#### DOCUMENT COVER SHEET

TITLE OF DOCUMENT: MEMORANDUM OF AGREEMENT TO CONDUCT

**CONTINUING OBLIGATIONS** 

DATE OF DOCUMENT:

GRANTOR: Pinellas County Industrial Development Authority d/b/a

Pinellas County Economic Development Authority

MAILING ADDRESS: Young-Rainey STAR Center

7887 Bryan Dairy Road, Suite 120

Largo, Florida 33777

GRANTEE: United States Department of Energy

MAILING ADDRESS: Office of Legacy Management

ATTN: Scott R. Surovchak 11025 Dover Street, Suite 1000

Westminster, CO 80021.

PROPERTY DRAWING: See Exhibit "A"

REFERENCE BOOK AND

PAGE (if any): \*\*NOT RECORDED\*\*

## MEMORANDUM OF AGREEMENT TO CONDUCT CONTINUING OBLIGATIONS

### Pinellas County Industrial Development Authority

7887 Bryan Dairy Road, Suite 120 Largo, Florida 33777

Pinellas County Industrial Development Authority d/b/a Pinellas County Economic Development Authority hereinafter referred to as (Grantor or County), in accordance with the requirements in the Sale and Purchase Contract for the Pinellas Plant, dated March 8, 1995, recognizes the right of access of the UNITED STATES OF AMERICA (Grantee), represented by the U.S. Department of Energy (DOE), Office of Legacy Management to the Young-Rainey Science, Technology and Research (STAR) Center (Property) as illustrated in the Property Drawing in Exhibit "A"). In accordance with this Memorandum of Agreement (MOA) other obligations by the Grantor and Grantee (Parties) in restricted areas, as depicted in Exhibit "A" and subject to Declarations of Restrictive Covenant (DRCs) are detailed herein.

### A. <u>Description of Facts:</u>

- A. 1. The Grantee previously owned the Property which was known as the Pinellas Plant (Site) and the DOE administered it. DOE transferred the Site in 1997, and the County redeveloped the facility, as the STAR Center. On December 14, 1987, prior to Grantor's ownership, DOE reported discharging chlorinated solvents at the Site to the United States Environmental Protection Agency.
- A. 2. DOE is performing Property-wide corrective action pursuant to Florida Department of Environmental Protection (FDEP) Corrective Action Permit No. 0034170/HH/004, issued January 9, 2012.
- A. 3. Grantor provides and shall continue providing Grantee and its representatives all reasonable and necessary access to conduct the above corrective action(s). This clause does not in any way affect the Grantee's access and easement to the property as provided in the Sale and Purchase Contract for the Pinellas Plant dated March 7, 1995 and the Quit Claim Deed (Instrument # 95-061400) recorded by Pinellas County on March 17, 1995.
- A. 4. Parties are entering into this MOA to manage the implementation of the associated DRCs on the property to restrict the use of the surficial aquifer (beginning at the water table below the Property and extending to approximately 40 feet below the Property) beneath the Property, to control the modification of existing stormwater management facilities, and to govern excavation and construction in restricted areas.
- A. 5. Grantor agrees to enter into DRCs regarding the Property with FDEP. FDEP is the regulatory agency with legal authority to define and enforce groundwater (use) restrictions and controls on the portions of the Property depicted in Exhibit A and as set forth in the DRCs, which will be recorded in the Official Records of Pinellas County, Florida. DOE has no authority over FDEP to act in these matters. Parties recognize DOE may only obtain FDEP approval concerning corrective action as required by its Corrective Action Permit.
- A. 6. In accordance with the Sale and Purchase Contract for the Pinellas Plant dated March 7, 1995, Grantor shall notify Grantee of proposed sale of the property and Grantee must consent in writing to the "right of the Buyer (Grantor) to assign Buyer's interest.

- A. 7. The Parties agree to follow a consultative process in implementing this agreement. "Consultation" and "the consultative process" mean the responsibility of one Party to meet and confer with the other Party and any appropriate contractors in order to reach agreement, to the extent possible, regarding a proposed course of action. Consultation involves a cooperative approach to problem solving between the Parties. Consultation includes the responsibility to raise any concerns or suggestions regarding the implementation of this agreement as soon as the concern or suggestion is identified, to maximize the chances of reaching agreement before an action must be taken. Consultation means timely participation by the Parties to reach consensus so that there is a clear understanding of the actions or direction to be taken based upon the outcome of consultative process.
- A. 8. Grantee agrees to pay Grantor the sum of \$10 and other just compensation for entering into this MOA and final DRCs for portions of the STAR Center property with the FDEP. DOE shall make electronic compensation upon recording of signed DRCs by Clerk of Court and Comptroller of Pinellas County, Florida.

### B. <u>Deed Restriction Covenant Requirement, Notification and Perpetual Access:</u>

- B. 1. Grantor, with the assistance of Grantee, shall negotiate in good faith with FDEP and enter into and record appropriate DRCs for the Property consistent with this MOA and its purpose.
- B. 2. Grantor shall notify Grantee prior to proposed well installation or other groundwater uses such as dewatering or before performing any other activities that are restricted by the DRCs. Grantee and Grantor will consult and evaluate such proposal for potential impact to remaining contamination and make all necessary arrangements to ensure work is accomplished in accordance with requirements of the DRCs. Grantor shall maintain Grantee's existing connection to Grantor's waste water system for the purpose of disposal of treated dewatering effluent from any and all portions of the contaminated ground water plume.
- B. 3. Grantor shall not alter, modify or expand stormwater swales, stormwater detention or retention facilities, or ditches, and shall not construct new stormwater swales, stormwater detention or retention facilities or ditches in the restricted areas without first notifying and consulting with Grantee.
- B. 4. Grantor recognizes Grantee's or Grantee's representative's right of perpetual access to perform remedial and corrective actions to include monitoring and other inspections.
- B. 5. Grantor shall not breach the Building 100 slab without first notifying Grantee. Grantor shall first consult and coordinate with Grantee prior to initiating any construction or other activities that involve subsurface activities in the Building 100 immediate vicinity.
- B. 6. Any conditions set forth in this MOA that conflict with the FDEP approved DRCs shall be superseded by DRC content. This MOA incorporates final recorded DRCs by reference, governs future Party obligations in, and defines, the restricted areas.

### C. Grantee's Continuing Obligations:

- C. 1. Grantee shall conduct corrective actions in restricted areas, including those requirements and obligations under FDEP issued Site Rehabilitation Completion Orders (SRCOs). Such corrective actions may include but are not limited to, groundwater monitoring, surveying, managing site related contaminated soil and groundwater, vapor intrusion mitigation, ground water and soil remedial action, and other activities. Grantee shall consult with Grantor regarding such corrective actions and/or long term obligations to minimize impacts to the property. C. 2. Upon notification from Grantor, Grantee will consult with Grantor and evaluate any proposed new construction, alteration, modification, or expansion of any stormwater facilities or dewatering for potential to impact any groundwater contamination and make all necessary arrangements, at Grantee's expense, to ensure the work is accomplished in a manner that is compliant with applicable rules. An example of Grantee's effluent management plan for dewatering is provided in Exhibit "B" to this MOA. Grantee will utilize its existing connection with Grantor's waste water system for disposal of all treated dewatering effluent.
- C. 3. Grantee, in coordination and consultation with Grantor, shall conduct evaluations of Building 100 pursuant to any requirements in the FDEP approved Engineering Control and Maintenance Plan within the area defined in Attachment 1. Any additional inspections are the responsibility of Grantor.
- C. 4. Grantee shall evaluate the potential for vapor intrusion within the building from the contaminated media beneath Building 100. The parties shall determine acceptable potential mitigation methods and maintenance requirements. Grantor shall coordinate with its tenants and ensure access to Grantee for locations within the building as selected by the parties and tenants.
- C. 5 Upon receipt of notice from Grantor that tenant construction activities will breach the exterior shell or the concrete slabs of Building 100, Grantee shall recommend appropriate measures to evaluate and/or potentially mitigate vapor intrusion and contact with potentially contaminated soil or groundwater in the work area during the proposed activity.
- C. 6. Grantee shall ensure that any contaminated soil or groundwater that is removed is properly disposed pursuant to Chapter 62-780, of the Florida Administrative Code (F.A.C.) and any other applicable local, state and federal requirements.
- C. 7. Grantee shall review any newly executed leases for spaces contained within the restricted areas to ensure that proper notice is provided to any lessees of this MOA and related DRCs and their associated requirements, within five (5) business days of receipt from Grantor.

### D. Grantor's Continuing Obligations:

- D. 1. Grantor shall reference the relevant DRCs and this MOA and its requirements in any subsequent lease or deed of conveyance within the restricted areas.
- D. 2. Grantor shall provide notice to any existing lessees within the restricted areas of the relevant DRCs and this MOA and their requirements.
- D. 3. Grantor shall provide copies of current leases, redacted as appropriate to limit the dissemination of business or proprietary information, to Grantee prior to Building 100 inspections that are required pursuant to the Engineering Control and Maintenance Plan.

- D. 4. Grantor shall coordinate Grantee's access to the restricted areas within fifteen (15) business days of notification from Grantee.
- D. 5. Grantor shall conduct inspections and maintenance of Building 100 in consultation with and assisted by Grantee, pursuant to an FDEP-approved Engineering Control and Maintenance Plan.
- D. 6. If dewatering is required in restricted areas, Grantor, in consultation with Grantee, shall prepare a site specific dewatering plan and provide same to Grantee prior to commencing work. Grantee shall utilize current connection with Grantor's water system for disposal of treated dewatering effluent.
- D. 7. Grantor shall provide forty (40) business days' notice to Grantee of any tenant construction activities that will breach the shell of Building 100 or its concrete floor. Grantor and Grantee shall consult to facilitate the project while maintaining protectiveness of the building.

# ARTICLE I GENERAL PROVISIONS

- 1.1 This MOA establishes Rights, Conditions, and Responsibilities for implementing the DRCs upon the subject Property in certain restricted areas. By granting and accepting the terms and conditions of this MOA, Grantor and Grantee (Parties), agree to be bound by said terms and agree that the Parties shall utilize a consultative process to ensure such terms and conditions are met. Should the Parties not agree the terms are being met, the Parties shall be entitled to specific performance of any of the provisions or conditions thereof in any court of competent jurisdiction if the curing of any violation has not occurred within twenty (20) business days after the Party has provided written notice pursuant to Article 5.1 below, to the violating Party of said violations or deficiencies. In any such action taken hereunder, The Party seeking specific performance shall be entitled to recover damages, including but not limited to, all costs associated with gaining access and maintaining the continued obligations as set forth in this MOA. In any such action, the prevailing party shall recover appropriate attorneys' fees and costs that were deemed necessary in bringing the action to enforce the MOA.
- 1.2 The Parties agree that venue for any state court proceedings shall be Pinellas County, and any federal court proceeding shall be the Middle District of Florida.
- 1.3 All future purchasers, lessees, or possessors of any portion of the Property shall be notified and assigned the Rights, Conditions and Restrictions contained herein by the current property owner at the time of any transfer. All future purchasers, lessees, or possessors of any portion of the Property shall also agree for and among themselves, their heirs, successors, and assigns, to adhere to the Rights, Conditions, and Responsibilities, established herein, for the benefit of future owners and occupants and that their interest in the Property shall be subject to the Rights, Conditions, and Responsibilities contained herein. The terms of this MOA shall pass to any successor owner of such Property unless the requirements under the MOA have been met at the time of sale, transfer or assignment or have become moot by reason of some other actions (e.g. the issuance of an SRCO for the site). The Grantor agrees to obtain for mutual Grantor/Grantee benefit, enforceable contractual provisions comparable in all material respects to the provisions set forth herein from any successor in interest or assign of an interest in the Property or any portion thereof and any purchasers, lessees, or possessors of any relevant portion of the Property and to require any such successor or assign to require similar contractual

protection from each subsequent successor or assign. The provisions of this Article will survive the termination of this MOA.

## ARTICLE II RIGHTS, CONDITIONS, AND RESPONSIBILITIES

- 2.1 Said Rights, Conditions, and Responsibilities are conveyed subject to existing easements for public roads and highways, public utilities, and pipelines.
- 2.2 The Grantor recognizes the right of Grantee, and their authorized representatives, contractors, and subcontractors of perpetual access in, upon, over, under and across Grantor's Property, described above, to perform inspection, surveillance, monitoring, characterization, assessment, and remediation of any potential contamination of the Property, to carry out surface or subsurface remedial action if determined necessary by Grantee, and to take other responsible action consistent with the evaluation and performance for remedial actions including but not limited to monitoring and well installation/maintenance and ensuring that all continuing obligations and engineering controls are properly maintained. Grantee, its successors and assigns agree to notify Grantor fifteen (15) business days prior to required access to the restricted areas. Grantee shall coordinate access with Grantor, its successors or assigns, to minimize interference of their use and enjoyment of the Property. Grantee's activities shall not unreasonably interfere with future development of the Property.
- 2.3 Grantor and Grantee agree there shall be no use of the shallow aquifer groundwater beginning approximately at the water table and extending below the Property to approximately 40 feet, without prior written approval of Grantee and appropriate permits and other authorizations as required by state and local law and in accordance with the applicable DRC. Grantor, its successors and assigns, may drill for water from the Floridan aquifer (approximately 100 feet or deeper below the Property) with prior, Grantee written approval and appropriate permits as required by state and local law and in accordance with the applicable DRC. Grantor must submit plans for any drilling or ground water use activity on the property to the Grantee before conducting such activities on the Property. Grantee shall consult with Grantor and assist in obtaining necessary regulatory approvals required by the DRCs. Grantee reserves the right to construct sampling wells, monitoring wells, remediation wells, or other remedial systems, on the Property.
- 2.4 Grantee shall consult with Grantor, its successors or assigns to ensure Grantee's equipment necessary to meet its regulatory compliance requirements does not unreasonably interfere with current or future use of the Property. Grantor shall not permit the Property to be used in such a way that will disturb or interfere with the integrity of such equipment or exacerbate the known contamination.
- 2.5 Grantee is self-insured and shall cause its authorized representatives, contractors and subcontractors who perform under this MOA to carry reasonable liability insurance covering risk of liability caused by any of their activities and/or their employees. Upon request, Grantee's authorized representatives, contractors and subcontractors will provide Grantor certificates evidencing insurance coverage.

- 2.6 Grantee shall be responsible for any loss or destruction of, or damage to, Grantor's real or personal property caused by the activities of Grantee in exercising any rights hereby granted in the 1995 Quit Claim Deed and this MOA in accordance with the Federal Torts Claims Act.
- 2.7 In accordance with 2.3 above, FDEP and the Grantee must approve a dewatering plan, prior to any dewatering activities on the Property. In consultation with Grantor, Grantee will ensure the plan includes appropriate handling, treatment and disposal of any extracted contaminated groundwater at Grantee's expense. Grantee will provide necessary personnel, personal protective equipment (PPE) and train Grantor's personnel in the use of such equipment. At its own expense and in consultation with Grantor, Grantee will develop an effluent management plan and provide and operate additional equipment/systems to ensure appropriate handling, treatment and disposal of any extracted contaminated groundwater. An example of Grantee's effluent management plan for dewatering is provided in Exhibit "B" to this MOA. Grantee shall utilize existing connection to Grantor's waste water system for disposal of all treated dewatering effluent.
- 2.8 Grantor, its successors and assigns, shall not alter, modify, or expand existing stormwater features, and shall not construct new stormwater swales, stormwater detention or retention facilities or ditches in restricted areas without first notifying the Grantee and obtaining its written approval. Grantor must also notify and obtain written approval from any other appropriate government agency, as required by the DRCs, before commencing such work. Should the alteration, modification, or expansion of existing stormwater features have costs that exceed those associated with normally accepted methods because of the known contamination, Grantee shall be responsible for these costs.
- 2.9 Grantor, its successors or assigns, shall notify the Grantee by certified mail, at least thirty (30) business days prior to any sale, transfer, or assignment of its fee interest in the restricted areas.
- 2.10 Grantee, its successors and assigns, agrees to obtain all necessary permits, licenses, and approvals in connection with its activities on the Property. Grantee shall appropriately handle, treat and dispose of any contaminated media derived from its activities.

### ARTICLE III REMOVAL OF CONDITIONS

- 3.1 The Grantee may remove from the restricted areas, at its discretion, the Rights, Conditions, and Responsibilities detailed in this MOA when the Grantee has determined that a restricted area meets regulatory standards, as approved by the FDEP; otherwise the Rights, Conditions, and Responsibilities of this MOA shall continue in effect in perpetuity.
- 3.2 To remove the herein established Rights, Conditions, and Responsibilities of this MOA and Restrictions from the Property or portion thereof, Grantee shall assist Grantor in securing a Termination and Release of Declaration of Restrictive Covenant executed by Grantor and FDEP.
- 3.3 Should Grantor and Grantee remove DRC-imposed restrictions from a restricted area with FDEP approval, or portions thereof pursuant to this Article, the Parties to this MOA shall be relieved of any obligations with regard to the area where restrictions are removed.

### ARTICLE IV COVENANT NOT TO SUE

4.1 In consideration of the mutual undertakings of this MOA, each Party releases and covenants not to sue the other Party or its officers, directors, employees, affiliates, attorneys or agents, successors, or assigns, with respect to any claims, liability, expenses, attorneys' fees and obligations (claims) out of the DRCs and this MOA whether such claims are known or unknown, suspected or unsuspected, claimed or unclaimed, asserted or unasserted, that any Party has in the past, now has or may have in the future. This release and covenant not to sue shall not include any claims relating to the enforcement of this MOA. The Parties reserve the right to take such action as may be necessary to enforce this MOA.

### ARTICLE V MISCELLANEOUS

- 5.1 Whenever any Party to this MOA seeks to give or serve Notice, demand, or other communication with respect to this MOA, such notice, demand, or communication shall be in writing and shall be sent simultaneously to an authorized representative of each Party in certified mail with return receipt requested or by electronic mail.
  - a) If to Grantor, such Notice, demand or other communication shall be sent to Pinellas County Industrial Development Authority, ATTN: Paul Sacco, Director Pinellas County Real Estate Management, 7887 Bryan Dairy Road, Suite 120, Largo, Florida 33777 or by electronic mail to psacco@pinellascounty.org.
  - b) If to the Grantee, such notice, demand or other communication shall be sent to the U.S. Department of Energy, Office of Legacy Management, ATTN: Scott Surovchak, Pinellas Site Manager, 11025 Dover Street, Suite 1000, Westminster, CO 80021 or by electronic mail to <a href="mailto:scott.surovchak@lm.doe.gov">scott.surovchak@lm.doe.gov</a>.
- 5.2 If any provision of this MOA is determined to be invalid or unenforceable for any reason, the remaining provisions of this MOA shall remain in full force and effect.
- 5.3 Except as otherwise noted in this MOA, this MOA constitutes the entire agreement among the Parties pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings of the Parties in connection therewith. No representation, warranty, covenant, agreement or condition not expressed in this MOA shall be binding upon the Parties hereto or shall affect or be effective to interpret change or restrict the provisions of this MOA.
- 5.4 This MOA may be executed in counterparts, with all counterparts taken as one instrument. It shall not be necessary that the signature of all parties appear on the same counterpart, so long as each party signs at least one counterpart.
- 5.5 This MOA shall not be modified in any respect, except in writing signed by all Parties to this MOA.
- 5.6 This MOA shall be governed by and construed in accordance with the laws of the State of Florida.

- 5.7 All Parties have participated in the drafting and preparation of this MOA and it shall not be construed for or against any Party by reason of authorship.
- 5.8 This MOA does not change or terminate any pre-existing rights or interests retained by the Grantor or Grantee under the March 8, 1995 Sale & Purchase Contract (DOE File code PIN 1415.05[A]), or granted by the Grantor to the Grantee. This MOA does not affect the Grantee's remediation obligations pursuant to 42 USC §9620(h) and previously agreed upon by the Parties.

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IN WITNESS WHEREOF, the parties have entered into this MOA on the date last written below.

THIS MOA, together with all the conditions thereof, is executed by Grantor this 10th day of September 2015.

**GRANTOR:** 

Pinellas County Industrial Development

Authority

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

ACCEPTED AND AGREED:

WITNESS:

BRIAN LOWACK

Notary Public

**APPROVED AS TO FORM** 

Bernie C Young

BERNIE C. YCAING
MY COMMISSION # FF 124388
EXPIRES: May 19, 2018

Attorne

#### **GRANTEE:**

United States of America Department of Energy, Office of Legacy Management

BY: BOOK for Dussel Edge

Russel Edge, Director Office of Site Operations

ACCEPTED AND AGREED:

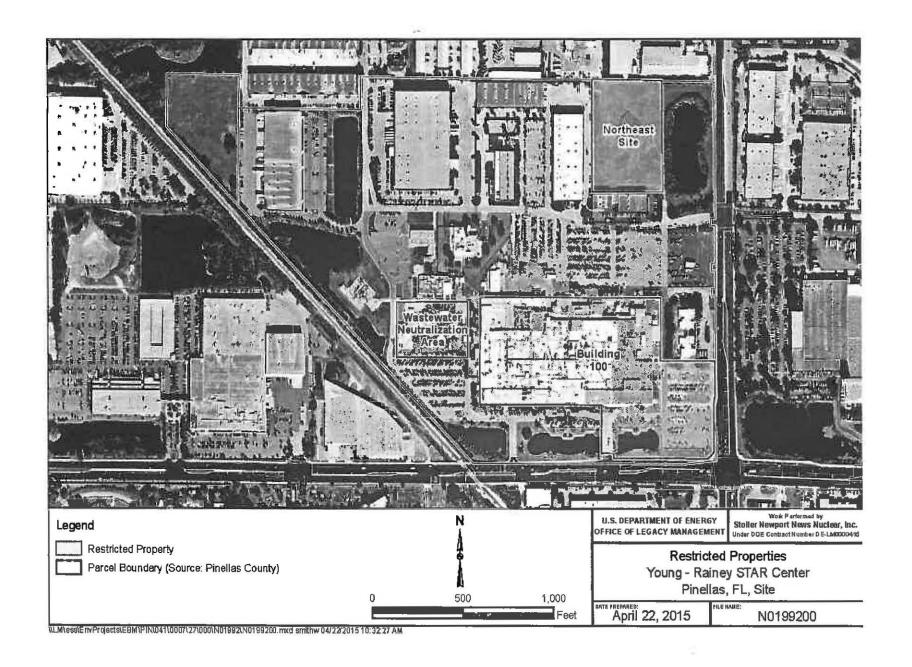
WITNESS:

Notary Public

# 20044022971

07/02/2016

# EXHIBIT "A" PROPERTY DRAWING



### EXHIBIT "B"

EXAMPLE EFFLUENT MANAGEMENT PLAN FOR DEWATERING

[DATE]
U. S. Department of Energy
Office of Legacy Management
2597 Legacy Way
Grand Junction, CO 81503

RE: Proposed Dewatering on Young - Rainey STAR Center

#### Gentlemen:

This letter details the parties responsible with respect to dewatering on the referenced property. There is a limited possibility of organic solvents in groundwater being captured by the dewatering activity. The parties have agreed to the following steps.

Owner and/or Owner's Contractor will include the following specification in its construction contract and/or subcontracts. The parties agree that the delivery point for ground water shall be as shown in the plans.

#### 1.02 SPECIAL DEWATERING REQUIREMENTS

- Groundwater encountered during the execution of the work may be contaminated. Groundwater samples taken from below the elevation of the deepest work have exhibited low levels of vinyl chloride and other associated contaminants. Samples taken at or above the elevation of the deepest work have not exhibited contamination. All dewatering of the soils within \_\_\_ feet of the area of concern shall be accomplished with well point systems only. Excavations must be kept dry. Water shall not be allowed to enter excavations. The discharge from the well point system shall be contained within the watertight discharge hose and delivered to a vessel provided by the Department of Energy (DOE) or their designee. The approximate location of the discharge point is shown on the plans and will be to the top of an 18,000 gallon tank with opening 14 feet above grade. At this point the DOE will accept the water and treat and dispose of the water as their responsibility. After such delivery, the Contractor will no longer be responsible for this water. While the tankage will allow some flow peaks, it can only accept up to 55 gallons per minute average flow on a continuous basis. The Contractor shall conform his operations to comply to this limit.
- 2. The Contractor shall notify the STAR Center and the DOE, or their designee, 30 days before entering the special dewatering requirements zone. The Contractor shall schedule his construction operations to minimize the durations of dewatering from within the zone as much as reasonably practicable. The DOE, or their designee, will monitor water removed from the tank and notify the Contractor and Engineer if contaminants are detected. The DOE or their designee will monitor the atmosphere in excavations for volatile contaminants and report the results to the Contractor's site supervisor. If contamination is detected in the groundwater, upon completion of

dewatering, dewatering equipment shall be flushed clean with clean water and discharged to the DOE tanks. The volume of water used for flushing shall exceed three times the volume of all the dewatering equipment volumetric capacity.

- 3. A report is available from DOE that describes the potential contamination as it relates to the proposed construction. The potential contaminants are known to be volatile and will evaporate into the air readily and possibly pose an inhalation hazard to workers, so containment of the well point water within the hose, pipe, pumps or vessels is paramount. The Contractor shall be responsible to determine personal protective equipment and safety measures to comply with Occupational Safety and Health Act regulations and to protect the workers.
- 4. After delivery to the DOE 18,000 gallon tank, the DOE will be responsible for the ground water, including transfer of water to the air stripper and disposing of the water through the normal industrial waste discharge to Pinellas County Sewer System including normal payments. The DOE will monitor/test water for contaminants and inform Engineer/Contractor of results. The atmosphere in the excavations will also be monitored for volatile contaminants by the DOE.

| •                                   | 2 2 71                    |   |  |
|-------------------------------------|---------------------------|---|--|
| Department of Energy Signature/Date | Contractor Signature/Date |   |  |
| Department of Energy Printed Name   | Contractor Printed Name   | _ |  |

If this letter is consistent with your understanding of our agreement, please sign and return.

### Attachment 1

Location of Engineering Control, Building 100 Area SWMU Pinellas, Florida, Site.

