;

1 Sections 5.8, 6.4, 6.5, 6.6, 6.7, 6.8 and 6.9 of the Lease; Exhibit C-1 (the Form of  
2 Design/Build Contract); financial figures in Exhibit C-2 (the Form of Construction  
3 Consultant Contract); Exhibit C-3 (the Form of GAF Work Letter); Exhibit H (the  
4 Form of Guaranty); and Exhibit I (the GAF Development Budget). The Court will  
5 analyze each redaction separately.

6

7 **A. Development Fee: Section 5.2.5**

8 The Navy redacted the Development Fee from section 5.2.5 of the Lease. The  
9 Court previously found that although the Navy alleged that Manchester would likely  
10 be injured by release of the fee, “the Navy has not explained how the injury would result  
11 from disclosure of the fee.” (*Order* [Doc. No. 26], 7:8–9.) The Court, therefore, found  
12 that the Navy had not met its burden of establishing that the figure was covered by  
13 Exemption 4.

14 In the current motion, the Navy raises two arguments in support of the  
15 contention that Manchester would be injured by disclosure. Although the Court finds  
16 little merit with one argument, the second argument establishes that the Development  
17 Fee is presently covered by Exemption 4.

18 The Navy argues that release of the fee would “likely enable competitors to  
19 discern Manchester’s profit margins, the ‘most vital piece of information available,’ and  
20 underbid Manchester in the future.” (*Navy’s P&A* [Doc. No. 31-2], 13:18–20.) But  
21 just as in the previous motion, the Navy does not adequately explain how disclosure is  
22 likely to cause the alleged injury. For example, the Navy does not identify what other  
23 information already disclosed to competitors could be used to reverse engineer the profit  
24 margin. Instead, the Navy relies on vague assertions that harm could occur if  
25 Manchester’s competitors were to “somehow have gathered other [unidentified] pieces”

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1 of Manchester's financial puzzle. (*Id.*, 13:22.) These vague allegations fall well short of  
2 explaining how disclosure is likely to cause the alleged harm.<sup>2</sup>

3 Moreover, the Navy's argument is contradicted by other statements made in its  
4 moving papers. The Navy contends that the Development Fee is subject to, among  
5 other things, "other terms in the Lease *which the Court has ruled are protected*," as well  
6 as "market changes" and the fluctuating oil market. (*Navy's P&A* [Doc. No. 31-2],  
7 13:5–7, emphasis added.) But if the Development Fee is made up, at least in part, of  
8 fluctuating costs, as well as terms the Court previously ruled are confidential, a  
9 competitor would lack information needed to determine Manchester's profit margin.  
10 See Acumenics Research and Technology, Inc. v. Department of Justice, 843 F.2d 800,  
11 808 (4th Cir. 1988) (Affirming agency's conclusion that "there are too many  
12 unascertainable variables in the unit price calculation for a competitor to derive  
13 accurately Acumenics' multiplier."); Pacific Architects & Engineers, Inc. v. Department  
14 of State, 906 F.2d 1345, 1347–1348 (9th Cir. 1990) (Affirming agency's conclusion that  
15 a competitor would not be able to calculate plaintiff's profit margin from the "unit price  
16 rates" because the rates are made up of a number of fluctuating variables.).<sup>3</sup>

17 The Navy's second argument is that the Development Fee should not be disclosed  
18 because it *will* be renegotiated, and thus disclosure is likely to harm Manchester.  
19 According to the Navy, Manchester intends to hire subcontractors to perform some of  
20 the services associated with the Development Fee, and thus disclosing the fee would

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22 <sup>2</sup>The Navy contends that "[t]o explain in a public document, such as a memorandum  
23 of law or court order, how those terms interact is to reveal the protected information and risk  
24 likely substantial competitive harm to Manchester. . . ." (*Navy's P&A* [Doc. No. 31-2],  
25 11:16–18.) The Navy ignores the fact that it has now been given two opportunities to explain  
in sealed affidavits how the terms interact. Rather than provide the necessary details, the  
Navy's sealed declarations primarily regurgitate the information contained in the previously-  
filed unsealed declarations.

26 <sup>3</sup>The Navy states that reverse FOIA cases, such as Acumenics and Pacific Architects,  
27 involve a different standard of review and thus are inapposite to the present case. The Navy's  
28 observation, however, overlooks the fact that an administrative agency's decision in a reverse  
FOIA case is based on the National Park's test. See e.g. Acumenics, 906 F.2d at 1347. Thus,  
although not binding on the Court, the reasoning employed in a reverse FOIA case is helpful  
in evaluating whether a party has satisfied the National Park's factors.



1 enable potential subcontractors “to leverage that knowledge in negotiations and reduce  
2 or potentially eliminate Manchester’s profit margin. (*Navy’s P&A* [Doc. No. 31-2],  
3 13:9–8; *see also Navy’s Reply* [Doc. No. 38], 2:15–22.) Because the Navy represents that  
4 the fee will be renegotiated, the Court finds that at this time disclosure is likely to cause  
5 Manchester substantial economic injury in future negotiations, and thus the redaction  
6 is proper under Exemption 4.

7  
8 **B. Section 5.8.**

9 The Navy redacted Section 5.8 in its entirety. This section deals with the parties’  
10 negotiated rights and obligations “in the event the value of the leasehold increases, or  
11 in the event of other certain conditions or under certain circumstances.” (*Gibbons Dec.*  
12 [Doc. No. 6-7], ¶ 16.) According to the Navy, this section involves “highly specialized  
13 terms, unusual to Manchester’s business and the ground lease and development industry  
14 which if released would cause Manchester substantial competitive harm because it  
15 would negatively impact ongoing negotiations related to the Project.” (*Navy’s P&A*  
16 [Doc. No. 31-2], 14:8–11.)

17 Having reviewed the documents filed under seal, the Court is not persuaded that  
18 Section 5.8 is exempt from disclosure. Assuming Section 5.8 constitutes information  
19 obtained from Manchester, the Navy has failed to explain how disclosure is likely to  
20 cause substantial harm to Manchester.<sup>4</sup> The Navy asserts in conclusory fashion that  
21 disclosure would “negatively impact ongoing negotiations related to the Project.”  
22 (*Navy’s P&A* [Doc. No. 31-2], 14:10–11.) But the Navy has failed to provide any

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24 <sup>4</sup>As conceded in *Gibbons’* August 2007 declaration (not filed under seal), Section 5.8  
25 addresses the parties’ *negotiated* rights and obligations. (*Gibbons Dec.* [Doc. No. 6-7], ¶ 16.)  
26 Under the National Parks’ test, information is “confidential” and covered by Exemption 4 if  
27 disclosure “is likely to . . . to cause substantial harm to the competitive position of the person  
28 *from whom the information was obtained.*” *Frazer*, 97 F.3d at 370 (quoting *Nat’l Parks*, 498 F.2d  
at 770) (emphasis added). The Navy’s concession that Section 5.8 is the result of negotiations  
implies that the information contained therein was not obtained from Manchester. Nor is  
there any indication by the Navy that this section relates to any information that Manchester  
provided to the Navy. For these reasons alone, Section 5.8 may not be covered by Exemption  
4. However, the Court need not address this issue since the Navy also failed to demonstrate  
how disclosure is likely to harm Manchester.



1 specificity regarding how release of Section 5.8 could negatively effect ongoing  
2 negotiations, or how it could “provide a clear picture into Manchester’s confidential  
3 pricing and bidding structure. . . .” (*Id.*, 14:11–14.) Nor is it evident from the terms of  
4 Section 5.8 how disclosure could lead to the alleged likely harm. In short, the Court  
5 fails to see how a provision dealing with the possible increase in the value of the  
6 leasehold many years after the Project is completed could cause the harm alleged. For  
7 these reasons, the Court finds that Section 5.8 is not covered by Exemption 4.

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9 **C. Section 6.4.**

10 The Navy redacted Section 6.4 in its entirety. This section deals with the parties’  
11 negotiated rights and obligations with respect to the “CCDC Determination” and “CCC  
12 Finding.” (*See Gibbons Dec.*, ¶ 16 [Doc. 6-7].) Similar to Section 5.8, the Navy alleges  
13 that this section involves “highly specialized terms, unusual to Manchester’s business  
14 and the ground lease and development industry which if released would cause  
15 Manchester substantial competitive harm because it would negatively impact ongoing  
16 negotiations related to the Project.” (*Navy’s P&A* [Doc. No. 31-2], 14:8–11.)

17 Having reviewed the documents filed under seal, the Court is not persuaded that  
18 Section 6.4 is exempt from disclosure. Again, assuming Section 6.4 constitutes  
19 information obtained from Manchester, the Navy has failed to explain how disclosure  
20 is likely to cause substantial harm to Manchester.<sup>5</sup> The Navy asserts in conclusory  
21 fashion that disclosure would “negatively impact ongoing negotiations related to the  
22 Project.” (*Navy’s P&A* [Doc. No. 31-2], 14:10–11.) But the Navy has not provided any  
23 specificity regarding how release of Section 6.4 could negatively effect ongoing  
24 negotiations, or how it could “provide a clear picture into Manchester’s confidential  
25 pricing and bidding structure. . . .” (*Id.*, 14:11–14.) Nor is it evident from the terms of  
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27 <sup>5</sup>According to Gibbons’ August 2007 declaration, Section 6.4 addresses the parties’  
28 *negotiated* rights and obligations. (*Gibbons Dec.* [Doc. No. 6-7], ¶ 17.) For the same reasons  
addressed in footnote 4, the fact that this section is the result of negotiations alone may  
preclude a finding that Exemption 4 applies.

1 section 6.4 how disclosure could lead to the alleged likely harm. For these reasons, the  
2 Court finds that Section 6.4 is not covered by Exemption 4.

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4 **D. Sections 6.5, 6.6, 6.7, 6.8, 6.9.**

5 The Navy redacted Sections 6.5 through 6.9 in their entirety. The Navy  
6 contends that the information contained therein would likely cause substantial  
7 competitive harm to Manchester and no meaningfully segregable portion could be  
8 released. Furthermore, the Navy argues that releasing these sections would negatively  
9 impact ongoing and future obligations and negotiations related to the project, and these  
10 terms, when read in concert with other redacted information, provide a clear picture of  
11 Manchester's confidential pricing and bidding structure.

12 Having reviewed sections 6.5 through 6.9, the Court finds that the Navy has  
13 established that disclosure of the information would likely lead to substantial  
14 competitive harm to Manchester. Based on the issues covered in these sections, the  
15 Court agrees with Gibbons' contention that a competitor could use the information: in  
16 negotiations or renegotiations with Manchester over the project; to hinder or impede  
17 progress of the development under the Lease; or to interfere with ongoing administrative  
18 processes associated with the development. (*Gibbons Dec.* [Doc. No. 6-7], ¶ 17.)  
19 Accordingly, the Court finds Sections 6.5, 6.6, 6.7, 6.8 and 6.9 were properly redacted  
20 under Exemption 4.

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22 **E. Exhibit C-1: Form of Design/Build Contract.**

23 The Navy has redacted Exhibit C-1, the Form of Design/Build Contract, in its  
24 entirety. This exhibit consists of the 120-page contract between Manchester and a third  
25 party that the Navy required Manchester to submit.

26 Having reviewed Exhibit C-1, the Court finds that the document contains  
27 confidential financial information that would harm Manchester's competitive position  
28 and should be redacted. Many of the pages contain unit prices, hourly charges, and

1 overall percentage fees. Additionally, the document relates to Manchester's ongoing  
2 negotiations related to the project.

3 Plaintiff argues, however, that there may be sections of the document that are  
4 segregable and may be disclosed without revealing the confidential information.  
5 Although certain segments include information that is not confidential, those portions  
6 are not informative without the confidential information. Therefore, the Court finds  
7 that the entire exhibit is exempt from disclosure under Exemption 4. See Johnson, 310  
8 F.3d at 776 (holding that non-exempt portions may still be redacted if they are  
9 "inextricably intertwined" with exempt portions).

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11 **F. Exhibit C-2: Form of Construction Consultant Contract.**

12 Exhibit C-2 is the Construction Consultant Agreement between Manchester and  
13 Marx Okubo Associates, Inc. The Navy has redacted portions of the document relating  
14 to compensation for various services, including meetings, site visits, document review,  
15 safety review, project completion, as well as hourly rates for various Manchester  
16 employees. "These dollar amounts arose from confidential financial information  
17 submitted by Manchester to the Navy during negotiations of the [Lease]." (*Gibbons*  
18 *Dec.* [Doc. No. 6-7], ¶ 20.)

19 Having reviewed the Navy's supporting declarations, the Court finds that the  
20 financial figures are confidential, and that disclosure is likely to cause substantial  
21 economic harm to Manchester. Because the figures arose from confidential information  
22 Manchester submitted, the Court agrees that the information could be used by  
23 competitors to determine Manchester's bidding methods, would give competitors access  
24 to Manchester's internal, non-public financial information, and would allow competitors  
25 to potentially undercut Manchester in future negotiations over similar agreements.  
26 Accordingly, the redactions to Exhibit C-2 are appropriate under Exemption 4.

27  
28 **G. Exhibit C-3: Form of the GAF Work Letter.**

1 The Navy has redacted Exhibit C-3, the GAF Work Letter, in its entirety.  
2 According to the Navy, Exhibit C-3 was properly redacted because it contains  
3 confidential commercial information, including key deadlines and methods by which  
4 future negotiations will proceed. The Navy contends that if this information is released,  
5 both parties would be harmed.

6 Plaintiff argues that the Navy's contentions are broad and conclusory, and that  
7 it has not shown that harm is likely to result from the release of this information.  
8 Plaintiff also contends that certain segregable sections of Exhibit C-3 should be  
9 disclosed, even if other portions are confidential.

10 Having reviewed Exhibit C-3, along with the relevant portions of the declarations  
11 filed under seal, the Court finds that based on the Navy's representation that certain  
12 portions of the Lease will be renegotiated, disclosure of the exhibit at this time will likely  
13 cause substantial economic harm to the parties. Accordingly, the redaction is covered  
14 by FOIA's Exemption 4.

15  
16 **H. Exhibit H: Form of Guaranty.**

17 The Navy has redacted Exhibit H, the Form Guaranty, in its entirety. The Navy  
18 contends that the release of Exhibit H would have a substantially harmful effect on the  
19 ongoing project because anyone with knowledge of the content of the guaranty could  
20 undermine ongoing negotiations and underbid Manchester in future contracts.

21 Having reviewed Exhibit H, along with the relevant portions of the declarations  
22 filed under seal, the Court finds that based on the Navy's representation that certain  
23 portions of the Lease will be renegotiated, disclosure of the exhibit at this time will likely  
24 cause substantial economic harm to the parties. Accordingly, the redaction is covered  
25 by FOIA's Exemption 4.

26  
27 **I. Exhibit I: GAF Development Budget.**  
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1 The Navy has redacted Exhibit I, the GAF Development Budget, in its entirety.  
2 Exhibit I is Manchester's breakdown for project funding, and thus contains  
3 Manchester's "proprietary bidding and pricing information, some of which is still subject  
4 to negotiation." (*Gibbons Dec.* [Doc. No. 6-7], ¶ 23.) The Navy argues that disclosing  
5 the information would improve the negotiating position of third parties with whom  
6 Manchester will "negotiate and re-negotiate contracts and subcontracts necessary to  
7 fulfill the development of the Project under the Broadway Complex Lease." (*Id.*)

8 Having reviewed Exhibit I, along with the relevant portions of the declarations  
9 filed under seal, the Court finds that because certain portions of the Lease will be  
10 renegotiated, disclosure of the exhibit will likely cause substantial economic harm to the  
11 parties. Additionally, because the information constitutes Manchester's confidential  
12 proprietary information, the Court concludes that the redaction is covered by FOIA's  
13 Exemption 4.

14  
15 **IV. CONCLUSION & ORDER**

16 This Court's March 21, 2008 order required the Navy to file under seal an  
17 unredacted copy of the Lease along with the Navy's summary-judgment motion. (*See*  
18 *Doc. No. 26*, 10:18–19.) Accordingly, the Court **GRANTS** the Navy's unopposed ex  
19 parte application to file exhibits under seal. (*Doc. No. 34.*)

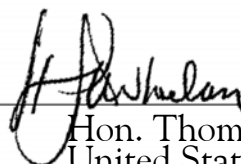
20 For the reasons stated above, the Court **GRANTS IN-PART** and **DENIES IN-**  
21 **PART** Plaintiff's summary-judgment motion (*Doc. No. 30*) and the Navy's summary-  
22 judgment motion (*Doc. No. 31*), and **ORDERS** the Navy to disclose Sections 5.8 and  
23 Section 6.4 of the Lease.<sup>6</sup>

24  
25 **IT IS SO ORDERED.**

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28 <sup>6</sup>The Navy initially redacted the Property Management Fee from section 5.5 of the Lease. On February 8, 2008, the Navy notified the Court that it would disclose the fee. (*See Navy's Supp. Memo.* [Doc. No. 21], 2:13–18.)

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DATED: March 5, 2009

  
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Hon. Thomas J. Whelan  
United States District Judge