

*Appendix B - Special Financial Institution Account Agreement*

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

Agreement entered into this 21<sup>st</sup> day of August, 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 Livermore National Laboratory, a corporation/legal entity existing under the laws of the State of California (hereinafter referred to as the Recipient) and Bank of America, a banking corporation existing under the laws of the State of , located at 555 California Street, San Francisco, CA 94104 (hereinafter referred to as the Bank).

**RECITALS**

- (a) On the effective date of January 18, 2001, DOE Oakland Operations Office and the Recipient entered into Contract No. W-7405-ENG-48 or a Supplemental Contract thereto, providing for a payments cleared financing arrangement.
- (b) DOE requires that amounts transferred to the Recipient there under 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 or on the World Wide Web at <http://www.publicdebt.treas.gov>.
- (c) The "Special Demand Deposit Account" shall contain "Control Disbursement Sub-accounts" which shall be designated:

"Lawrence Livermore National Laboratory Payroll Account"

and

"Lawrence Livermore 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 Sub accounts", 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incorporated into this Agreement by reference, but the Bank shall not be responsible for the application of funds withdrawn from said account.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

*Appendix B - Special Financial Institution Account Agreement*

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 there under 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-RP03-02SF22517, dated July 19, 2002. The Bank agrees that per-item costs, detailed in the "Schedule of Services and Charges," contained in the Bank's aforesaid bid (and Attachment A to this document) 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.

*Appendix B - Special Financial Institution Account Agreement*

- (7) This Agreement, with all its provisions and covenants, shall be in effect for a term of two (2) years, beginning on the 1st day of October 2002, and ending on the 30th day of September 2004, and with three option years can be extended to the 30<sup>th</sup> 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 therefore, 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.

*Appendix B - Special Financial Institution Account 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 8 pages including the signature pages, and Attachment A (Schedule of Services and Charges), 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  
Maria C. Robles

\_\_\_\_\_/s/\_\_\_\_\_  
(Signature of Contracting Officer)

September 5, 2002  
(Date of Signature)

The Regents of the University of California

By: Daniel C. Sampson  
(Typed Name of Recipient's Representative)

\_\_\_\_\_/s/\_\_\_\_\_  
(Signature of Recipient's Representative)

Director - Financial Controls and Accountability  
(Title)

*Appendix B - Special Financial Institution Account Agreement*

1111 Franklin 10<sup>th</sup> Flr. Oakland, CA 94607  
(Address)

August 26, 2002  
(Date of Signature)

*Appendix B - Special Financial Institution Account Agreement*

\_\_\_\_\_  
Bank of America

By: Anthony J. Chisholm  
(Typed Name of Bank Representative)

\_\_\_\_\_/s/\_\_\_\_\_  
(Signature of Bank Representative)

Senior Vice President  
(Title)

555 South Flower Street, 10/F, Los Angeles, CA 90071  
(Address)

213-345-3854  
(Telephone Number)

September 3, 2002  
(Date of Signature)

*Appendix B - Special Financial Institution Account Agreement*

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, Patricia L. Trivette certify that I am the Secretary of the corporation named as Recipient herein that Daniel C. Sampson, who signed this agreement on behalf of the Recipient was then Director 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, Christine CoAamagna certify that I am an Assistant Secretary of the Bank of America N.A. ("BANA") named as Bank Depository herein that Anthony J. Chisholm, who signed this agreement on behalf of the Bank Depository was then a Senior Vice President of said BANA that said Agreement was duly signed for and on behalf of said BANA by authority of its governing body, and is within the scope of its corporate powers.

\_\_\_\_\_/s/\_\_\_\_\_(Corporate Seal)  
(Signature)

*Appendix B - Special Financial Institution Account Agreement*

**CONTRACT CLAUSES**

**A.1 52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)**

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

[www.arnet.gov/far/](http://www.arnet.gov/far/)

\_\_\_\_\_  
\_\_\_\_\_

**I. FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1) CLAUSES**

NUMBER	DATE	TITLE
52.212-4	DEC 2001	CONTRACT TERMS AND CONDITIONS-- COMMERCIAL ITEMS

**FAR 52.212-5 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDER--COMMERCIAL ITEMS (Apr 2001) (DEVIATION)**

(a) Comptroller General Examination of Record. The Contractor agrees to comply with the provisions of this paragraph (a) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at 52.215-2, Audit and Records-Negotiation.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to the right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times, the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made

*Appendix B - Special Financial Institution Account Agreement*

available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(b) The Contractor is not required to include any FAR clause, other than those listed below (and as may be required by an addenda to this paragraph to establish the reasonableness of prices under Part 15), in a subcontract for commercial items or commercial components-

- (1) 52.222-26, Equal Opportunity (E.O. 11246);
  - (2) 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212);
  - (3) 52.222-36, Affirmative Action for Workers with Disabilities (29 U.S.C. 793);
  - (4) 52.247-64, Preference for Privately-Owned U.S.-Flagged Commercial Vessels (46 U.S.C. 1241) (flow down not required for subcontracts awarded beginning May 1, 1996 ); and
  - (5) 52.222-41, the Service Contract Act As Amended (41 U.S.C. 351, et seq.)
- Subcontracts for certain commercial services may be exempt from coverage if they meet the criteria in FAR 22.1103-4(c) or (d) (see DoD class deviation number 2000-00006.

(End of Clause)

**A.2 LOBBYING RESTRICTION (ENERGY & WATER DEVELOPMENT APPROPRIATIONS ACT, 2001 (NOV 2000))**

The contractor agrees that none of the funds obligated on this contract shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.