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**University of California  
Governmental Accounting Standards Board (GASB) Statement No. 27, *Accounting for Pensions by State and Local Government Employers***

**Issues Resolution Memo No. 27.3.1**

*(Issued May 21, 2007)*

**Legal Financial Responsibility of the Department of Energy (DOE) for all Pension Costs Associated with Former University of California Employees Who Worked at the Los Alamos National (LANL) Laboratory**

**Background**

UC provides pension benefits to retired UC employees. Employees working at the DOE laboratories are technically UC employees as long as the Prime UC/DOE contract is in place.

Retired employees who worked at LANL while it was managed by UC receive pension benefits under the University of California Retirement Plan (UCRP), a defined benefit plan. When the UCRP previously required contributions, the DOE provided funding to UC on a monthly basis for the cost incurred to provide these benefits using the identical contribution rate established for all of the UC.

In 2006, the DOE terminated the Prime Contract with the University to manage LANL. In accordance with the contract with the DOE, the UCRP retains all of the pension obligations associated with all former LANL employees who were either inactive or retired as of May 31, 2006, the date the Prime Contract expired (LANL segment liabilities). All pension obligations associated with active employees who accepted employment beginning June 1, 2006 with Los Alamos National Security LLC (LANS), the successor contractor, are assigned to the LANS retirement plans.

Under the terms of the contract, UCRP will also retain assets equivalent to the retained LANL segment liabilities to satisfy the future obligations to the LANL retirees. The assets will remain within the UCRP, although the portfolio will be unitized so the assets and operating activities (income, realized or unrealized gains and losses, beneficiary payments and expenses) within the UCRP associated with LANL retirees are tracked separately (LANL segment assets).

An actuarial report will be prepared annually to track the status of the LANL segment of the UCRP, separate from the actuarial report prepared for the total UCRP. The separate LANL segment actuarial report will provide the basis for the measurement of the funded status of the LANL segment, for which the DOE remains financially responsible, and will be the foundation for any DOE contributions to the UCRP required by the results of the contract termination negotiations.

## Define Issues

The Governmental Accounting Standards Board (GASB) requires the UC to record the Annual Pension Cost (APC) as an expense and also a liability to UCRP, under certain circumstances. In the future, UC's financial statements may, depending on the level of annual funding and actuarial reports, include an APC and NPO for the UCRP. The financial accounting and reporting of the University's application of GASB Statement No. 27, *Accounting for Pensions by State and Local Governmental Employers*, is dependent on a determination of whether the DOE is ultimately the financially responsible party for all pension costs specifically related to former employees who worked at LANL.

## Conclusion

UC's conclusion is, under the terms of the Prime Contract, the DOE is legally the ultimate financially responsible party for all pension costs specifically related to former employees who worked at LANL based upon the following:

- The UC/DOE Prime Contract 36 obligates the DOE to pay for UCRP pension benefits incurred prior to contract termination.
- DOE/NNSA's obligation under the contract's pension provisions is not, and should not be thought to be, ambiguous; what is ambiguous is the methodology for anticipating and minimizing any shortfall before the last LANL segment beneficiary dies and the actual total cost is known (Note: In conjunction with the LANL contract termination, UC/NNSA contract termination negotiations clarified the timing of required DOE contributions in support of their ongoing financial responsibility for the LANL laboratory segment. These negotiations resulted in formulas that define specific amounts and dates for contributions to be made).
- The DOE policies state they are obligated to provide future funding for pension liabilities associated with retired employees who worked at DOE laboratories. The DOE's internal regulations require contracting officers to assure that subsequent to any contract termination or expiration, benefit continuation will be continued for those who have earned such benefits.
- The DOE acknowledges their obligation to provide future funding for contractor's postemployment benefits liabilities in their audited (KPMG) financial statements by recording the liability to the contractor and through related footnote disclosures.
- GAO Audit Report 04-539 issued in April 2004 reinforces the obligation of the DOE to contractors regarding postemployment benefits.
- UC's financial statements would be misleading to a user if they included any APC and NPO associated with this specific group of retired LANL employees without including the offsetting receivable from the DOE to satisfy these future liabilities.

## **Recommended Approach**

This IRM concludes on the legal financial responsibility and is not a discussion of the financial accounting and reporting that results from this conclusion.

See IRM 27.3 for a further discussion of the accounting and reporting for the contract termination agreement and the DOE's legal responsibility for any pension shortfalls associated with the LANL segment of the UCRP.

## **Authoritative Guidance**

The UCRP is a defined pension plan and therefore UC should follow the requirements outlined in GASB Statement No. 27, *Accounting for Pensions by State and Local Governmental Employers*. However, circumstances are complicated by the unique nature of the DOE's contractual responsibility to the University for the financial obligations for a certain segment of the UCRP. The University is the plan sponsor of the UCRP.

## **Supporting Documentation**

### *Prime Contract 36 Between the DOE and UC*

The UC/DOE contract 36 related to LANL establishes the financial responsibility for the continuing pension benefit obligations associated with former LANL employees. The prime contracts can be located on the web at <http://labs.ucop.edu/internet/comix/> and the pertinent section H.008 – Pension Plan is shown in Appendix 1.

Paragraph (c) 1 of section H.008 of the Prime Contract states, “Contributions to the plan will be based on the actuarial valuation for the Plan and will be approved by the Contractor's Plan Trustees (The Regents of the University of California).”

Paragraph (c) 2 of section H.008 of the Prime Contract states, “DOE agrees to continue to fund for the Contract terms, as extended, the employer cost of UCRP for Contract employees at the contribution rates established from time to time by the Contractor, subject to the following restriction: The DOE funded contribution shall not exceed the full funding limit as defined in the Internal Revenue Code, Section 412.”

Paragraph (b) (7) of section H.008 of the Prime Contract states, “All plan provisions of the UCRP are applicable to all eligible employees of the Contractor, including those employees at a DOE Laboratory and, as such, a single contribution rate, expressed as a percentage of covered compensation, is calculated for the Plan. This single rate is to be applied to all members of the Plan in order to determine the contribution, if any. For purposes of assessing the liabilities of the DOE segment of the Plan as described in paragraphs (e), (f) and (g), the DOE will have no liabilities to the Plan beyond that associated with Laboratory employees who are members of the Plan.”

Subsection (f) of section H.008 of the Prime Contract discusses contract termination and selection of a successor contractor within the context of transferring assets and liabilities to a successor plan. In paragraph (f) (3) (ii)... “Under a successor pension plan acceptable to the DOE and which fulfills all of the Contractor's fiduciary responsibilities under UCRP, and which further assumes UCRP liabilities for transferred Contract employees, the Contractor agrees to

transfer to the trustees of such successor plan an amount equal to the contract service assets as determined in subparagraph (f) (2) above.”

Subsection (g) of section H.008 of the Prime Contract discusses UCRP plan termination. In paragraph (g) (2) “The Contractor may satisfy plan liabilities to plan members by the purchase of annuities through competitive bidding on the open annuity market or through the payment of lump sums. Any competitive annuity bid process must include at least five bidders, if possible, who satisfy the criteria listed in United States Department of Labor Interpretive Bulletin 95-1. The final selection of insurance company(ies) shall be based upon the bids of the qualifying companies, in conjunction with the assessed quality of the annuity provider(s). Lump sums shall be calculated using the same mortality table and actuarial assumptions which the UCRP uses for purposes of defining actuarially equivalent. Otherwise, the Parties to the contract shall negotiate the assumptions and methods for determining DOE’s liability pursuant to paragraph (h) below.”

Subsection (h) on the topic of Financial Requirements is as follows:

1. Funds to be paid or transferred to any party as a result of settlements relating to pension plan termination under paragraph (g) above shall accrue interest from the effective date of termination until the date of payment or transfer.
2. Terminating Operations. The Contractor shall calculate pension liabilities attributable to DOE contract work. For this purpose, DOE and the Contractor shall use the same mortality table as used for funding purposes, and an applicable 30-year Treasury rate of interest as the basis for the frozen liability calculation.

*DOE/NNSA’s obligation under the contract’s pension provisions is not, and should not be thought to be, ambiguous; what is ambiguous is the methodology for anticipating and minimizing any shortfall before the last LANL segment beneficiary dies and the actual total cost is known.*

There are two very separate issues associated with the payment of a pension shortfall:

1. The legal obligation to pay, and
2. The process for determining the timing of payments.

The subject of this document is focused on the former for purposes of supporting documentation for a receivable from the DOE/NNSA for any pension shortfall.

The contract clearly gives the University a receivable; whether the assets on hand make that receivable \$0 or \$x is what we are defining with DOE/NNSA. We are not negotiating an obligation with DOE - all of the circumstances giving rise to the obligation existed on May 31, 2006 when the contract expired. DOE/NNSA agreed in the contract that allowable costs incurred in termination of the contract (including pension costs) which had not been previously paid under the contract were:

1. Payable by DOE without regard to the funds obligated to the contract prior to expiration,
2. Payable from any funds appropriated to DOE which could be lawfully used to make such payments, and

3. If no funds were currently available, DOE would make its best efforts to obtain appropriated funds for that purpose.

(See I.093 (b) “Obligation of Funds” in Appendix 2)

[Note: The general allowability of cost rules for the University prime contract are found in I.091 (j) “Payments and Advances” in Appendix 4, and H.026 (b) “Advance Understanding of Costs and Expenses” in Appendix 5. Costs which are presented after contract termination relating back to obligations incurred during contract performance are also allowable costs of the contract under I.043(b)(2) “Termination” in Appendix 3, and under I.093 (b) cited above and are payable without regard to whether funds are currently obligated to the prime contract.]

*The DOE policies state that they are responsible for providing future funding. The DOE’s internal regulations require contracting officers to assure that subsequent to any contract termination or expiration, benefit continuation will be continued for those who have earned such benefits.*

DOE policies demonstrate the continuing obligation of the DOE to the UC to provide future funding sufficient to offset the related liability.

The DOE issues “Directives” that provide for how DOE contracting officers must view contracts with ME contractors, such as UC. There is a DOE Order 350.1 issued on September 30, 1996 titled “Contractor Human Resource Management ME Programs.”

The objective of DOE Order 350.1 is to “ensure that contractors that perform work under cost reimbursement contracts develop employee benefit programs that will attract and retain competent and productive employees and that facilitate the achievement of objectives and business strategies in support of DOE missions in a cost effective manner.” Contracting Officers must approve of contractor’s employee benefit programs as an ongoing part of their responsibility. UC’s employee benefit programs, including pensions, have been approved by the DOE.

Under section 4 (b) (14) of DOE Order 350.1, describing the responsibilities of contracting officers, it states that they must, “assure that subsequent to contract termination or expiration, benefit continuation will be provided for those who earned such benefits, according to the approved benefit plans, on a funding basis most reasonable to the department (DOE). Among acceptable arrangements for these provisions are paying a sum to the outgoing contractor to continue its liability, paying a third party such as an insurer or other contractor, to guarantee benefit payments, or continuing benefit payment obligation with the replacement contractor.”

The Department Of Energy’s Order 350.1 can be found on the web at <http://www.directives.doe.gov/pdfs/doe/doetext/neword/350/o3501c1.pdf>

*The DOE acknowledges their obligation to provide future funding in their audited (KPMG) financial statements by recording the liability to the contractor and through related footnote disclosures*

The DOE’s September 30, 2006 financial statements, audited by KPMG, includes a liability to contractors for pension benefits associated with the contractor’s employees working at DOE laboratories.

In addition, there is footnote language that states,

- “Most of the department’s contractors have defined benefit pension plans under which they promise to pay specified benefits to their employees, such as a percentage of the final average pay for each year of service. The Department’s costs under the contracts includes reimbursement of annual contractor contributions to these pension plans....Since the Department approves the contractor’s pension and postretirement benefit plans and is ultimately responsible for the plans, the responsibility for any related liabilities rests with the Department.”
- “The Department follows SFAS No. 87, Employers’ Accounting for Pensions, for contractor employees for whom the Department has a continuing pension obligation.”

The Department of Energy financial statements can be found on the web at (<http://www.cfo.doe.gov/progliaison/par2006fr2.pdf>). Refer to the consolidated balance sheet on page154 and footnote 15, shown on pages 27 through 30 (financial report pages are 175 through178).

*GAO Audit Report 04-539 issued in April 2004 reinforces the obligation of the DOE to contractors regarding postemployment benefits*

The GAO audit report reinforces that “the DOE reimburses contractor payments for employee compensation, including postretirement benefits as authorized by applicable regulations and each contractor’s operating agreement.” The applicable regulation is DOE Order 350.1 as discussed above. Employee benefit programs are approved as part of the operating agreement with the DOE.

DOE officials are on record stating that the continuation of postretirement health benefits is necessary to reward former contractor employees and to attract and retain future contractors and contractor employees. Therefore, in this regard, DOE Order 350.1 provides that “when operations at the DOE facility are terminated and no further work is to be completed, pension and postretirement health benefit continuation will be provided for those contractor employees who earned retirement benefits in these plans.” Further, according to the audit report, “it is the DOE’s policy in these situations that future postretirement benefits earned by contractor employees may be satisfied by the outgoing contractor in one of two ways. Under the first option, the contractor can request reimbursement from the DOE for the immediate settlement of outstanding benefit obligations, such as through the purchase of insurance contracts. Under the second option, the contractor may facilitate the continuation of the current benefit program and seek DOE reimbursement as postretirement benefit payments are made to retirees. The outgoing contractor can achieve the latter option through continuing to sponsor current postretirement benefit plans or through the transfer of plan administration to another party.

GAO Report 04-539 can be found on the web at <http://www.gao.gov/> Enter “04-539” in the *Key Word or Report Number* field in the upper right hand corner.

*UC's financial statements would be misleading to a user if they included a liability for the postemployment liabilities associated this specific group of retired employees without including the offsetting receivable from the DOE to satisfy these future liabilities*

Finally, it is reasonable to take the view that a receivable from the DOE to offset a LANL segment NPO should be recorded from the perspective of whether UC's financial position would be "presented fairly."

The discussion above describes the fact that the contract requires and DOE policies state they are obligated to provide continuing funding for pension benefits. A receivable that represents that obligation for a LANL segment NPO would result in UC financial position being presented fairly.

**Next Steps—Required Actions**

<b>Responsibility (C, OP)</b>	<b>Required Completion Date</b>	<b>Action Item/Task</b>
OP	January, 2006	Discuss UC's approach with PwC.
OP	January, 2006	Incorporate results of discussions in contract termination negotiations.
OP	March, 2007	Finalize UC's approach
OP	March, 2007	Complete IRM outlining UC's accounting and reporting

## Appendix 1: H.008 Pension Plan

- (a) Adoption of the principles and procedures in this clause shall not be deemed nor be intended to neither create rights in third parties nor abrogate existing rights of pension plan members performing services under this Contract. All assets and liabilities associated with employee contributions to the Contractor's Defined Contribution Plan and the Tax-Deferred 403(b) Plan shall be excluded from these principles and procedures. The following stipulations apply, as appropriate, to the defined benefit pension plan, the University of California Retirement Plan (UCRP), covering University of California employees working under contracts at DOE-owned and Contractor-operated facilities.
- (b) Basic requirements.
- (1) DOE shall be notified prospectively of each change to the UCRP that could have a significant impact on current or future Departmental funding or liabilities.
    - (i) Changes covered by this provision include any change to a benefit, right or feature of the Plan and any change to a funding method or assumption.
    - (ii) A significant impact is a change that requires the approval of the Regents of the University of California.
  - (2) Prospective notice will be provided to the DOE for each newly adopted pension plan or change requiring prospective notice as described in subparagraph (b)(1)(i) above, including any changes to non-DOE-reimbursed segments of commingled pension plans.
  - (3) For purposes of this clause, prospective notice shall mean written notice, including a copy of the proposed change, at least thirty (30) days in advance of approval of each change to the UCRP by the Regents of the University as trustees of the pension plan.
  - (4) The pension plan shall be submitted to an annual, full-scope audit by an outside independent auditor. The Contractor shall provide a report of such audit to DOE within seven months after the end of the plan year to which the audit applies.
  - (5) The Contractor shall maintain a separate annual accounting of liabilities and assets attributable to each Laboratory. Market value of assets on an accrual basis at the beginning of a plan year shall equal the assets at market value on an accrual basis at the end of the prior year based on the separate annual accounting of the prior plan year. The procedures for annual accounting of contributions to UCRP are for each plan year (July 1 through June 30), the Contractor will provide an annual accounting of assets associated with DOE-funded employer contributions and employee contributions under Contract No. W-7405-ENG-36 as follows:
    - (i) Market value of assets at the beginning of a plan year;



- (ii) (A) Employer contributions made during a plan year, less the employer contributions transferred to the Social Security Administration on behalf of Contract employee members of UCRP who elected Social Security coverage in 1976 or 1977; and
    - (B) Employee contributions made during a plan year, less the employee contributions transferred to the Social Security Administration on behalf of Contract employee members of UCRP who elected Social Security coverage in 1976 or 1977;
  - (iii) The dollar amount of investment income from applying the rate of return on the accrual-basis market value of UCRP assets to subparagraphs (b)(5)(i), (ii), (iv) and (v);
  - (iv) Benefits disbursed on account of Contract employees during the plan year, including return of accumulated employee contributions;
  - (v) Administrative expenses paid from the trust shall be allocated to the Laboratories in the same proportion that the market value of assets assigned to the Laboratory segment bears to the market value of the total asset fund as of the beginning of the plan year. However, there may be situations agreed to by the DOE where specific expenses would directly be charged to each Laboratory in addition to the proportionate share of expenses; and
  - (vi) Market value of assets at the end of the plan year = [subparagraphs (b)(5)(i) + (ii) + (iii) - (iv) - (v)]. The annual accounting shall include the market value of such assets as of June 30, 1991, and as of the end of each plan year thereafter.
- (6) "Contract service assets" means the accrual basis market value given by the accounting which is referred to in subparagraph (b)(5).
- (7) All plan provisions of the UCRP are applicable to all eligible employees of the Contractor, including those employed at a DOE Laboratory and, as such, a single contribution rate, expressed as a percentage of covered compensation, is calculated for the Plan. This single rate is to be applied to all members of the Plan in order to determine the contribution, if any. For purposes of assessing the liabilities of the DOE segment of the Plan as described in paragraphs (e), (f), and (g), the DOE will have no liabilities to the Plan beyond that associated with Laboratory employees who are members of the Plan.
- (8) The DOE will be given prospective notice of any changes in the scope of the administration of the DOE-reimbursed pension plans that require a change in administration cost of five percent or more. Changes in administration cost resulting directly from normal inflation in administration costs or per specific DOE requests do not require notice.

- (9) If and when the funded status (measured by dividing the actuarial value of assets by the entry age liability of UCRP), reaches 150 percent, the President of the University will initiate a review of the surplus situation and provide to DOE a copy of the Contractor's recommendations to bring the fund into conformity with the long-term needs of the Plan. Any recommendation by the Contractor for the disposition of the Plan assets in connection with a Plan termination or spin-off will be consistent with the then applicable federal and state laws relating to qualified pension plans and ensure equitable distribution of excess Plan assets to DOE and the University-reimbursed Plan segments as provided in this clause.
  - (10) The DOE will pay costs for any special retirement and/or actuarial analysis that it requests during the period of the contract.
  - (11) DOE has the right to take any action it deems appropriate and consistent with applicable law with reference to the pension plan.
- (c) Funding requirements.
- (1) Contributions to the Plan will be based on the actuarial valuation for the Plan and will be approved by the Contractor's Plan Trustees (The Regents of the University of California).
  - (2) DOE agrees to continue to fund for the Contract term(s), as extended, the employer cost of UCRP for Contract employees at the contribution rates established from time to time by Contractor, subject to the following restriction: The DOE funded contribution shall not exceed the full funding limit as defined in the Internal Revenue Code, Section 412.
  - (3) The DOE funding policy is intended to be congruent with the basic objectives of the cost accounting standards (CAS) and will generally result in funding consistent with the CAS. If this policy causes a temporary, technical inconsistency with the CAS, the Contractor shall immediately notify the cognizant Contracting Officer and Chief Financial Officer. Contractors have recourse to the cost principles found at FAR 31.203, 31.205-6 and 31.205-10 and shall avoid penalties on that basis.
  - (4) If more than five percent of the members of each Laboratory transfer from the Contractor's private operations to the DOE Laboratories annually, or vice versa, appropriate adjustments shall be made to the pension fund or segments' assets and liabilities.
- (d) Reporting requirements for designated contracts. The following reports shall be submitted by the last day of the plan year to DOE for each Laboratory.
- (1) The annual actuarial valuation report includes information in the annual separate actuarial valuations for each Laboratory which DOE may reasonably request. DOE shall pay the cost of all separate valuations. At a minimum, these reports shall include: an itemized cashflow; the aggregate covered compensation; a distribution of active members by age, service, and salary; separate distributions of retirees and terminated vested members by age and benefit amount; a brief description of each amortization base, if any, and its date, original amount, and annual payment; an itemization of the changes in the numbers of actives, retirees and terminated vested members during the plan year; the rate of interest currently credited to employee contributions; a statement

of the Financial Accounting Standards (FAS) 35 liabilities; a statement of the current liability under Internal Revenue Code Section 412; a development of the total actuarial gain or loss; a statement of actuarial assumptions and methods; calculation of the assets of each Laboratory; calculation of the actuarial asset value; calculation of contribution requirements; and a statement of the changes, if any, in benefits, assumptions or methods since the last report.

- (2) A copy of the Financial Accounting Standards Board Statement 87 report prepared each year to satisfy the expense-reporting requirement of the Office of Management and Budget.
  - (3) In order to report the funded status (surplus or deficit) of each Laboratory's portion of UCRP to the DOE, the Contractor will measure the liabilities using the Entry Age Normal actuarial method and the Actuarial Value of Assets as defined in the valuation report indicated in subparagraph (d)(1) above.
- (e) Terminating operations. When operations at a DOE Laboratory are terminated and no further work is to occur under this contract, the following rules shall apply:
- (1) No further benefits for service shall accrue after the Contract termination date, or such earlier date as agreed to by the DOE and the Contractor.
  - (2) The Contractor shall take steps to return to the DOE a portion of the UCRP assets attributable to the Contract employees through a spin-off-reversion transaction. Such a transaction shall be accomplished by the Contractor's (i) establishing a Spin-off Plan for certain Contract employees and transferring the assets to the Spin-off Plan as set forth below, (ii) terminating the Spin-off Plan and receiving back any assets in excess of those needed to provide benefits to the members in the Spin-off Plan, and (iii) transferring the reverted assets (less any tax or other liabilities imposed upon the Contractor because of the receipt of the assets) to the DOE. The Contractor's participation in the transactions described in the preceding sentence is conditioned upon its receiving satisfactory rulings from the Internal Revenue Service and any other appropriate Government agencies that the transactions contemplated by the sentence will have no adverse effect on the Contractor, the UCRP, or the members of the UCRP.
  - (3) Procedures with respect to the spin-off and reversion.
    - (i) The liabilities as of the effective date of the Spin-off Plan for members to be covered by the Spin-off Plan shall be calculated by using the UCRP Plan provisions, actuarial assumptions, and actuarial cost methods as then in effect. The only members to be covered by the Spin-off Plan (the "Spin-off Members") are members of the UCRP as of the Spin-off date who are terminated active and inactive Laboratory members, excluding pensioners, survivors, and members receiving disability income under the UCRP.

- (ii) Assets to be transferred to the Spin-off Plan shall be determined by a formula to be negotiated between the Parties, subject to an IRS ruling and in compliance with the laws of the State of California as to permitted agreements that may be contained in the aforementioned formula. If permitted, assets for the Spin-off Plan shall be determined generally in accordance with the following formula.

A – B, where

A = Market value of assets assigned to the DOE Laboratories as determined from paragraph (b)(5) as of the last business day of the calendar quarter which ends coincident with, or next preceding, the effective date of the spin-off. From the effective date of spin-off to the date of transfer of the assets, interest will be credited at the rate established for a one year Treasury bill as published by the Federal Reserve.

B = Liabilities associated with pensioners, survivors, members receiving disability income (including projected benefit increases), and active members (contract employees) who are retained by the Contractor determined as of the last business day of the calendar quarter which ends coincident with, or next preceding, the effective date of the spin-off. In determining these liabilities, the present value of future ad hoc benefit improvements shall be included based on past practices.

If, for technical, administrative, or regulatory reasons, the preceding formula proves inapplicable, the Contractor and DOE shall bargain in good faith to produce a result which would be as equitable to both parties as the preceding formula and in compliance with applicable law.

- (iii) The Parties agree that any disposition of Contract service assets or transfer of liabilities upon a spin-off shall be consistent with the then applicable federal and state laws relating to qualified defined benefit pension plans and shall be subject to obtaining such rulings and/or approvals from cognizant federal and state agencies as may be required by law or deemed prudent by the Contractor or DOE.
- (A) When a Spin-off Plan has been established, UCRP shall retain the liabilities associated with pensioners, members receiving UCRP disability income, and survivors and Contract employees who are retained by the Contractor.
- (B) Under a Spin-off Plan acceptable to the DOE and which fulfills all of the Contractor's fiduciary responsibilities under UCRP, and which further assumes UCRP liabilities for transferred Contract employees, the Contractor agrees to transfer to the trustees of the Spin-off Plan an amount equal to the Contract service assets to be transferred as determined above. Such amount shall be transferred as investment holdings of the UCRP, plus any necessary United States Currency, or, by mutual agreement of the Parties, the total amount may be transferred as United States Currency. Agreement by the DOE and Contractor will not be unreasonably withheld.
1. If the asset transfer to the Spin-off Plan is made in the form of investment holdings, such holdings shall include cash, equity, securities, and fixed income securities, but shall exclude any investment holding (and earnings thereon) acquired from the effective date of the spin-off. Such assets shall be allocated on a pro-rated basis, with proration for fixed income assets based on rating and classification. The pro-rata

allocation shall be the ratio of (A) and (B) where, (A) is the Contract service assets referred to in subparagraph (e)(3)(ii) above; and (B) is the total assets of the Retirement Fund of UCRP at market value as of the effective date of the spin-off. Such assets shall be transferred within 36 months of the creation of the Spin-off Plan and shall include actual investment earnings (gains or losses) of such assets less expenses and benefit disbursements from the effective date of the spin-off to the date of transfer.

2. The Contractor will transfer assets at a rate at least sufficient to meet the cashflow requirement of transferred employees who go into benefit status under the Spin-off Plan.
3. If the transfer is made as United States Currency, the transfer shall be increased to include interest credited at the rate established for a one year Treasury bill as published by the Federal Reserve. This rate will be in effect from the first day following the effective date of spin-off through the day of payment.

(iv) Subsequent to the spin-off, UCRP shall, subject to obtaining all necessary IRS and other appropriate governmental approvals, terminate the Spin-off Plan, purchase annuities for the Spin-off Members with the assets of the Spin-off Plan, receive the remaining assets of the Spin-off Plan as a reversion and transfer the remaining assets (less any tax or other liabilities imposed upon the Contractor because of the receipt of such assets) to the DOE.

(f) Contract termination and selection of a successor contractor. Should another contractor replace the Contractor, the following become requirements:

- (1) Liabilities for present and future benefits of Contract employees in the event there is a successor plan. The liabilities as of the effective date of disaffiliation for members to be covered by a successor pension plan shall be calculated by using the UCRP Plan provisions, actuarial assumptions, and actuarial cost methods as then in effect. Active members not retained by the Contractor are the only members to be covered by a successor pension plan.
- (2) (i) Contract service assets in the event there is a successor pension plan. Contract service assets shall be determined by a formula to be negotiated between the Parties, subject to an IRS ruling and in compliance with the laws of the State of California as to permitted agreements that may be contained in the aforementioned formula. If permitted, contract service assets for a successor contractor shall be determined generally in accordance with the following formula:

A - B, where

A = Market value of assets assigned to the DOE Laboratories as determined from subparagraph (b)(5), as of the last business day of the calendar quarter which ends coincident with, or next preceding, the effective date of disaffiliation. From the effective date of spin-off to the date of transfer of the assets, interest will be credited at the rate established for a one year Treasury bill as published by the Federal Reserve.

B = Liabilities associated with pensioners, survivors, terminated vested and nonvested inactive members, members receiving disability income under the UCRP and active members (contract employees) who are retained by the Contractor as determined pursuant to subparagraph (f)(1) above.

If, for technical, administrative, or regulatory reasons, the preceding formula proves inapplicable, the Contractor and DOE shall bargain in good faith to produce a result which would be as equitable to both parties as the preceding formula and in compliance with applicable law.

- (ii) In no event, however, shall the UCRP retain an amount less than the liabilities for benefits of members whose liabilities are retained by the UCRP. Notwithstanding the provisions of this paragraph (f), the Parties further agree to consider the desirability of covering pensioners, survivors, UCRP disability recipients, and terminated vested and nonvested members under a successor plan.
- (3) Disposition of contract service assets and liabilities. The Parties agree that any disposition of contract service assets or transfer of liabilities upon Contract termination shall be consistent with the then applicable federal and state laws relating to qualified defined benefit pension plans and shall be subject to obtaining such rulings and/or approvals from cognizant Federal and State agencies as may be required by law or deemed prudent by the Contractor or DOE.
- (i) Retention of assets and liabilities. When a successor pension plan has been established by a successor contractor, UCRP shall retain the liabilities associated with pensioners, survivors, UCRP disability recipients, and terminated vested and nonvested members and active members who are retained by the Contractor as determined in subparagraph (f)(1) above. In the event that there is no successor plan, UCRP shall retain the liabilities associated with all members (contract employees).
  - (ii) Transfer of assets and liabilities to successor pension plan. Under a successor pension plan acceptable to the DOE and which fulfills all of the Contractor's fiduciary responsibilities under UCRP, and which further assumes UCRP liabilities for transferred Contract employees, the Contractor agrees to transfer to the trustees of such successor plan an amount equal to the contract service assets as determined in subparagraph (f)(2) above. Such amount shall be transferred as investment holdings of the UCRP, plus any necessary United States Currency, or, by mutual agreement of the Parties, the total amount may be transferred as United States Currency. Agreement by the DOE and Contractor will not be unreasonably withheld.
    - (A) If the asset transfer to the successor contractor's trust is made in the form of investment holdings, such holdings shall include cash, equity securities and fixed income securities, but shall exclude investment holdings (and earnings thereon) acquired after the effective date of disaffiliation. Such assets shall be allocated on a pro-rated basis, with proration for fixed income assets based on rating and classification. The pro-rata allocation shall be the ratio of (A) and (B) where, (A) is the contract service assets referred to in subparagraph (f)(2) above and (B) is the total assets of the Retirement Fund of UCRP at market value as of the effective date of disaffiliation. Such

assets shall be transferred within 36 months of the effective date of disaffiliation, and shall include actual investment earnings(gains or losses) of such assets less expenses and benefit disbursements from the effective date of disaffiliation to the date of transfer.

- (B) The Contractor will transfer assets at a rate at least sufficient to meet the cashflow requirement of transferred employees who go into benefit status under the successor plan.
  - (C) If the transfer is made as United States Currency, the transfer shall be increased to include interest on the amount at the rate established for a one year Treasury bill as published by the Federal Reserve, from the first day following the effective date of disaffiliation through the day of payment.
- (4) DOE agrees to require that, in the event of termination of work under the contract, a successor contractor shall permanently maintain the benefit accrual terms and conditions of UCRP for the Contractor employees transferred to the successor contractor insofar as UCRP is consistent with the provisions of applicable law.
  - (5) In the event that there is no successor plan, a reconciliation of funding obligations shall be done. A separate accounting of assets and liabilities for contract employees shall be maintained by the Contractor. The Contractor shall assure that accrued obligations to contract employees are met and that the fund is being prudently managed. If, pursuant to approval by the Regents of the University of California, all UCRP obligations to contract employees are fulfilled through a plan spin-off and termination under the process outlined in subparagraphs (e)(3) above and (g)(2) below, as applicable, the Contractor shall return any net excess assets attributable to contract employees to DOE, if approved by the Internal Revenue Service. If a funding shortfall arises as a result of economic conditions beyond the Contractor's direct control, the DOE agrees to contribute funds necessary to fully fund liabilities to cover obligations to contract employees, not including active employees who continue to be permanently employed by the Contractor.

(g) UCRP plan termination.

- (1) In the unlikely event of plan termination, the Contractor shall not terminate any pension plan (commingled or site-specific) without notifying the Department at least 60 days prior to the scheduled date of plan termination, or if earlier, 60 days before plan members are notified of the plan termination.
- (2) The Contractor may satisfy plan liabilities to plan members by the purchase of annuities through competitive bidding on the open annuity market or through the payment of lump sums. Any competitive annuity bid process must include at least five bidders, if possible, who satisfy the criteria listed in United States Department of Labor Interpretive Bulletin 95-1. The final selection of insurance company(ies) shall be based upon the bids of the qualifying companies, in conjunction with the assessed quality of the annuity provider(s). Lump sums shall be calculated using the same mortality table and actuarial assumptions which the UCRP uses for purposes of defining actuarially equivalent. Otherwise, the Parties to the contract shall negotiate the assumptions and methods for determining DOE's liability pursuant to paragraph (h) below.

- (3) DOE-reimbursed assets which are in excess of the DOE liability shall revert to DOE with interest. Interest shall accrue from the date of the event (defined in paragraph (h) below as the date of pension plan termination) at the rate established for a one-year Treasury bill as published by the Federal Reserve.
- (h) Financial requirement.
- (1) Funds to be paid or transferred to any party as a result of settlements relating to pension plan termination under paragraph (g) above shall accrue interest from the effective date of termination until the date of payment or transfer.
  - (2) Terminating Operations. The Contractor shall calculate pension liabilities attributable to DOE contract work. For this purpose, DOE and the Contractor shall use the same mortality table as used for funding purposes, and an applicable 30-year Treasury rate of interest as the basis for the frozen liability calculation.
- (i) Special programs. The Contractor shall advise DOE in advance of each early-out program, window benefit, disability program, plan-loan feature, employee contribution refund, asset reversion, or incidental benefit. Any UCRP retirement system programs proposal that is Laboratory specific which would increase the cost of the Contract beyond that approved by Contractor for Contractor employees shall be approved in advance by the Contracting Officer and the Contractor.



**Appendix 2: I.093 DEAR 970.5232-4 Obligation of Funds (Dec 2000)  
Alternate 1 (DEC 2000)**

- (a) Obligation of funds. The amount presently obligated by the Government with respect to this contract is \$24,331,637,621.79. Such amount may be increased unilaterally by DOE by written notice to the Contractor and may be increased or decreased by written agreement of the parties (whether or not by formal modification of this contract). Estimated collections from others for work and services to be performed under this contract are not included in the amount presently obligated. Such collections, to the extent actually received by the contractor, shall be processed and accounted for in accordance with applicable requirements imposed by the Contracting Officer pursuant to the Laws, Regulations, and DOE Directives clause of this Contract. Nothing in this paragraph is to be construed as authorizing the Contractor to exceed limitations stated in financial plans established by DOE and furnished to the Contractor from time to time under this contract.
- (b) Limitation on payment by the Government. Except as otherwise provided in this contract and except for costs which may be incurred by the Contractor pursuant to the Termination clause of this contract or costs of claims allowable under the contract occurring after completion or termination and not released by the Contractor at the time of financial settlement of the contract in accordance with the Section I clause entitled "Payments and Advances," payment by the Government under this contract on account of allowable costs shall not, in the aggregate, exceed the amount obligated with respect to this contract, less the contractor's fee and any negotiated fixed amount. Unless expressly negated in this contract, payment on account of those costs excepted in the preceding sentence which are in excess of the amount obligated with respect to this contract shall be subject to the availability of:
- (1) collections accruing to the Contractor in connection with the work under this contract and processed and accounted for in accordance with applicable requirements imposed by the Contracting Officer pursuant to the Laws, regulations, and DOE directives clause of this contract, and
  - (2) other funds which DOE may legally use for such purpose, provided DOE will use its best efforts to obtain the appropriation of funds for this purpose if not otherwise available.
- (c) Notices—Contractor excused from further performance. The Contractor shall notify DOE in writing whenever the unexpended balance of available funds (including collections available under paragraph (a) of this clause), plus the contractor's best estimate of collections to be received and available during the forty-five (45)-day period hereinafter specified, is in the contractor's best judgment sufficient to continue contract operations at the programmed rate for only forty-five (45) days and to cover the contractor's unpaid fee and any negotiated fixed amounts, and outstanding encumbrances and liabilities on account of costs allowable under the contract at the end of such period. Whenever the unexpended balance of available funds (including collections available under paragraph (a) of this clause), less the amount of the contractor's fee then earned but not paid and any negotiated fixed amounts, is in the contractor's best judgment sufficient only to liquidate outstanding encumbrances and liabilities on account of costs allowable under this contract, the Contractor shall immediately notify DOE and shall make no further encumbrances or expenditures (except to liquidate existing encumbrances and liabilities), and, unless the parties otherwise agree, the Contractor shall be excused from further performance (except

such performance as may become necessary in connection with termination by the Government) and the performance of all work hereunder will be deemed to have been terminated for the convenience of the Government in accordance with the provisions of the Termination clause of this contract.

- (d) Financial plans; cost and encumbrance limitations. In addition to the limitations provided for elsewhere in this contract, DOE may, through financial plans, such as Approved Funding Programs, or other directives issued to the contractor, establish controls on the costs to be incurred and encumbrances to be made in the performance of the contract work. Such plans and directives may be amended or supplemented from time to time by DOE. The Contractor agrees
- (1) to comply with the specific limitations (ceilings) on costs and encumbrances set forth in such plans and directives,
  - (2) to comply with other requirements of such plans and directives, and
  - (3) to notify DOE promptly, in writing, whenever it has reason to believe that any limitation on costs and encumbrances will be exceeded or substantially underrun.
- (e) Government's right to terminate not affected. The giving of any notice under this clause shall not be construed to waive or impair any right of the Government to terminate the contract under the provisions of the Termination clause of this contract.

### **Appendix 3: I.043FAR 52.249-6 Termination (Cost-Reimbursement) (Sep 1996) (DEVIATION)**

(a) Termination of this contract shall be in accordance with the provisions as follows:

(1) The performance of work under this contract may be terminated by the Government in whole, or from time to time in part,

(i) whenever the Contracting Officer makes a determination that the Contractor has violated:

(A) Section I Clause ,entitled Foreign Ownership, Control, or Influence Over Contracts;

(B) Section I Clause, entitled Organizational Conflicts of Interest; or

(C) Section I Clause entitled, Workplace Substance Abuse Programs at DOE Sites; and the Contractor fails to cure the fault or failure within such period as the Contracting Officer may allow after receipt by the Contractor of a notice from the Contracting Officer specifying the fault or failure; or

(ii) whenever the Contracting Officer determines that there has been an action which gives the Government a right to terminate under:

(A) Section I Clause, entitled Gratuities; or

(B) Section I Clause, entitled Price or Fee for Illegal or Improper Activity; or

(iii) whenever, for any reason, the Contracting Officer shall determine any such termination is for the best interest of the Government.

(2) Termination of the work hereunder shall be effected by delivery of a notice of termination specifying the reason for termination, the extent to which performance of work under the Contract shall be terminated, and the date upon which such termination shall become effective. Any such termination shall be without prejudice to any claim which either Party may have against the other.

(3) If, after notice of termination under the provisions of (a)(1)(i) or (ii) above, it is determined for any reason that termination was not appropriate under the above-cited provisions, such notice shall be deemed to have been issued pursuant to (a)(1)(iii) above, and the rights and obligations of the Parties hereto shall in such event be governed accordingly.

(4) Upon receipt of notice of termination, in accordance with (a)(1) above, the Contractor shall, to the extent directed, in writing, by the Contracting Officer, discontinue the terminated work and the placing of orders for materials, facilities, supplies, and services in connection therewith, and shall proceed, if, and to the extent required by the Contracting Officer, to cancel promptly and settle with the approval of the Contracting Officer, existing orders, subcontracts, and commitments insofar as such orders, subcontracts, and commitments pertain to this contract.

- (b) Upon the termination of this Contract, full and complete settlement of all claims of the Contractor and of DOE arising out of this Contract shall be made as follows:
- (1) The Government shall have the right in its discretion to assume sole responsibility for any or all obligations, commitments, and claims that the Contractor may have undertaken or incurred, the cost of which are allowable in accordance with the provisions of this Contract; and the Contractor shall, as a condition of receiving the payments mentioned in this clause, execute and deliver all such papers and; take all such steps as the Contracting Officer may require for the purpose of fully vesting in the Government any rights and benefits the Contractor may have under or in connection with such obligations, commitments, or claims.
  - (2) The Government shall treat as allowable costs all expenditures made in accordance with and allowable under Section I Clause entitled, Payments and Advances and Section H Clause entitled, Advance Understanding of Cost and Expenses, not previously so allowed or otherwise credited for work performed prior to the effective date of termination, together with expenditures as may be incurred for a reasonable time thereafter with the approval of, or as directed by, the Contracting Officer.
  - (3) The Government shall treat as allowable costs, to the extent not included in (b)(2) above, the costs of settling and paying claims arising out of the termination of work under orders, subcontracts, and commitments as provided in (a)(2) above.
  - (4) The Government shall treat as allowable costs the reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the termination of the contract and for the termination and settlement of orders and subcontracts thereunder, together with such further expenditures made by the Contractor after the date of termination for the protection or disposition of Government property as are approved or required by the Contracting Officer; provided, however, that if the termination is pursuant to (a)(1)(i) or (ii), or if at the time of termination pursuant to (a)(1)(iii) the latest aggregate Appendix F rating is less than a "good" gradient, the first \$700,000 (LLNL) \$875,000 (LANL) of any amount for preparation of the Contractor's settlement proposal shall be unallowable.
  - (5) The obligation of the Government to make any of the payments required by this clause or any other provisions of this contract shall be subject to any unsettled claims in connection with this contract which the Government may have against the Contractor.
- (c) Prior to final settlement, the Contractor shall furnish a release as required in Section I Clause entitled, Payments and Advances, and account for Government-owned property as may be required by the Contracting Officer; provided, however, that unless the Contracting Officer requires an inventory, the maintenance and disposition of the records of Government-owned property in accordance with Section I Clause entitled, Accounts, Records, and Inspection, shall be accepted by the Contracting Officer as full compliance with all requirements of this contract pertaining to an accounting for such property.

**Appendix 4: I.091DEAR 970.5232-2 Payments and Advances (Dec 2000)  
Alternate II (Dec 2000), Alternate III (Dec 2000)**

- (a) Payment of Total available fee: Base Fee and Performance Fee. The base fee amount, if any, is payable in equal monthly installments. Total available fee amount earned is payable following the Government's Determination of Total Available Fee Amount Earned in accordance with the section H clause entitled "Program Performance Fee." Base fee amount and total available fee amount earned payments shall be made by direct payment or withdrawn from funds advanced or available under this contract, as determined by the Contracting Officer. The Contracting Officer may offset against any such fee payment the amounts owed to the Government by the contractor, including any amounts owed for disallowed costs under this Contract. No base fee amount or total available fee amount earned payment may be withdrawn against the payments cleared financing arrangement without the prior written approval of the Contracting Officer.
- (b) Payments on Account of Allowable Costs. The Contracting Officer and the Contractor shall agree as to the extent to which payment for allowable costs or payments for other items specifically approved in writing by the Contracting Officer (for example, negotiated fixed amounts) shall be made from advances of Government funds. When pension contributions are paid by the Contractor to the retirement fund less frequently than quarterly, accrued costs therefor shall be excluded from costs for payment purposes until such costs are paid. If pension contribution are paid on a quarterly or more frequent basis, accrual therefor may be included in costs for payment purposes, provided that they are paid to the fund within 30 days after the close of the period covered. If payments are not made to the fund within such 30-day period, pension contribution costs shall be excluded from cost for payment purposes until payment has been made.
- (c) Special financial institution account--use. All advances of Government funds shall be withdrawn pursuant to a payments cleared financing arrangement prescribed by DOE in favor of the financial institution or, at the option of the Government, shall be made by direct payment or other payment mechanism to the contractor, and shall be deposited only in the special financial institution account referred to in the Special Financial Institution Account Agreement, which is incorporated into this contract as Appendix B. No part of the funds in the special financial institution account shall be commingled with any funds of the Contractor or used for a purpose other than that of making payments for costs allowable and, if applicable, fees earned under this contract, negotiated fixed amounts, or payments for other items specifically approved in writing by the Contracting Officer. If the Contracting Officer determines that the balance of such special financial institution account exceeds the contractor's current needs, the Contractor shall promptly make such disposition of the excess as the Contracting Officer may direct.
- (d) Title to funds advanced. Title to the unexpended balance of any funds advanced and of any special financial institution account established pursuant to this clause shall remain in the Government and be superior to any claim or lien of the financial institution of deposit or others. It is understood that an advance to the Contractor hereunder is not a loan to the contractor, and will not require the payment of interest by the contractor, and that the Contractor acquires no right, title or interest in or to such advance other than the right to make expenditures therefrom, as provided in this clause.

- (e) Financial settlement. The Government shall promptly pay to the Contractor the unpaid balance of allowable costs (or other items specifically approved in writing by the Contracting Officer) and fee upon termination of the work, expiration of the term of the contract, or completion of the work and its acceptance by the Government after:
- (1) Compliance by the Contractor with DOE's patent clearance requirements, and
  - (2) The furnishing by the Contractor of:
    - (i) An assignment of the contractor's rights to any refunds, rebates, allowances, accounts receivable, collections accruing to the Contractor in connection with the work under this contract, or other credits applicable to allowable costs under the contract;
    - (ii) A closing financial statement;
    - (iii) The accounting for Government-owned property required by the clause entitled "Property"; and
    - (iv) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract subject only to the following exceptions:
      - (A) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible to exact statement by the contractor;
      - (B) Claims, together with reasonable expenses incidental thereto, based upon liabilities of the Contractor to third parties arising out of the performance of this contract; provided that such claims are not known to the Contractor on the date of the execution of the release; and provided further that the Contractor gives notice of such claims in writing to the Contracting Officer promptly, but not more than one (1) year after the contractor's right of action first accrues. In addition, the Contractor shall provide prompt notice to the Contracting Officer of all potential claims under this clause, whether in litigation or not (see also Contract Clause I.092, DEAR 970.5228-1, "Insurance--Litigation and Claims");
      - (C) Claims for reimbursement of costs (other than expenses of the Contractor by reason of any indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of this contract relating to patents; and
      - (D) Claims recognizable under the clause entitled, Nuclear Hazards Indemnity Agreement.
  - (3) In arriving at the amount due the Contractor under this clause, there shall be deducted,
    - (i) any claim which the Government may have against the Contractor in connection with this contract, and

- (ii) deductions due under the terms of this contract, and not otherwise recovered by or credited to the Government. The unliquidated balance of the special financial institution account may be applied to the amount due and any balance shall be returned to the Government forthwith.
- (f) Claims. Claims for credit against funds advanced for payment shall be accompanied by such supporting documents and justification as the Contracting Officer shall prescribe.
- (g) Discounts. The Contractor shall take and afford the Government the advantage of all known and available cash and trade discounts, rebates, allowances, credits, salvage, and commissions unless the Contracting Officer finds that action is not in the best interest of the Government.
- (h) Collections. All collections accruing to the Contractor in connection with the work under this contract, except for the contractor's fee and royalties or other income accruing to the Contractor from technology transfer activities in accordance with this contract, shall be Government property and shall be processed and accounted for in accordance with applicable requirements imposed by the Contracting Officer pursuant to the Laws, regulations, and DOE directives clause of this contract and, to the extent consistent with those requirements, shall be deposited in the special financial institution account or otherwise made available for payment of allowable costs under this contract, unless otherwise directed by the Contracting Officer.
- (i) Direct payment of charges. The Government reserves the right, upon ten days written notice from the Contracting Officer to the contractor, to pay directly to the persons concerned, all amounts due which otherwise would be allowable under this Contract. Any payment so made shall discharge the Government of all liability to the Contractor therefor.
- (j) Determining allowable costs. The Contracting Officer shall determine allowable costs in accordance with the Federal Acquisition Regulation subpart 31.2 and the DOE Acquisition Regulation subpart 48 CFR 970.31 in effect on the date of this contract and other provisions of this contract.
- (k) Review and approval of costs incurred. The Contractor shall prepare and submit annually as of September 30, a "Statement of Costs Incurred and Claimed" (Cost Statement) for the total of net expenditures accrued (i.e., net costs incurred) for the period covered by the Cost Statement. The Contractor shall certify the Cost Statement subject to the penalty provisions for unallowable costs as stated in sections 306(b) and (i) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 256), as amended. DOE, after audit and appropriate adjustment, will approve such Cost Statement. This approval by DOE will constitute an acknowledgment by DOE that the net costs incurred are allowable under the contract and that they have been recorded in the accounts maintained by the Contractor in accordance with DOE accounting policies, but will not relieve the Contractor of responsibility for DOE's assets in its care, for appropriate subsequent adjustments, or for errors later becoming known to DOE.

## **Appendix 5: H.026 Advance Understanding of Costs and Expenses**

- (a) Compensation for Contractor's Services. Payment for the allowable costs and the Contractor's indirect costs as hereinafter defined, and of the fees as described in Section H Clause entitled, Program Performance Fee, shall constitute full and complete compensation for the performance of the work under this Contract. Furthermore, costs incurred or expenditures made by the Contractor during the FY 2001 in the performance of Appendices F and O will be accomplished within the authorized FY 2001 budget levels.
- (b) Allowable costs. The allowable cost of performing the work under this Contract shall be the costs and expenses that are actually incurred by the Contractor in the performance of the Contract work in accordance with its terms, that are necessary or incident thereto, and that are determined to be allowable as set forth in paragraph (c).
- (c) Determination of Allowability. The determination of the allowability of cost shall be based on FAR 31.2 as supplemented by DEAR 970.31 and as further described herein.
- (d) Examples of items of allowable cost. Subject to the other provisions of this clause, the following examples of items of cost of work done under this Contract shall be allowable to the extent indicated:
  - (1) Costs incurred or expenditures made by the Contractor, as directed, approved or ratified by the Contracting Officer and not unallowable under any other provisions of this contract.
  - (2) Litigation expenses (including reasonable counsel fees and the premium for bail bond) necessary to defend adequately an on-site uniformed guard against whom a civil or criminal action is brought based upon an act or acts of the guard undertaken within the course and scope of employment, subject to the approval or ratification, in writing, of the Contracting Officer.
  - (3) Losses and related expenses (including settlements made with the consent of the Contracting Officer) sustained by the Contractor in the performance of this Contract and certified, in writing, by the Contracting Officer to be reasonable, except the losses and expenses expressly made unallowable under other provisions of this contract. Such certification will not be unreasonably withheld.
  - (4) Personnel costs and related expenses incurred in accordance with the Personnel Appendix (Appendix A).
  - (5) Subcontracts and purchase orders, including procurements from Contractor-controlled sources, subject to approvals required by other provisions of this Contract.
  - (6) Utility services, including electricity, gas, water and sewage.



- (7) Indirect costs. DOE will pay the Contractor a fixed amount for indirect costs for each annual period, or portion thereof as set forth below:

<u>During the Period:</u>	<u>The Amount will be:</u>	
	<u>LANL</u>	<u>LLNL</u>
10/01/97 - 9/30/98	\$5,500,000	\$4,400,000
10/01/98 - 9/30/99	\$5,500,000	\$4,400,000
10/01/99 - 9/30/00	\$5,500,000	\$4,400,000
10/01/00 - 9/30/01	\$5,500,000	\$4,400,000
10/01/01 - 9/30/02	\$5,169,000	\$4,135,200
10/01/02 - 9/30/03	\$5,361,500	\$4,289,200
10/01/03 - 9/30/04	\$5,560,900	\$4,448,700
10/01/04 - 9/30/05	\$5,767,000	\$4,613,600

The University utilizes an integrated system of accounts for the collection of all general and administrative costs associated with University Government contracts, including this contract, calculated in accordance with OMB Circular A-21 for allowability. The University shall allocate costs in accordance with the cost accounting standards, rules and regulations issued by the Cost Accounting Standards Board and set forth in 48 CFR Chapter 99.

Indirect costs shall be paid to the Contractor in equal monthly installments and shall not be subject to adjustment except as provided in the Section I Clause entitled, Termination (Cost Reimbursement).

- (8) Division of Laboratory Management Costs. DOE will pay the Contractor the costs of the Division of Laboratory Management (VPLM) within the University of the Office of the President (UCOP) in the annual amounts for the period set forth below:

<u>During the Period:</u>	<u>The Not to Exceed Amount will be:</u>	
	<u>LANL</u>	<u>LLNL</u>
10/01/97 - 9/30/98	\$2,250,000	\$1,800,000
10/01/98 - 9/30/99	\$2,250,000	\$1,800,000
10/01/99 - 9/30/00	\$2,250,000	\$1,800,000
10/01/00 - 9/30/01	\$2,534,500	\$2,030,600
10/01/01 - 9/30/02	\$3,324,200	\$2,666,000
10/01/02 - 9/30/05	\$3,754,000	\$3,010,500

These costs shall be a direct charge to Laboratory General and Administrative cost pool and shall be paid to the University in equal monthly installments of 1/12th the annual amount. All funds not required shall be refunded to the Laboratory and applied to reduce Laboratory overhead. The allowability of costs charged shall be determined in accordance with OMB Circular A-21 and shall be subject to an annual audit of costs.

- (e) Examples of items of unallowable costs. The following examples of items of costs are unallowable under this Contract to the extent indicated:
- (1) Advertising and public relations costs made unallowable by FAR 31.205-1(f)(1) except those allowed therein and those approved, in advance, by the Contracting Officer where the primary purpose of the activity is to facilitate Contract performance in support of the DOE mission.
  - (2) Salary or other compensation (and expenses related thereto) of any individual employed under this Contract as a consultant or in another comparable employment capacity who is an employee of another organization and concurrently performing work on a full-time annual basis for that organization under a cost-type contract with DOE, except to the extent that the other contractor is reimbursed for the services of the individual.

## **Appendix 6: Appendix T to Prime Contract**

See the scanned document on the following pages.

## Appendix T

Contract No: W-7405-ENG-36 (Modification No: M620)

### **DOE/NNSA Funding Obligation to the University of California with respect to Reimbursement of Contributions to the University of California Retirement Plan (UCRP)**

#### **Section 1 – Purpose**

- (a) This Appendix –
- (1) sets forth the terms and conditions under which DOE/NNSA may be required to reimburse the Regents of the University of California (UC) (Parties) for Required Contributions and establishes a basis to calculate any amount that DOE/NNSA may be required to reimburse UC as a Required Contribution; and
  - (2) provides a mechanism for UC to make certain changes to the UCRP with respect to the Retained Segment with the consent of DOE/NNSA.
- (b) This Appendix is incorporated into the Contract and in turn incorporates into the Contract the following Attachment, including its Exhibits:
- “Agreement Between the Department of Energy/National Nuclear Security Administration and the Regents of the University of California Concerning the Transfer of Assets and Liabilities From the University of California Retirement Plan to the LANS Defined Benefit Pension Plan,” which specifically provides the values called for in the A minus B formula of clause H.008 paragraph (f)(2) (Attachment 1)(Asset Transfer Agreement).
- (i) June 1, 2006, Los Alamos National Laboratory Special Interim Addendum Report (Exhibit 1)(Actuarial Valuation).
  - (ii) Proposed Approach for Asset Allocation for Transfer to the LANS Plan (Exhibit 2)(Asset Allocation).
  - (iii) Pricing Procedures for Asset Classes Held in the UCRP (Exhibit 3)(Pricing Procedures).
  - (iv) Estimated Asset Transfer Amount based on accounting through February 28, 2007, to be modified upon determination of the actual value at the Asset Transfer Date (Exhibit 4)(Estimation).
- (c) Except as specifically set out herein, this Appendix does not make changes to pre-existing rights and obligations between the Parties as set forth in clause H.008 or any other provisions of the Contract; however, any conflict between the requirements of

clause H.008 or any other provision of the Contract and this Appendix will be resolved in favor of this Appendix.

(d) Subject to subparagraph (d)(5) of the Asset Transfer Agreement, this Appendix, including its Attachment and the Exhibits thereto, is for the exclusive benefit and convenience of the Parties hereto. Nothing contained herein shall be construed as granting, vesting, creating or conferring any right of action or any other right or benefit upon past, present or future employees of UC, upon any participants or beneficiaries of the University of California Retirement Plan (UCRP), as amended from time to time, or upon any other third party.

(e) This Appendix is not intended to limit or impair or add to the rights which any person may have under applicable Federal statutes.

(f) All assets and liabilities associated with UC's Defined Contribution Plan, 415(m) Restoration Plan, 457(b) Deferred Compensation Plan, and the Tax-Deferred 403(b) Plan are not covered by this Appendix and remain covered by clause H.008.

## **Section 2 – Definitions**

These definitions apply to this Appendix T and its Attachment, including all of its Exhibits, unless otherwise specified.

(a) "Actuarial Value of Assets" means the dollar amount of assets attributable to the Retained Segment for purposes of calculating the Required Contribution determined under the actuarial asset valuation method adopted by the Regents for the Retained Segment for the Plan Year.

(b) "Beneficiary" means (A) the eligible survivors and beneficiaries of Retained Members and (B) alternate payees of LANL employees under qualified domestic relations orders (QDROs) who are eligible, and elect, on or before June 30, 2007, to retain their interests under the QDROs in the UCRP.

(c) "Contract Service Assets" means the accrual basis market value of assets attributable to the Retained Segment given by the accounting referred to in subsection (4)(a), below.

(d) "Funding Shortfall" means the excess, if any, of the Funding Target over the Actuarial Value of Assets of the Retained Segment, determined as of the first day of the Plan Year.

(e) "Funding Target" means, with respect to a Plan Year, 100% of the present value of all benefits accrued or earned as of the beginning of the Plan Year that are allocated to the Retained Segment. The present value shall be determined using the actuarial assumptions adopted by the Regents as in effect for the Retained Segment for the Plan Year subject to subsections (d), (e), and (f) of Section 5 of this Appendix T and to the other provisions of this Contract.

- (f) “LANL” means the Los Alamos National Laboratory.
- (g) “LANS Plan” means the LANS Defined Benefit Pension Plan.
- (h) “Plan Year” is the Plan Year as defined and adopted by the Regents for the UCRP.
- (i) “Required Contribution” means the greater of (1) the Shortfall Amortization Charge allocable to the Retained Segment for a Plan Year, or (2) the amount necessary to meet the UCRP’s current obligations to Retained Members and Beneficiaries when the remaining market value of assets of the Retained Segment as of the beginning of the Plan Year is insufficient to meet current obligations. For purposes of this provision, “current obligations” means an amount equal to three times the benefit payments and expenses for the 12 months prior to the beginning of the Plan Year. The Required Contribution is fixed as calculated and not subject to either positive or negative adjustment based on changes in market conditions or other actuarial experience between the calculation date and the payment date.
- (j) “Retained Member” means an individual who satisfies the following two conditions: (A) on May 31, 2006, was (i) a retiree of the UCRP from LANL, (ii) a terminated vested participant of the UCRP from LANL, (iii) a disability income recipient under UCRP from LANL, or a deceased participant with respect to any survivor entitled to benefits under UCRP from LANL, or (iv) an employee in good standing of UC at LANL and either an active or reinstated and rehired member of UCRP with a vested interest in the UCRP, and (B) did not elect to become a participant in the LANS Plan. “Retained Member” shall also include an individual with an account under the Capital Accumulation Provisions (CAP), and who elected to become a participant in the LANS Plan; provided, however, that such inclusion as a Retained Member shall be limited to such member’s CAP benefit for purposes of calculating benefits and liabilities under the Retained Segment.
- (k) “Retained Segment” means the portion of UCRP represented by the assets and liabilities accrued through May 31, 2006, and associated with the benefits of Retained Members and Beneficiaries.
- (l) “Shortfall Amortization Base” means, with respect to a Plan Year, the Funding Shortfall (if any) for the Plan Year reduced by the present value of any remaining future Shortfall Amortization Installments from prior Plan Years.
- (m) “Shortfall Amortization Charge” means, with respect to a Plan Year, the sum of the Shortfall Amortization Installments with respect to the Shortfall Amortization Bases for such Plan Year and for each of the six preceding Plan Years, based on the Funding Shortfall for each of those years. For any Plan Year when the Funding Shortfall is zero, all prior Shortfall Amortization Bases will be considered fully amortized, no new Shortfall Amortization Base will be established for that year, and the Shortfall Amortization Charge will be zero for that year.

(n) “Shortfall Amortization Installment” means the amount necessary to amortize the Shortfall Amortization Base in level annual installments over a seven-year period using the interest rate assumption adopted by the Regents as in effect for the Retained Segment for the Plan Year.

(o) “The Regents” means the Regents of the University of California.

### **Section 3 –Required Contribution**

(a) Subject to the availability of appropriations and the other provisions of this Contract, each Plan Year DOE/NNSA will reimburse UC for the Required Contribution, if greater than zero, within eight months of the close of the Plan Year, starting with the Plan Year beginning July 1, 2006 and ending June 30, 2007. Immediately upon reimbursement by DOE/NNSA, the Regents will pay the Required Contribution into the UCRP for the Retained Segment and add it to the Contract Service Assets.

(b) DOE/NNSA will make payment from any funds which DOE may legally use for such purpose, provided that DOE/NNSA will use its best efforts to request that sufficient funds for this purpose be included in the President’s Budget if not otherwise available.

### **Section 4 – Accounting and Reporting Requirements for the Retained Segment**

#### **(a) Contract Service Assets**

UC shall maintain a separate annual accounting of liabilities and assets attributable to the Retained Segment. The accounting for the Retained Segment will reflect the effects of any transactions covered by the Asset Transfer Agreement. Market value of assets on an accrual basis at the beginning of a Plan Year shall equal the assets at market value on an accrual basis at the end of the prior Plan Year based on the separate annual accounting of the prior Plan Year. The annual accounting of the assets in the Retained Segment under the Contract will incorporate the following:

- (i) Market value of assets at the beginning of a Plan Year, determined in accordance with the Pricing Procedures;
- (ii) (A) Contributions reimbursed by DOE/NNSA that are accounted for on a monthly basis during a Plan Year; and  
(B) Employee contributions in the form of after-tax service credit buybacks made to UCRP that are accounted for on a monthly basis during a Plan Year, if any;
- (iii) The dollar amount of total investment rate of return from the market value of the Retained Segment assets that are invested in the UCRP portfolio accrued on a monthly basis during the Plan Year;

- (iv) Benefits disbursed on a monthly basis from the Retained Segment during the Plan Year, including return of accumulated employee contributions;
- (v) Administrative expenses, excluding any expense specifically allocated to a segment, paid from the trust allocated to the Retained Segment in the same proportion that the market value of assets assigned to the Retained Segment bears to the market value of the total UCRP on a monthly basis during the Plan Year. Specific expenses will be directly charged to the Retained Segment as provided for in subsection 5(h) of Appendix T in addition to the proportionate share of expenses; and
- (vi) Market value of assets at the end of the Plan Year = [subparagraphs (i) + (ii) + (iii) - (iv) - (v)]. The annual accounting shall commence as of June 1, 2006 with the Contract Service Assets priced as of May 31, 2006, and as provided in the Pricing Procedures, and thereafter as of the end of each Plan Year.

(b) Reporting requirements for Retained Segment.

The following reports will be submitted by UC to DOE/NNSA:

- (i) The annual actuarial valuation for the UCRP and an addendum report including such information for the Retained Segment that the DOE may reasonably request will be submitted within six months of the end of the Plan Year. At a minimum, the addendum report will include: a statement of the Actuarial Accrued Liability (Funding Target) for the Retained Segment; calculation of the Required Contribution for the subsequent Plan Year (including the Shortfall Amortization Charge and the amount necessary to meet “current obligations”); a schedule of each Shortfall Amortization Base, if any, and its date, original amount and Shortfall Amortization Installment; a demographic summary of data for the members in the Retained Segment; an itemization of the changes in the numbers of members in the Retained Segment during the Plan Year; a development of the Funding Shortfall for the Plan Year, if any; a statement of the market value of assets for the Retained Segment; an itemized cashflow for the assets of the Retained Segment; calculation of the Actuarial Value Assets; definition of pension terms used in the addendum report; a statement of actuarial assumptions and methods; a summary of UCRP provisions; and a statement of the changes, if any, in benefits, assumptions or methods since the last report.
- (ii) A copy of the Financial Accounting Standards Board Statement 87 report prepared each year to satisfy the expense-reporting requirement of the Office of Management and Budget. The report will be provided by the date requested by DOE/NNSA.



- (iii) UC shall provide a report of an annual, full-scope audit of UCRP by an outside independent auditor within seven months after the end of the Plan Year to which the audit applies.

### **Section 5 – Administration of the Retained Segment**

- (a) Any disputes that may arise under this Appendix, including its Attachment and the Exhibits thereto, are subject to the DISPUTES clause of the Contract.
- (b) The Retained Segment will remain within UCRP, consistent with the terms of the Contract.
- (c) UC will continue to provide an annual addendum report on the Retained Segment as described in subsection (4)(b). As part of that report, the Regents' actuary will calculate any Required Contribution.
- (d) Subject to subsections (e) and (f), DOE/NNSA acknowledges and agrees that the Regents are authorized and expected to administer the UCRP and its trust fund as fiduciaries of the UCRP.
- (e) Notice
  - (i) In addition to the advance notice and approval from DOE/NNSA required pursuant to subsection (5)(f), UC will notify DOE/NNSA prospectively of each change to the UCRP that could have a significant impact on current or future DOE/NNSA funding or liabilities. Changes covered by this provision include any change to a benefit, right or feature of the UCRP and any change to a funding method or assumption. A significant impact is a change that requires the approval of the Regents. DOE/NNSA will also be given prospective notice of any changes in the scope of the administration of the Retained Segment that requires a change in the administration costs of five percent or more. Changes in administration costs resulting directly from normal inflation in administration costs or pursuant to specific requests from DOE/NNSA do not require notice.
  - (ii) Prospective notice will be provided to DOE/NNSA for each change requiring prospective notice as described in this section, including any changes to non-DOE/NNSA-reimbursed segments of UCRP. For purposes of this section, prospective notice on a change that requires prior regental approval shall mean written notice, including a copy of the proposed change by the Regents as trustees of UCRP, at least thirty (30) days in advance of approval of each change to UCRP. With respect to changes in the scope of administration of the Retained Segment, prospective notice shall be included in the annual addendum report for the Retained Segment.

- (f) Any UCRP proposal that:
  - (i) is specific to the Retained Segment, or specific to the Retained Segment and any future retained segment associated with the Lawrence Livermore National Laboratory; or
  - (ii) would increase pension liabilities for the Retained Segment beyond what is approved for UCRP members generally or would have a significant and differential impact on the Retained Segment than on the UCRP generally; or
  - (iii) changes an asset allocation or adopts actuarial assumptions or methods for the Retained Segment differently than for UCRP members generally; or
  - (iv) involves ad hoc adjustments to the benefits of Retained Members or Beneficiaries, even if proposed for all UCRP members and beneficiaries

is subject to approval in advance by the DOE/NNSA Contracting Officer, which approval for subsections (i)-(iii) will not be unreasonably withheld. In addition, the DOE/NNSA Contracting Officer shall not withhold approval for changes under subsections (ii) and (iii) above resulting from a court order requiring or directing UC to make such change. DOE/NNSA shall make a good faith effort to respond to a request by UC under this section within 90 days after receipt of such request.

- (g) The provisions of Clause H.008 (b) (1)-(5) and (b)(8) and (d) are replaced by section 4 and subsections (5) (e) and (f) of this Appendix T.
- (h) Subject to the other provisions of this Contract, including the cost principles contained in this Contract, the reasonable costs of planning for and implementing the division of assets between UCRP and the LANS Plan, and administering the Retained Segment will be reimbursed to UC through a charge to the Retained Segment to the extent legally permissible; provided, however, that any losses or penalties which cannot be charged to the Retained Segment and which DOE/NNSA is required to reimburse UC pursuant to the Asset Transfer Agreement, Clause (b) (6), will be separately invoiced.
- (i) As the size of the Retained Segment begins to significantly decline, if requested by DOE/NNSA and legally permissible, the Retained Segment will be spun off from UCRP to be terminated after the death of the last Retained Member or Beneficiary. An amount equivalent to any Contract Service Assets remaining after satisfaction of all liabilities and obligations of the Retained Segment, less costs of liquidation, plus interest at the then-current rate established for a one-year Treasury bill as published by the Federal Reserve calculated

from the date of plan termination to the payment date, will be paid to DOE/NNSA or as directed by DOE/NNSA, if approved by the Internal Revenue Service.

IN WITNESS WHEREOF, the Parties have executed this Appendix T as of the date(s) indicated below.

DEPARTMENT OF ENERGY/NATIONAL NUCLEAR SECURITY ADMINISTRATION

By: \_\_\_\_\_  
David O. Boyd

Title: Director  
Office of Acquisition and Supply Management

Date: \_\_\_\_\_

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

By: \_\_\_\_\_  
Judith W. Boyette

Title: Associate Vice President  
Human Resources and Benefits

Date: \_\_\_\_\_

Attachment:

“Agreement Between the Department of Energy/National Nuclear Security Administration and the Regents of the University of California Concerning the Transfer of Assets and Liabilities From the University of California Retirement Plan to the Los Alamos National Security LLC Defined Benefit Pension Plan” (Attachment 1)(Asset Transfer Agreement), with the following exhibits:

- (i) June 1, 2006, Los Alamos National Laboratory Special Interim Addendum Report (Exhibit 1)(Actuarial Valuation).
- (ii) Proposed Approach for Asset Allocation for Transfer to the LANS Plan (Exhibit 2)(Asset Allocation).

(iii) Pricing Procedures for Asset Classes Held in the UCRP (Exhibit 3)(Pricing Procedures).

(iv) Estimated Asset Transfer Amount (Exhibit 4)(Estimation).

**Attachment 1 to Appendix T**

**AGREEMENT BETWEEN  
THE DEPARTMENT OF ENERGY/NATIONAL NUCLEAR SECURITY  
ADMINISTRATION AND  
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA  
CONCERNING  
THE TRANSFER OF ASSETS AND LIABILITIES  
FROM THE UNIVERSITY OF CALIFORNIA RETIREMENT PLAN  
TO THE LANS DEFINED BENEFIT PENSION PLAN**

(a) **General.**

- (1) The “Parties” means the Department of Energy, through the National Nuclear Security Administration (DOE/NNSA), and the Regents of the University of California (UC).
- (2) The “Asset Transfer Agreement” means this Agreement between the Department of Energy/National Nuclear Security Administration and the Regents of the University of California concerning the Transfer of Assets and Liabilities from the University of California Retirement Plan to the LANS Defined Benefit Pension Plan.
- (3) Pursuant to Clause H.008 of the Contract, the assets and liabilities associated with the Los Alamos National Laboratory Segment (LANL Segment) of the University of California Retirement Plan (UCRP) have been accounted for separately each year by the Regents’ actuary since the early 1990s at the request of DOE/NNSA.
- (4) During the transition to management of Los Alamos National Laboratory (LANL) by Los Alamos National Security, LLC (LANS), employees of UC at LANL on May 31, 2006, who were either active, or rehired and reinstated as members of the UCRP could elect to participate in the LANS Defined Benefit Pension Plan (LANS Plan) so that benefit liabilities under the UCRP attributable to service prior to June 1, 2006, would be transferred from the UCRP to the LANS Plan effective June 1, 2006. Such individuals are collectively referred to as “Transferring Employees.” The benefit liabilities transferred exclude any liabilities for Capital Accumulation Provision (CAP) accounts. The benefit liabilities transferred also exclude liabilities for benefits assigned by a qualified domestic relations order (QDRO) to a former spouse of an employee who elected to participate in the LANS Plan if the former spouse elected on or before June 30, 2007, pursuant to procedures established by LANS and UC, to retain his or her interest in UCRP. Collectively the excluded liabilities for CAP accounts and for alternate payees under QDROs who

themselves elect to retain their interest in the UCRP shall be referred to as "Excluded Liabilities."

- (5) Under the terms of the LANS Plan, as adopted by LANS on September 13, 2006, Transferring Employees began accruing benefits under the terms of the LANS Plan starting June 1, 2006. As provided in the LANS Plan, these individuals are also eligible to receive benefits under the LANS Plan attributable to service credited under the UCRP for employment prior to June 1, 2006, based upon the benefit provisions, payment options, and other terms of the LANS Plan. Transferring Employees waived any rights they might have had to benefits under the UCRP, except the Excluded Liabilities, which remain payable from the UCRP.
- (6) The definitions set forth in Section 2 of Appendix T are applicable to this Asset Transfer Agreement, except as may be specifically provided in this Asset Transfer Agreement.

(b) **For and in consideration of the mutual understandings expressed herein, DOE/NNSA agrees and represents as follows:**

- (1) The date of the transfer of assets and liabilities pursuant to this Asset Transfer Agreement from the UCRP to the LANS Plan will be on or about April 2, 2007 (Asset Transfer Date), provided that DOE/NNSA provides UC with executed copies of this Asset Transfer Agreement and the agreement set forth in Appendix T to the Contract between UC and DOE/NNSA to define DOE/NNSA's ongoing obligation to reimburse UC for contributions to the UCRP attributable to the Retained Segment no later than March 26, 2007.
- (2) DOE/NNSA will work with the Internal Revenue Service (IRS) to facilitate regulatory approval for the transfer of assets and liabilities described below from the UCRP to the LANS Plan.
- (3) DOE/NNSA will provide UC with the following –
  - (i) As agreed to by LANS, a copy of the application submitted by LANS on January 31, 2007, to the IRS for a Favorable Determination Letter that the LANS Plan satisfies the requirements of Section 401(a) of the Internal Revenue Code of 1986 (Code), including the requirements of the Economic Growth and Tax Relief Reconciliation Act (EGTRRA) and all other applicable requirements, including those documented in the Cumulative List in Notice 2005-101. In that application, LANS also requested a determination that the LANS Plan's associated trust is tax-qualified within the meaning of Code section 501(a).

- (ii) LANS' agreement to make any modifications requested by the IRS as required to obtain a Favorable Determination as to the qualified status of the LANS Plan, and an opinion provided by LANS to DOE/NNSA from counsel for LANS that the LANS Plan is qualified under Section 401(a) of the Internal Revenue Code (Code) as to form, that its trust is exempt from taxation under Section 501(a) of the Code.
- (iii) LANS' agreement to return the Asset Transfer Amount (as defined in clause (d)(2) below) and the remaining liabilities for service under the UCRP prior to June 1, 2006, to the UCRP to the extent legally permissible (a) if LANS is unable to obtain a Favorable Determination from the IRS on the form of the LANS Plan; (b) if LANS, with the facilitation of DOE/NNSA, as described above, is unable to obtain IRS approval for the asset and liability transfer to the LANS Plan; or (c) if so ordered by a court of competent jurisdiction. To the extent legally permissible, such agreement will provide that:
  - A. The assets so returned to the UCRP shall be the Asset Transfer Amount adjusted by benefit distributions from the LANS Plan attributable to service credit earned prior to June 1, 2006, to the extent transferred to the LANS Plan, and an allocable share of the investment return and expenses incurred during the period from the Asset Transfer Date to the date the assets are returned to the UCRP.
  - B. The allocable share of expenses to be offset against the assets returned to UCRP shall be an amount equal to the administrative expenses, excluding investment expenses, incurred during the period from the Asset Transfer Date to the date the assets are returned to the UCRP, multiplied by the ratio of the liability of the Transferring Employees to the total liability of the LANS Plan on the Asset Transfer Date.
  - C. Solely for the purpose of calculating the ratio in B. above, the liability shall be based on the current liability under Code section 412(l) using the LANS Plan assumptions for current liability for the LANS plan year containing the Asset Transfer Date.
  - D. The allocable share of the investment return added to (or subtracted from) the assets returned to UCRP shall be determined in accordance with applicable fiduciary duties by applying the total rate of investment return, net of investment expenses, of the LANS Plan (during the period from the Asset Transfer Date to the date

the assets are so returned to the UCRP) to the Asset Transfer Amount adjusted by benefit distributions attributable to service credit earned prior to June 1, 2006 and the allocable share of expenses determined above.

E. The liabilities so returned to the UCRP shall be adjusted by benefit distributions attributable to service credit earned prior to June 1, 2006, to the extent of the liabilities transferred to the LANS Plan and the obligations incurred by LANS on behalf of members of the LANS Plan under the LANS Defined Benefit Eligible Survivor Income Program and the LANS Defined Benefit Eligible Disability Program.

- (iv) LANS' agreement to cooperate with DOE/NNSA and UC in finalizing the data and reconciliations to support any adjustments in the amount of assets transferred from the UCRP to the LANS Plan that may be necessary after the Asset Transfer Date and to assume full responsibility for payment of premiums to the Pension Benefit Guaranty Corporation for the LANS Plan and the LANS Plan's compliance with the requirements of the Code.
  - (v) LANS' agreement that it has been given an adequate opportunity to review the proposed allocation of assets to be transferred from the UCRP to the LANS Plan, that it agrees that the valuation approach to be used with respect to the assets transferred is reasonable, and that it agrees to direct the trustee of the LANS Plan to accept the Asset Transfer Amount into the LANS Plan as of the Asset Transfer Date.
  - (vi) LANS' agreement that it will maintain the special schedule (or the data necessary to create the special schedule) as required by Code section 414(l), and that it will file IRS Form 5310-A to this effect for the merger of the assets and liabilities into the LANS Plan.
  - (vii) LANS' agreement that, upon transfer of the Asset Transfer Amount from the UCRP to the LANS Plan in accordance with this Asset Transfer Agreement, all liabilities of the UCRP, UC and the Regents for the benefits under the UCRP attributable to service prior to June 1, 2006, associated with the Transferring Employees – with the exception of Excluded Liabilities retained in the UCRP – will be extinguished.
- (4) Based upon representations made by UC and its actuaries as set forth in subparagraph (c) of this Asset Transfer Agreement, DOE/NNSA accepts that the difference between the Contract Service Assets for the LANL Segment (priced as of May 31, 2006 as provided in the Pricing



Procedures, Exhibit 3, to this Attachment) (\$4,448,574,090) as provided in the Actuarial Valuation (Exhibit 1) and the value as of May 31, 2006, of the liabilities retained in the Retained Segment (\$3,169,811,239) as provided in the Actuarial Valuation was \$1,278,762,851 (Formula Amount).

- (5) DOE/NNSA agrees that upon transfer of the Asset Transfer Amount from the UCRP to the LANS Plan and subject to any adjustments made pursuant to the terms of subparagraphs (d)(3) and (4) of this Asset Transfer Agreement, UC will have satisfied its responsibilities to transfer assets and liabilities from the UCRP to the LANS Plan pursuant to clause H.008 paragraph (f).
  - (6) The costs, expenses, losses and penalties that the UCRP or UC reasonably incurs, as a direct result of the transfer of assets and liabilities from the UCRP to the LANS Plan as provided for in this Asset Transfer Agreement, including transaction costs associated with rebalancing the investments in the UCRP, will be assessed as costs of the Retained Segment to the extent permissible or, if not, separately invoiced. "Costs" for these purposes do not include losses on the value of assets sold in the rebalancing of investments. "Penalties" for these purposes are limited to those assessed to the UCRP, UC or one or more of the fiduciaries of the UCRP as a direct result of performing those acts in conformance with the terms of this Asset Transfer Agreement.
  - (7) If LANS returns the Asset Transfer Amount pursuant to the LANS agreement described in subparagraph (b)(3)(iii) of this Asset Transfer Agreement, and the rate of return on investments in the LANS Plan is less than the rate of return on investments in the UCRP for the period beginning on the Asset Transfer Date and ending on the date assets are returned to the UCRP, an amount equal to the excess of the UCRP rate of return over the LANS Plan rate of return times the Asset Transfer Amount will be treated as a reimbursable cost to the extent that if, after taking into account the assets and the liabilities returning to the Retained Segment, such transfer would leave the Retained Segment with a Funding Shortfall.
- (c) **For and in consideration of the mutual understandings expressed herein, UC agrees and represents as follows:**
- (1) UC submitted an application to the IRS on June 17, 1999, for a Favorable Determination Letter that the UCRP, as amended, continues to satisfy the requirements of Code section 401(a). The request has been held at the National Office of the IRS pending resolution of certain issues concerning cash balance plans. UC recently received notification that its request is now being considered and UC is committed to maintaining the tax-

qualified status of the UCRP. A Favorable Determination Letter from the IRS was previously issued on the UCRP in 1997.

- (2) UC will make any amendments to the UCRP necessary to obtain a Favorable Determination Letter from the IRS. Prior to the execution of this Asset Transfer Agreement, UC will provide an opinion from counsel for UC that the UCRP as amended for General Agreements on Tariffs and Trade, Uniformed Services Employment and Reemployment Rights of 1994, Small Business Job Protection Act, The Taxpayer Relief Act of 1997 (GUST) changes and as may be requested by the IRS is qualified under Section 401(a) of the Code as to form, its trust is exempt from taxation under Section 501(a) of the Code, and UC will make any amendments requested by the IRS as required to obtain a determination that the form of the UCRP continues to satisfy the requirements of Code section 401(a).
- (3) In accordance with clause H.008 paragraph (f)(2)(i) as modified by subparagraph (d)(1)(ii) of this Asset Transfer Agreement, UC has determined that, priced as of May 31, 2006, as provided in the Pricing Procedures, the total market value of the assets allocated to the LANL Segment was \$4,448,574,090 on May 31, 2006.
- (4) In accordance with clause H.008 paragraph (f)(2)(i), UC has determined that, as of midnight Pacific time on May 31, 2006, the liabilities associated with the LANL Segment for benefits under the UCRP attributable to service at LANL prior to June 1, 2006, that are retained in the LANL Segment, including the Excluded Liabilities, were \$3,169,811,239.
- (5) In accordance with clauses H.008 paragraphs (f)(2) and (3) as modified by subparagraph (d)(1)(ii) of this Asset Transfer Agreement, UC has determined that, priced as of May 31, 2006, and as provided in the Pricing Procedures, the difference between the Contract Service Assets of the LANL Segment as reflected in the Actuarial Valuation and the value of the liabilities of the Retained Segment as reflected in the Actuarial Valuation was \$1,278,762,851 (Formula Amount).
- (6) UC represents that the Asset Transfer Amount will be calculated and determined as provided in subparagraph (d)(2) of this Asset Transfer Agreement.
- (7) UC agrees that, upon the transfer to the LANS Plan of the Asset Transfer Amount and the liabilities under the UCRP associated with the benefits of the Transferring Employees, the liabilities under the UCRP associated with the benefits of such individuals (with the exception of the Excluded Liabilities retained in the UCRP) and the liabilities and responsibilities of DOE/NNSA for reimbursement of such liabilities under the UCRP will be

extinguished except to the extent that such liabilities may be returned to the UCRP as described in subparagraph (b)(3)(iii) above.

- (8) Prior to the Asset Transfer Date, UC's enrolled actuaries will certify that, although the UCRP is not subject to the requirements of Code sections 401(a)(12) and 414(l) because the UCRP is a governmental plan as defined in Code section 414(d), if Code section 414(l) did apply to the spin off of assets and liabilities from the UCRP to the LANS Plan, the transfer of the Asset Transfer Amount as defined in subparagraph (d)(2) would comply with Code section 414(l) regarding the minimum level of assets to be transferred to the LANS Plan to cover the liabilities transferred and that UC will submit an IRS Form 5310-A to that effect for the spin off of assets and liabilities from the UCRP.
- (9) In accordance with Clause H.008, paragraph (f) and upon UC's receipt of the documents and representations set out in subparagraph (b) of this Asset Transfer Agreement, UC agrees to transfer the Asset Transfer Amount from the UCRP to the LANS Plan as of a date no later than the Asset Transfer Date; provided, however, that the transfer will be accomplished with an allocation of cash and an allocation of securities mutually agreed upon by the DOE/NNSA, LANS, and UC as set forth in Exhibit 2 attached to and made a part of this Asset Transfer Agreement.
- (10) UC will cooperate with DOE/NNSA and LANS to determine and reconcile the Final Transfer Amount and the final liability transfer amount from the UCRP to the LANS Plan in accordance with the terms of this Asset Transfer Agreement and applicable law. UC further agrees to cooperate with DOE/NNSA and LANS in finalizing the data and reconciliation to support any adjustments in the amount of assets and liabilities transferred from the UCRP to the LANS Plan that may be necessary after the Asset Transfer Date.
- (11) UC hereby agrees to provide data, documentation, and records reasonably requested for and on behalf of the LANS Plan for the proper establishment, maintenance and administration of the LANS Plan.
- (12) UC hereby agrees that, if – in accordance with paragraph (b)(3)(iii) of this Asset Transfer Agreement – LANS returns the Asset Transfer Amount (as adjusted pursuant to paragraphs (b)(3)(iii) and (d)(3) of this Asset Transfer Agreement) and the remaining liabilities for service under the UCRP prior to June 1, 2006, to the UCRP, the UCRP will accept those assets and liabilities to the extent legally permissible.

(d) **For and in consideration of the mutual understandings expressed herein, UC and DOE/NNSA agree as follows:**

(1) Formula Amount

- (i) The Parties are mutually relying upon obtaining approval from the IRS for the Formula Amount.
- (ii) The Formula Amount (\$1,278,762,851) was determined based upon the Actuarial Valuation as of May 31, 2006, the effective date of disaffiliation, instead of the last business day of the calendar quarter which ended coincident with, or next preceding, the effective date of disaffiliation as had been provided in Clause H.008 Paragraph (f)(2) of the Contract.

(2) Asset Transfer Amount

The Asset Transfer Amount is the Formula Amount adjusted to the Asset Transfer Date to reflect the following factors occurring during the period beginning June 1, 2006, and ending on or near the Asset Transfer Date: the portion of the total return earned by the UCRP portfolio allocable to the Formula Amount of the LANL Segment; administrative expenses allocable to the Formula Amount of the LANL Segment; buybacks for the UCRP service credit attributable to the Formula Amount of the UCRP benefits of Transferring Employees (apart from the CAP accounts); and any interim distributions agreed to by DOE/NNSA from the UCRP made to the LANS Plan and/or to LANS Plan members or their beneficiaries or alternate payees pursuant to a QDRO. See Exhibit 4 estimating the Asset Transfer Amount, based upon preliminary accounting through February 28, 2007, to be modified on or about April 15, 2007, upon determination of the actual value at the Asset Transfer Date. Any losses or penalties that cannot be charged to the Retained Segment and which DOE/NNSA is required to reimburse UC pursuant to this Asset Transfer Agreement or Appendix T will be separately invoiced.

(3) Final Transfer Amount

UC and DOE/NNSA acknowledge and agree that the Asset Transfer Amount transferred on the Asset Transfer Date may need to be subsequently adjusted to reflect – with respect to certain assets – final earnings figures and other final performance numbers that may be received by UC after the Asset Transfer Date, other investment-related adjustments and any data corrections related to the calculations supporting the Asset Transfer Amount but not available on the Asset Transfer Date as well as to make any adjustments necessary to obtain appropriate regulatory approval. Any additional transfers of assets between the UCRP

and the LANS Plan as may be needed to make such adjustments will be made as soon as practicable following the Asset Transfer Date.

(4) Corrections

The Parties agree that UC will provide prompt notice of any errors or omissions in data used to calculate the Asset Transfer Amount discovered after the Asset Transfer Date that would have had an effect on the Asset Transfer Amount had such error or omission been recognized prior to the Asset Transfer Date. The Parties shall determine how to correct the error or omission with as minimum an administrative burden on the Parties as possible.

(5) Third Party Beneficiaries

This Attachment, including its Exhibits, is for the exclusive benefit and convenience of the Parties hereto. Nothing contained herein shall be construed as granting, vesting, creating or conferring any right of action or any other right or benefit upon past, present or future employees of the Contractor, upon any participants or beneficiaries of the UCRP, as amended from time to time, or upon any other third party.

Notwithstanding the foregoing and Section 1(d) of Appendix T, LANS may rely on the representations made by UC in subparagraph (c) of this Asset Transfer Agreement provided that LANS has entered into an

enforceable agreement with the DOE/NNSA providing that UC may rely on the representations provided by LANS described in subparagraphs (b)(3) of this Asset Transfer Agreement.

IN WITNESS WHEREOF, the Parties have executed this Asset Transfer Agreement as of the date(s) indicated below.

DEPARTMENT OF ENERGY/NATIONAL NUCLEAR SECURITY  
ADMINISTRATION

By: \_\_\_\_\_  
David O. Boyd

Title: Director  
Office of Acquisition and Supply Management

Date: \_\_\_\_\_

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA,  
FOR THE UNIVERSITY OF CALIFORNIA

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Exhibits:

- (i) June 1, 2006, Los Alamos National Laboratory Special Interim Addendum Report (Exhibit 1)(Actuarial Valuation).
- (ii) Proposed Approach for Asset Allocation (Exhibit 2) for Transfer to the LANS Plan (Exhibit 2)(Asset Allocation).
- (iii) Pricing Procedures for Asset Classes Held in the UCRP (Exhibit 3)(Pricing Procedures).
- (iv) Estimated Asset Transfer Amount (Exhibit 4)(Estimation).