

ATTACHMENT J.9

SPECIAL FINANCIAL INSTITUTION ACCOUNT AGREEMENT

*Special Financial Institution Account Agreement for use
with the Payments Cleared Financing Arrangement*

Agreement entered into this **15th day of September, 2008** between the United States of America (hereinafter called the "Government") represented herein by the U.S. Department of Energy (hereinafter called the "DOE"), and **Washington River Protection Solutions LLC** (hereinafter called the "Contractor"), a ~~corporation~~ **limited liability company** under the laws of the State of ~~Washington~~ **Delaware**, and U.S. Bank, (hereinafter called the "Bank"), a banking corporation existing under the laws of the State of Washington, located at Richland, Washington.

Recitals

- (1) On the date of **May 29, 2008**, DOE and the Contractor entered into Contract(s) No. DE-RP27-07RV14800, or a supplemental agreement thereto, providing for the transfer of funds on a payments-cleared basis.
- (2) DOE requires that amounts transferred 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 TFM 6-9000. 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 Bank.
- (3) The special demand deposit account shall be designated "**Washington River Protection Solutions LLC (WRPS) 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 funds transferred to the Contractor, and said title shall be superior to any lien, title, or claim of the Bank or others with respect to such account.
- (2) The Bank shall be bound by the provisions of said contract between DOE and the Contractor relating to the transfer of funds into and withdrawal of funds from the above special demand deposit account, which are hereby incorporated into this Agreement by reference, but the Bank shall not be responsible for the application of funds withdrawn from said account. After receipt by the Bank of directions from the Contracting Officer,

or from the duly authorized representative of the Contracting Officer, the Bank shall act thereon and shall be under no liability to any party hereto for any action taken in accordance with the said written directions. Any written directions received by the Bank 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 Bank are concerned, be considered as having been properly issued and filed with the Bank by DOE.

- (3) DOE, or its authorized representatives, shall have access to financial records maintained by the Bank 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 financial records and any or all memoranda, checks, payment requests, correspondence, or documents pertaining thereto. Such financial records shall be preserved by the Bank for a period of six (6) years after final payment under the contract.
- (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 Bank shall promptly notify DOE.
- (5) DOE shall authorize funds that shall remain available to the extent that obligations have been incurred in good faith thereunder by the Contractor to the Bank for the benefit of the special demand deposit account. The Bank agrees to honor upon presentation for payment all payments issued by the Contractor and to restrict all withdrawals against the funds authorized to an amount sufficient to maintain the average daily balance in the special demand deposit account in a net positive and as close to zero as administratively possible.

The Bank agrees to service the account in this manner based on the requirements and specifications contained in RFP Number 20051031 dated January 3, 2006. The Bank agrees that per-item costs, detailed in the form "Schedule of Financial Institution Processing Charges" contained in the Bank's proposal dated March 16, 2006, will remain constant during the term of this Agreement. The Bank shall calculate the monthly fees based on services rendered and invoice the Contractor. The Contractor shall issue a check or automated clearinghouse authorization transfer to the Bank in payment thereof.

- (6) The Bank shall post collateral, acceptable under Department of the Treasury Circular 176, with the Federal Reserve Bank in an amount equal to the net balances in all of the accounts included in this Agreement, less the Department of the Treasury-approved deposit insurance.
- (7) This Agreement, with all its provisions and covenants, shall be in effect for a term of _____, beginning on the **15th** day of **September, 2008** and ending on the 30th day of **June 2011**, ~~with an option to extend for an additional three one-year options.~~
- (8) DOE, the Contractor, or the Bank, 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' written notice to the Bank if DOE or the Contractor, or both parties, find that the Bank has failed to substantially perform its obligations under this Agreement or that the Bank is performing its obligations in a manner that precludes administering the program in an effective and efficient manner or that precludes the effective utilization of the Government's cash resources.
- (10) Notwithstanding the provisions of Covenants 8 and 9, in the event 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 Bank shall be terminated automatically upon the delivery of written notice to the Bank.
- (11) In the event of termination, the Bank agrees to retain the Contractor's special demand deposit account for an additional 90-day period to clear outstanding payment items.

This Agreement shall continue in effect for the 90-day additional period, with exception of the following:

- (1) Term Agreement (Covenant 7); and
- (2) Termination of Agreement (Covenants 8 and 9).

All terms and conditions of the aforesaid bid submitted by the Bank that are not inconsistent with this 90-day additional term shall remain in effect for this period.

The Bank has submitted the forms entitled "Technical Representations and Certifications," "Schedule of Financial Institution Processing Charges," and ~~"Calculation of Time Account Balance Required."~~ These forms have been accepted by the Contractor and the Government and are incorporated herein with the document entitled "Financial Institution's Information on Payments Cleared Financing Arrangement" as an integral part of this Agreement.

Any direction received by the Bank from DOE which alters any portion of the terms and conditions of this Agreement shall not be valid unless signed by the Contracting Officer.

In witness whereof the parties hereto have caused this Agreement to be executed, as of the day and year first above written.

_____ by **Poniatowski, Joseph C.**
(Date Signed) (Type Name of Contracting Officer)

(Signature of Contracting Officer)

WITNESS

Janyce M. Shelt
(Typed Name of Witness)

Washington River Protection Solutions LLC
(Typed Name of Contractor)

_____ by **Brian R. Thomas**
(Signature of Witness) (Typed Name of Contractor's Representative)

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

ORIGINAL SIGNED BY

(Signature of Contractor's Representative)

Vice President, Finance & Administration

(Title)

ETC 2 Building

H1-01

2920 George Washington Way

Richland, Washington 99352

(Address)

9/12/08

(Date Signed)

(Name of Witness)

U.S. Bank

(Name of Financial Institution)

(Signature of Witness)

Gail Heinselman, CTP

(Typed Name of Financial Institution Representative)

ORIGINAL SIGNED BY

(Signature of Financial Institution Representative)

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

Vice President of Government Banking

(Title)

Government Banking

PD-WA-T123

428 West Riverside – Suite 1230

Spokane, WA 99201

(Address)

9/12/08

(Date Signed)

NOTE

The contractor, if a corporation, shall cause the following Certificate to be executed under its corporate seal, provided that the same officer shall not execute both the Agreement and the Certificate.

CERTIFICATE

I, Gloria J. Johnson, certify that I am the Secretary & General Counsel of the corporation ~~company~~ named as Contractor herein; that Brian R. Thomas, who signed this Agreement on behalf of the Contractor, was then Vice President, Finance & Administration of said ~~corporation~~ **company** and that said Agreement was duly signed for and in behalf of said ~~corporation~~ **company** by authority of its governing body and is within the scope of its corporate powers.

ORIGINAL SIGNED BY

(Corporate Seal) (Signature)

NOTE

Financial Institution (or Bank), if a corporation, shall cause the following Certificate to be executed under its corporate seal, provided that the same officer shall not execute both the Agreement and the Certificate.

CERTIFICATE

I, _____, certify that I am the _____ of the corporation named as Financial Institution (or Bank) herein; that _____, who signed this Agreement on behalf of the Financial Institution (or Bank), was then _____ of said corporation; and that said Agreement was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.