

ATTACHMENT J.3

APPENDIX C

**SPECIAL DEMAND DEPOSIT ACCOUNT AGREEMENT FOR USE WITH
THE PAYMENTS CLEARED FINANCING ARRANGEMENT**

**Applicable to the Operation of
Ernest Orlando Lawrence Berkeley National Laboratory**

Contract No. DE-AC02-05CH11231

**SPECIAL DEMAND DEPOSIT ACCOUNT AGREEMENT FOR USE WITH THE
PAYMENTS CLEARED FINANCING ARRANGEMENT**

Agreement entered into this 17th day of June 2002 between the UNITED STATES OF AMERICA, represented by the Department of Energy (hereinafter referred to as DOE Oakland Operations Office), and The Regents of the University of California, for performance at the Lawrence Berkeley National Laboratory, a corporation/legal entity existing under the laws of the State of California (hereinafter referred to as the Recipient) and Union Bank of California, N.A., located at 400 California Street, San Francisco CA 94104 (hereinafter referred to as the Bank).

RECITALS

- (a) On the effective date of October 1, 1997, DOE Oakland Operations Office and the Recipient entered into Contract No. DE-AC03-76SF00098 or a Supplemental Contract thereto, providing for a payments cleared financing arrangement.
- (b) DOE requires that amounts transferred to the Recipient thereunder be deposited in a special demand deposit account at a financial institution covered by Department of the Treasury-approved Government deposit insurance organizations that are identified in Vol. I TFM 6-9000.
- (c) The "Special Demand Deposit Account" shall contain "Control Disbursement Sub-accounts" which shall be designated:

"Lawrence Berkeley National Laboratory Payroll Account"

and

"Lawrence Berkeley National Laboratory Accounts Payable Account"

COVENANTS

In consideration of the foregoing, and for other good and valuable consideration, it is agreed that:

- (1) DOE Oakland Operations Office shall have title to the credit balance in said accounts to secure the repayment of all funds transferred to the Recipient and said title shall be superior to any other title, lien, or claim with respect to such accounts.
- (2) The Bank shall be bound by the provisions of said Agreement(s) between DOE Oakland Operations Office and the Recipient relating to the deposit and withdrawal of funds in the above "Special Demand Deposit Account" and "Controlled Disbursement Subaccounts", which are hereby incorporated into this Agreement by reference, but the Bank shall not be responsible for the application of funds withdrawn from said account. After receipt by the Bank of written directions from the DOE Oakland Operations Office Contracting

Officer, the Bank shall act thereon and shall be under no liability to any party hereto for any action taken in accordance with the said written directions. Any written directions received by the Financial Institution from the Government Contracting Officer upon DOE stationery and purporting to be signed by, or signed at the written direction of, the Government may, insofar as the rights, duties, and liabilities of the Financial Institution are concerned, be considered as having been properly issued and filed with the Financial Institution by DOE.

- (3) DOE Oakland Operations Office, or its authorized representatives, shall have access to the books and records maintained by the Bank with respect to such "Special Demand Deposit Account" and "Controlled Disbursement Sub-accounts" at all reasonable times and for all reasonable purposes, including, without limitation, the inspection or copying of such books and records and any or all memoranda, checks, payments requests, correspondence, or documents pertaining thereto. Such books and records shall be preserved by the Bank for a period of six (6) years after the final payment under the Agreement.
- (4) In the event of the service of any writ of section, levy of execution, or commencement of garnishment proceedings with respect to the "Special Demand Deposit Account" and "Controlled Disbursement Sub-accounts", the Bank shall promptly notify the DOE Oakland Operations Office Contracting Officer at:

Maria C. Robles
Contracting Officer
U.S. Department of Energy/NNSA
1301 Clay Street, Suite 700N
Oakland, CA 94612

- (5) DOE shall authorize funds that are irrevocable to the extent that obligations have been incurred in good faith thereunder by the Recipient to the Bank for the benefit of the special demand deposit account and controlled disbursement sub-accounts. The Bank agrees to honor upon presentation for payment all checks issued by the Recipient and to restrict ASAP withdrawals against the funds authorized to an amount sufficient to maintain the average daily balance as close to zero as administratively possible.

The Bank agrees to service the account in this manner based on the requirements and specifications contained in DOE Solicitation No. DE-RP03-02SF22518, dated April 09, 2002. The Bank agrees that per-item costs, detailed in the "Schedule of Services and Charges," (Attachment A to this document) contained in the Bank's aforesaid bid will remain constant during the term of this Agreement, including the option periods. The Bank shall calculate the monthly fees based on services rendered and invoice the Recipient. The Recipient shall issue a check or automated clearing house authorization transfer to the Bank in payment thereof.

- (6) The Bank shall post collateral, acceptable under Title 31 CFR 202/Treasury Financial Manual Part 6, Chapter 9000, with the Federal Reserve Bank (FRB) in an amount equal to the net balances in all of the accounts included in this Agreement, less the Department of the Treasury-approved deposit insurance.

- (7) This Agreement, with all its provisions and covenants, shall be in effect for a term of three (3) years, beginning on the 1st day of October 2002, and ending on the 30th day of September 2005, and with two option years can be extended to the 30th day of September 2007. The specific provisions for operating the accounts after expiration are contained in Covenant (11).
- (8) DOE Oakland Operations Office, the Recipient, or the Bank may terminate this Agreement at any time within the agreement period upon submitting written notification to the other parties ninety (90) days prior to the desired termination date. The specific provisions for operating the accounts during this 90 day period are contained in Covenant (11).
- (9) DOE Oakland Operations Office and the Recipient may terminate this Agreement at any time upon thirty (30) days written notice to the Bank if DOE Oakland Operations Office and/or Recipient find that the Bank has failed to substantially perform its obligations under this Agreement, or that the Bank is performing its obligations in a manner which precludes the administering of the Recipient's program in an effective and efficient manner or that precludes the effective utilization of the Government's cash resources.
- (10) Notwithstanding the provisions of Covenants (8) and (9), in the event the Agreement (referenced in Recital (a)) between DOE Oakland Operations Office and the Recipient) is not renewed or is terminated, this Agreement between DOE Oakland Operations Office, the Recipient, and the Bank shall be terminated upon the delivery to the Bank of a written notice signed by the Contracting Officer.
- (11) In the event of termination or expiration, the Bank agrees to retain the Recipient's "Special Demand Deposit Account" and "Controlled Disbursement Sub-accounts" for an additional 90 day period following the term end date to allow for clearance of outstanding checks. During this 90 day period, DOE Oakland Operations Office will ensure that the special demand deposit account shall have sufficient funds to cover all outstanding checks presented for payment.
 - (a) After all outstanding payment items have been cleared or a stop payment order has been issued therefor, the remaining authorized balance in the payments cleared funding account at FRB Richmond must be reduced to zero and the account closed in ASAP 1031.
 - (b) During the 90-day period, the Bank shall bill the Recipient for the actual service charges rendered in accordance with the "Schedule of Bank Services and Charges."
 - (c) During the entire 90-day period, it is further understood that:
 - (1) The Bank shall maintain sufficient collateral to cover Government funds in all DOE accounts, less Federal Deposit Insurance Corporation coverage on the accounts.
 - (2) All service charges shall be consistent with the amounts reflected in this Agreement.
 - (3) All terms and conditions of the proposal submitted by the Bank that are not inconsistent with this 90 day additional term shall remain in effect.

- (4) This Agreement shall continue in effect, with exception of the following covenants:
 - (i) The term of this Agreement (Covenant 7)
 - (ii) Termination of Agreement (Covenant 8 and 9)

- (12) The Bank has completed and submitted the following documents: (1) "Offeror Representations, Certifications -- Commercial Items" (2) "Commercial Bank's Representations and Certifications", including "Questions Regarding Bank Fiscal and General Operating Information" and (3) "Schedule of Services and Charges". These sections have been accepted by the Recipient and the DOE Oakland Operations Office Contracting Officer and are incorporated herein with the document entitled, "Commercial Bank's Information on the Payments Cleared Financing Arrangement", as an integral part of this Agreement.

IN WITNESS THEREOF the parties hereto have caused this Agreement, which consists of 10 pages including the signature pages and Attachment A, to be executed as of the day and year first above written.

THE UNITED STATES OF AMERICA
U.S. Department of Energy, Oakland Operations Office

By Maria C. Robles

/s/
(Signature of Contracting Officer)

6/17/02
(Date of Signature)

The Regents of the University of California

By Melvin L. Stanton
(Typed Name of Recipient's Representative)

/s/
(Signature of Recipient's Representative)

Assistant Treasurer

(Title)

1111 Broadway Oakland 94607

(Address)

6-17-02

(Date of Signature)

Union Bank of California
By Coleen Sullivan

/s/
(Signature of Bank Representative)

Vice President
(Title)

200 Pringle Avenue, Suite 250
Walnut Creek, CA 94596
(925)947-3045

6/12/02
(Date of Signature)

NOTE--Recipient, if a corporation, should cause the following Certificate to be executed under its corporate seal, Provided that the same Officer shall not execute both the Agreement and the Certificate.

CERTIFICATE

I, Anne L. Shaw certify that I am the Associate Secretary of the corporation named as Recipient herein that Melvin L. Stanton, who signed this agreement on behalf of the Recipient was then Assistant Treasurer of said corporation that said Agreement was duly signed for and on behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

/s/ (Corporate Seal)
(Signature)

NOTE--Bank Depository, if a corporation, should cause the following Certificate to be executed under its corporate seal, provided that the same officer shall not execute both the Agreement and the Certificate.

CERTIFICATE

I, John H. McGuckin, Jr. certify that I am the Secretary of the corporation named as Bank Depository herein that Coleen Sullivan, who signed this agreement on behalf of the Bank Depository was then Vice President of said corporation that said Agreement was duly signed for and on behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

/s/ (Corporate Seal)
(Signature)