

SECTION J
APPENDIX D
**SPECIAL ACCOUNT AGREEMENT FOR USE WITH THE
CHECKS-PAID METHOD OF LETTER-OF-CREDIT FINANCING**

Agreement entered into this, _____ day of _____, 19____, between the UNITED STATES OF AMERICA, represented by the Department of Energy (hereinafter referred to as "DOE"), and _____, a corporation/legal entity existing under the laws of the State of _____ (hereinafter referred to as the Contractor) and _____, a financial institution corporation existing under the laws of the State of _____, located at _____ (hereinafter referred to as the Institution).

Recitals

- (1) On the effective date of _____, 19____, DOE and the Contractor entered into Agreement(s) No. _____, or a Supplemental Agreement(s) thereto, providing for an advance of funds by a letter of credit. Copy of such advance provisions has been furnished to the Institution.
- (2) DOE requires that amounts advanced to the Contractor thereunder be deposited in a special demand deposit account at a financial institution covered by Department of the Treasury-approved Government deposit insurance organizations that are identified in I TFM 6-9000 (see Fig. IX-10).

These special demand deposits must be kept separate from the Contractor's general or other funds and the parties are agreeable to so depositing said amounts with the Institution.

- (3) The special demand deposit account shall be designated [name of Contractor], [account title] Account."

Covenants

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

- (1) The Government shall have a title to the credit balance in said account to secure the repayment of all advance payments made to the Contractor, and said title shall be superior to any lien, title or claim of the Institution with respect to such accounts.
- (2) The Institution shall be bound by the provisions of said Agreement(s) between DOE and the Contractor relating to the deposit and withdrawal of funds in the above special demand deposit account, which are hereby incorporated into this Agreement by reference, but the

Institution shall not be responsible for the application of funds withdrawn from said account. After receipt by the Institution directions from DOE, the Institution shall act thereon and shall be under no liability to any party hereto for any action taken in accordance with the said written directions. Any written directions received by the Institution from the Government upon DOE stationery and purporting to be signed by, or signed at the written direction of, the Government may insofar as the rights, duties, and liabilities of the Institution are concerned, be considered as having been properly issued and filed with the Institution by DOE.

- (3) DOE, or its authorized representatives, shall have access to the books and records maintained by the Institution with respect to such special demand deposit account at all reasonable times and for all reasonable purposes, including, but without limitation to, the inspection or copying of such books and records and any or all memoranda, checks, correspondence, or documents pertaining thereto. Such books and records shall be preserved by the institution for a period of 6 years after the final payment under the Agreement.
- (4) In the event of the service of any writ of attachment, levy of execution, or commencement of garnishment proceedings with respect to the special demand deposit account, the Institution shall promptly notify DOE at-

[Name of office]
[Street address]
[City]
[State and ZIP Code]

- (5) DOE shall issue a letter of credit that is irrevocable to the extent that obligations have been incurred in good faith thereunder by the Contractor to the Institution for the benefit of the special demand deposit account. The Institution agrees to honor upon presentation for payment all checks issued by the Contractor and to restrict all Letter of Credit withdrawals to an amount sufficient to maintain the account balance as close to zero as administratively possible each day.

If documentation furnished by the Institution demonstrates that this withdrawal procedure would be inequitable to DOE or to the Institution, Covenant 5 may be modified upon agreement of all parties concerned. The Institution shall comply with the provisions contained in I TFM 6-2000, which states that payment vouchers (TFS form 5401) ordinarily should not be drawn more frequently than daily or for amounts less than \$5,000, and in no case should they be drawn for more than \$5,000,000 unless so stated in the Letter of Credit. In the event that the balance remaining in the letter of credit limitation is not sufficient to cover the checks presented, the Department of the Treasury will, at the specific authorization of DOE, instruct the Federal Reserve Bank to immediately wire a transfer of funds from the Department of the Treasury account to the Institution's account, for the benefit of the Contractor's Special Demand Deposit Account, in an amount sufficient to cover the check presented in excess of the available Letter of Credit balance.

The Institution agrees to service the account in this manner based on the requirements and specifications contained in the DOE solicitation No. ____, dated ____, 19__, in consideration of the placement by DOE of a non-interest-bearing time deposit with the Institution in an amount agreed upon as shown on the form ACalculation of Time Account Balance Required@contained in the Institution's bid dated ____, 19__. The Institution agrees that per item costs, detailed in the form ASchedule of Bank Processing Charges,@ contained in the Institution's aforesaid bid will remain constant during the term of this Agreement. The Contractor shall withdraw \$____ in funds from the special demand deposit account and use such funds to make a non-interest-bearing time deposit in a separate account in the Institution. This account will hereinafter be defined as the time deposit account. The funds in the time deposit account will remain on deposit and shall not be withdrawn or used for any purpose without the authorization of DOE. The amount of the deposit may be adjusted upward or downward, but only with the approval of DOE.

- (6) The Institution shall post collateral, acceptable under Department of the Treasury Department Circular 176, with the Federal Reserve Bank in an amount equal to the Federal funds deposited in all of the accounts included in this Agreement, less the Department of the Treasury-approved deposit insurance.
- (7) This Agreement, with all its provisions and covenants, shall be in effect for a term of ____ years, beginning on the ____ day of ____, 19__, and ending on the ____ day of ____, 19__.
- (8) DOE, the Contractor, or the Institution may terminate this Agreement at any time within the agreement period upon submitting written notification to the other parties 90 days prior to the desired termination date. The specific provisions for operating the account during this 90-day period are contained in Covenant 11.
- (9) DOE or the Contractor may terminate this Agreement at any time upon 30 days=notice to the Institution if DOE or the Contractor, or both parties, find that the Institution has failed to substantially perform its obligations under this Agreement or that the Institution is performing its obligations in a manner that precludes administering the program, in an effective and efficient manner.
- (10) Notwithstanding the provisions of Covenants 8 and 9, in the event that the Agreement, referenced in Recital a, between DOE and the Contractor is not renewed or is terminated, this Agreement between DOE, the Contractor, and the Institution shall be terminated automatically upon the delivery of written notice to the Institution.
- (11) In the event of termination, the Institution agrees to retain the Contractor's special demand deposit account for an additional 90-day period to allow for clearance of outstanding checks. During this 90-day period, DOE shall place on deposit in that account sufficient funds to cover all outstanding checks presented for payment. Within 7 days of the expiration of the Agreement term, an analysis of the special demand deposit account shall be made by DOE to determine whether an insufficient or excessive balance was maintained in the time deposit account to compensate the Institution for services rendered

up to the expiration date.

- (1) If the analysis indicates that the Institution has been insufficiently compensated for services rendered up to the expiration of the Agreement, the Contractor shall:
 - 1 Maintain on deposit, during this 90-day period, sufficient Federal funds to reimburse the Institution for prior cumulative loss of earnings and
 - 2 Maintain on deposit in the time deposit account sufficient Federal funds to compensate the Institution for services rendered during the 90-day period.
- (2) If the analysis indicates that the Institution has been overcompensated for services rendered up to the expiration of the Agreement, DOE shall close out the time deposit account and secure from the Institution a check in an amount equal to the net cumulative profit (profit minus compensation for services rendered during the 90-day period).
- (3) If cumulative profit is not sufficient to compensate the Institution for services rendered during the 90-day period, adjustments shall be made to the time deposit account to compensate the Institution for the difference between the cost of services rendered during the 90-day period and the cumulative profit.

During the entire 90-day period, it is further understood that:

- (1) The institution shall maintain collateral in an amount sufficient to collateralize the highest balance in the account, less Federal Deposit Insurance Corporation coverage on the accounts.
- (2) All service charges shall be consistent with the amounts reflected in this Agreement.
- (3) All terms and conditions of the aforesaid bid submitted by the Institution that are not inconsistent with this 90-day additional term shall remain in effect.
- (4) This Agreement shall continue in effect, with exception of the following:
 - 1 Letter of Credit (Covenant 5)
 - 2 The terms of this Agreement (Covenant 7)
 - 3 Termination of Agreement (Covenants 8 and 9)

The Institution has submitted the forms entitled **ATechnical Representations and Certifications,@**
ASchedule of Financial Institution Charges,@and **ACalculation of Time Account Balance**
Required.@ These forms have been accepted by the Contractor and the Government and are
incorporated herein with the document entitled **AFinancial Institution's Information on the Checks-**
Paid Letter of Credit,@as an integral part of this Agreement.

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

THE UNITED STATES OF AMERICA

By _____
(Typed Name of Contracting Officer)

WITNESS

(Signature of Contracting Officer)

(Typed Name of Witness)

(Date of Signature)

(Signature of Witness)

(Typed Name of Contractor)

Note: In the case of a corporation, a witness is not required. Type or print names under all signatures.

By _____
(Typed Name of Contractor's Representative)

(Signature of Contractor's Representative)

(Title)

(Address)

(Date of Signature)

WITNESS

(Typed Name of Witness)

(Signature of Witness)

Note: In the case of a corporation, a witness is not required. Type or print names under all signatures.

(Typed Name of Financial Institution)

By _____
(Typed Name of Financial Institution Representative)

(Signature of Financial Institution Representative)

(Title)

(Address)

(Date of Signature)