

# STOEL RIVES LLP

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October 28, 1996

RICHARD D. BACH  
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Mr. Marvin M. Mendonca  
Senior Project Manager  
Non-Power Reactors and Decommissioning  
Project Directorate  
Division of Reactor Program Management  
Office of Nuclear Reactor Regulation  
Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

**Re: Your Docket No. 50-288: Financial Assurance for  
Decommissioning--Reed College Facility License No. R112**

Dear Mr. Mendonca:

Mr. Edwin McFarlane of Reed College has asked us to contact you with respect to financial assurances for the decommissioning of the captioned research reactor.

Reed College has elected to provide a letter of credit for such purposes, and has arranged with Wells Fargo Bank, N.A. (successor to First Interstate Bank) for the letter of credit and the standby trust.

Enclosed are drafts of the letter of credit and the standby trust agreement which we propose to use in this matter. These forms are acceptable to both the Bank and the College; and with one exception they follow the format set forth in your Regulatory Guide 1.159, covering Part 50 Licensees.

The one change, which we submit at the request of Wells Fargo Bank, is in the second sentence of the third paragraph of the letter of credit. The Bank has expressed concern that it might be unable to determine with any certainty that the College had in fact been "unable to secure alternate financial assurance to replace the letter of credit." Accordingly, the Bank would prefer to allow NRC to draw upon the letter of credit upon the happening of the specific event--i.e., notice of nonrenewal--without being required to make

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the subjective determination that Reed College had been unable to secure alternate financial assurance.

If these documents, with the change we have proposed, are acceptable to NRC, please let me know and we will have Reed College proceed to obtain the letter of credit.

Please feel free to call me if you have any questions, comments or suggestions with respect to the foregoing. Thank you for your consideration and cooperation.

Very truly yours,



Richard D. Bach

RDB:tw

Enclosures

cc (w/enclosures): Mr. Edwin O. McFarlane - Reed College  
Mr. Doug Gaslin - Wells Fargo

**DRAFT**

WELLS FARGO BANK, N.A.  
525 MARKET STREET, 25TH FLOOR  
SAN FRANCISCO, CA 94105

**IRREVOCABLE STANDBY LETTER OF CREDIT**

DATE OF ISSUE: \_\_\_\_\_

OUR IRREVOCABLE STANDBY CREDIT:

[NO. \_\_\_\_\_]

DATE OF EXPIRY: \_\_\_\_\_

PLACE OF EXPIRY: \_\_\_\_\_

APPLICANT:

Reed College  
3203 SE Woodstock Boulevard  
Portland, OR 97202

BENEFICIARY:

U.S. Nuclear Regulatory Commission  
Washington, DC 20555  
Attn: Non Power Reactors &  
Decommissioning Directorate

AMOUNT: Up to USD500,000.00  
Up to Five Hundred Thousand and  
00/100 US Dollars

We hereby establish our Standby Letter of Credit No. \_\_\_\_\_ in your favor, at the request and for the account of Reed College, 3203 SE Woodstock Boulevard, Portland, Oregon 97202, up to the aggregate amount of Five Hundred Thousand U.S. Dollars (\$500,000), available upon presentation of:

- (1) your sight draft, bearing reference to this Letter of Credit No. \_\_\_\_\_, and
- (2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of the U.S. Nuclear Regulatory Commission."

This letter of credit is issued in accordance with regulations issued under the authority of the U.S. Nuclear Regulatory Commission (NRC), an agency of the U.S. Government, pursuant to the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974. The NRC has promulgated regulations in Title 10, Chapter I of the Code of Federal Regulations, Part 50, which require that the holder of a license issued under 10 CFR Part 50 provide assurance that funds will be available when needed for decommissioning.

This letter of credit is effective as of \_\_\_\_\_ and shall expire on \_\_\_\_\_, but such expiration date shall be automatically extended for a period of one year on said expiration date and on each successive expiration date, unless, at least 90 days before the current expiration date, we notify both you and Reed College, as shown on the signed return

receipts. Upon receipt of such notification of non-renewal of this letter of credit, the NRC may draw upon the full value of this letter of credit prior to cancellation. We shall give immediate notice to Reed College and the NRC of any notice received or action filed alleging (1) the insolvency or bankruptcy of this Bank or (2) any violations of regulatory requirements that could result in suspension or revocation of this Bank's charter or license to do business. We also shall give immediate notice if we, for any reason, become unable to fulfill our obligations under this letter of credit.

Whenever this letter of credit is drawn on under and in compliance with the terms of this letter of credit, we shall duly honor such draft upon its presentation to us within 30 days, and we shall deposit the amount of the draft directly into the Standby Trust Fund of Reed College in accordance with your instructions.

Each draft must bear on its face the clause: "Drawn under Letter of Credit No. \_\_\_\_\_, dated \_\_\_\_\_, and the total of this draft and all other drafts previously drawn under this letter of credit does not exceed \$500,000.

Except as otherwise provided herein, this credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce publication No. 500, and engages us in accordance therewith.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 1996.

WELLS FARGO BANK, N.A.

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

## STANDBY TRUST AGREEMENT

THIS STANDBY TRUST AGREEMENT is entered into as of \_\_\_\_\_, by and between Reed College, an Oregon not for profit corporation, hereinafter referred to as the "Grantor," and Wells Fargo Bank, N.A., 1300 SW Fifth Avenue, Portland, Oregon 97208-3131, the "Trustee."

WHEREAS, the U.S. Nuclear Regulatory Commission (NRC), an agency of the U.S. Government, pursuant to the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, has promulgated regulations in Title 10, Chapter I of the Code of Federal Regulations, Part 50. These regulations, applicable to the Grantor, require that a holder of a Part 50 license provide assurance that funds will be available when needed for required decommissioning activities;

WHEREAS, the Grantor has elected to use a letter of credit to provide all of such financial assurance for the facilities identified herein;

WHEREAS, when payment is made under such letter of credit, this standby trust shall be used for the receipt of such payment; and

WHEREAS, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this Agreement, and the Trustee is willing to act as trustee,

NOW, THEREFORE, the Grantor and the Trustee agree as follows:

### Section 1. Definitions. As used in this Agreement:

- (a) The term "Grantor" means the NRC licensee who enters into this Agreement and any successors or assigns of the Grantor.
- (b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Costs of Decommissioning. This Agreement pertains to the costs of decommissioning the Facility identified in License Number R-112 issued pursuant to 10 CFR Part 50.

Section 3. Establishment of Fund. The Grantor and Trustee hereby establish a standby trust fund (the Fund) for the benefit of the NRC. The Grantor and the Trustee intend that no third party shall have access to the Fund except as provided herein.

Section 4. Payments Constituting the Fund. Payments made to the Trustee for the Fund shall consist of cash, securities, or other liquid assets acceptable to the Trustee. Such

property transferred to the Trustee are referred to as the "Fund," together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided.

Section 5. Payment for Required Activities Specified in the Plan. The Trustee shall make payments from the Fund to the Grantor or to a decommissioning contractor of the Grantor as the Grantor may designate upon presentation to the Trustee of the following:

- a. A certificate duly executed by the Vice President/Treasurer of the Grantor attesting to the occurrence of the events, and in the form set forth in the attached Specimen Certificate of Events, and
- b. A certificate attesting to the following conditions:
  - (1) that decommissioning is proceeding pursuant to an NRC-approved plan, and
  - (2) that the funds withdrawn will be expended for activities undertaken pursuant to that Plan.

In the event of the Grantor's default or inability to direct decommissioning activities, the Trustee shall: (1) make payments from the Fund as the NRC shall direct, in writing, to provide for the payment of the costs of required activities covered by this Agreement; (2) make disbursements to the Grantor or other persons as specified by the NRC from the Fund for expenditures for required activities in such amounts as the NRC shall direct in writing; and (3) refund to the Grantor such amounts remaining after the license has been terminated or as the NRC specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 6. Trust Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge its duties with respect to the Fund in the best interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

- (a) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended (15 U.S.C. 80A-2(a)), shall not be acquired or held,



unless they are securities or other obligations of the Federal or a State government; and

- (b) For a reasonable time, not to exceed three (3) business days, the Trustee is authorized to hold uninvested cash, awaiting investment or distribution, without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

- (a) To transfer from time to time any or all of the assets of the fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and
- (b) To purchase shares in any investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80A-1 et seq.), including one that may be created, managed, underwritten, or to which investment advice is rendered, or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

- (a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale, as necessary for prudent management of the Fund;
- (b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- (c) To register any securities held in the Fund in its own name, or in the name of a nominee, and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, to reinvest interest and dividends payments and funds from matured and redeemed instruments, to file proper forms concerning securities held in the Fund in a timely fashion with appropriate government agencies, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee or such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the

- U.S. Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;
- (d) To deposit any cash in the Fund in interest-bearing accounts maintained or saving certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee; and
- (e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund may be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee may be paid from the Fund.

Section 10. Annual Valuation. After payment has been made into this standby trust fund, the Trustee shall quarterly furnish to the Grantor a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value within a reasonable time of such statement. The failure of the Grantor to object in writing to the Trustee within 30 days after the statement has been furnished to the Grantor shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to the matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting on the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. Upon 30 days notice to the Grantor, the Trustee may resign; upon 30 days notice to the Trustee, the Grantor may replace the Trustee; but such resignation or replacement shall not be effective until the Grantor has either appointed a successor Trustee and this successor accepts the appointment or implements another financial assurance mechanism specified in Title 10, Chapter I, Code of Federal Regulations, Section 50.75(e). The successor Trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor Trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor Trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor Trustee or for instructions. The successor Trustee shall



specify the date on which it assumes administration of the trust in a writing sent to the Grantor and the present Trustee by certified mail 10 business days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are signatories to this Standby Trust Agreement or such other designees as the Grantor may designate in writing. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. If the NRC issues orders, requests, or instructions to the Trustee in the event of Grantor default, these shall be in writing, signed by the NRC or its designee, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the NRC hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the NRC, except as provided for herein.

Section 15. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee and, if applicable, the NRC, or by the Trustee and the NRC if the Grantor ceases to exist.

Section 16. Termination. This Standby Trust Agreement shall continue until terminated at the written agreement of the Grantor, the Trustee and, if applicable, the NRC, or by the Trustee and the NRC if the grantor ceases to exist. Upon termination of the trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor or its successor, or transferred to another financial assurance mechanism specified in 10 CFR 50.75(3), as appropriate.

Section 17. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this trust, or in carrying out any directions by the Grantor or the NRC, issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the trust fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 18. This Agreement shall be administered, construed, and enforced according to the laws of the State of Oregon.

Section 19. Interpretation and Severability. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal

efficacy of this Agreement. If any part of this Agreement is invalid, it shall not affect the remaining provisions which will remain valid and enforceable.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by the respective officers duly authorized and the incorporate seals to be hereunto affixed and attested as of the date first written above.

ATTEST:

REED COLLEGE

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

ATTEST:

WELLS FARGO BANK, N.A.

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

#### ACKNOWLEDGMENT

STATE OF OREGON                   )  
  )  
COUNTY OF MULTNOMAH        )

On this \_\_\_\_\_ day of \_\_\_\_\_, before me, a notary public in and for the State aforesaid, personally appeared \_\_\_\_\_, and she/he did depose and say that she/he is a Vice President of Wells Fargo Bank, N.A., Trustee, which executed the above instrument, that she/he knows the seal of said association; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the association; and that she/he signed her/his name thereto by like order.

\_\_\_\_\_  
[Signature of Notary Public]

My commission expires: \_\_\_\_\_  
[Date]