Remediation Agreement

for the Four and One-Half Acre Site in Largo,

Pinellas County, Florida

Between:

State of Florida Department of Environmental Protection

and

U.S. Department of Energy Grand Junction Office

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State of Florida

Department of Environmental Protection

In the Matter of:

The U.S. Department of Energy Albuquerque Operations Office, Grand Junction Office	**) Remediation Agreement) for the Four and One-Half Acre) Site in Largo, Pinellas County,) Florida**

and

The State of Florida,
Florida Department of
Environmental Protection

Based upon the information available to the Parties, as of the effective date of this Agreement, and without trial or adjudication of any issues of fact or law, the Parties agree as follows:

I. Parties

A. The U.S. Department of Energy (DOE) and the Florida Department of Environmental Protection (FDEP) are the Parties to this Agreement.

B. The Parties shall notify their authorized representatives of the existence of this Agreement and shall take all appropriate measures to ensure that their authorized representatives perform work in accordance with this Agreement.

C. Each signatory for a Party certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party to this Agreement.

D. The provisions of this Agreement are binding on each Party's heirs, executors, administrators, successors in interest, assignees, lessees, and purchasers with the same force and effect as if they were a Party to this Agreement.

E. The DOE shall provide a copy of this Agreement to the landowner and each contractor and subcontractor hired to perform the work required by this Agreement. All contracts to perform the work required by this Agreement shall contain provisions requiring compliance with the provisions of this Agreement. The DOE shall nonetheless be responsible for ensuring that its contractors or subcontractors perform the work required by this Agreement in accordance with the provisions of this Agreement.

II. Jurisdiction

The Parties enter into this Agreement pursuant to Section 120(a)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. § 9620, and the Atomic Energy Act of 1954, as amended, 42 U.S.C. § 2011 et seq., and the Florida Air and Water Pollution Control Act, FLL 403, Florida Statutes.

III. Purpose

A. This Agreement is entered into by the Parties for the limited purpose of remediating the groundwater under a parcel of property adjacent to the DOE's former Pinellas Plant, known as the Four and One-Half Acre Site. The Site is more fully described in the legal description in Attachment A, attached to this Agreement.

B. The DOE intends to remediate groundwater on the Site to levels that are consistent with its use as an industrial area. The FDEP agrees this would be appropriate so long as state statutes and rules are met and appropriate deed restrictions are in place. The remediation will be in accordance with a Remedial Action Plan (RAP) to be prepared by the DOE and approved by the FDEP, and in accordance with the provisions of this Agreement.

C. All previous contaminant assessments, including the contamination assessment plan/contaminant assessment report/feasibility study, soil study and all interim remedial actions performed at the Site by the DOE prior to the effective date of this Agreement, are recognized by the FDEP as fully approved actions, and they shall be retained and utilized as elements of the final remedial action for the Site.

D. Nothing in this Agreement shall constitute any additional express or implied waiver of sovereign immunity than is provided for by Federal Statute as otherwise applicable to any Party or its authorized representatives.

IV. Definitions

A. Except as otherwise specifically defined herein, the terms used in this Agreement shall have the same meaning as those used in the CERCLA 42 U.S.C. Section 9601, et. seq.

B. Agreement means this document (Remediation Agreement for the Four and One-Half Acre Site in Largo, Pinellas County, Florida) and all its attachments.

C. Authorized Representatives are a Party's employees, agents, successors, and contractors.

D. Constituents of Potential Concern (COPC) are those contaminants that have existed at the Site, based on their frequency of detection, and that have a potential to adversely impact human health and the environment due to their concentration and/or toxicity.

E. Days mean calendar days, unless business days are specified. Any schedules, submittals, or written statements of dispute required by the provisions of this Agreement that would be due on a Saturday, Sunday, or holiday will be due on the following day. In computing any period of time prescribed or allowed by this Agreement, the first day shall be excluded and the final day counted.

F. DOE means the United States Department of Energy and its authorized representatives.

G. FAC means Florida Administrative Code.

H. FDEP means the Florida Department of Environmental Protection and its authorized representatives.

I. F.S. means Florida Statutes.

J. Maximum Contaminant Level (MCL) are those levels and criteria set forth in the applicable provisions of Chapters 62-550 and 62-520 of the FAC.

K. Pinellas Plant means the industrial Site located at 7887 Bryan Dairy Road, Largo, Florida, now known as the Pinellas Star Center.

L. Project Site Managers means the DOE employee or designated and duly authorized contractor and the FDEP employee responsible for direction, execution, and oversight of remediation operations at the Four and One-Half Acre Site.

M. Remedial Action means those actions required to remediate the surficial aquifer at the Four and One-Half Acre Site under the provisions of this Agreement.

N. Remedial Action Plan (RAP) is a plan that will be prepared by the DOE and approved by the FDEP, which will delineate the remedial actions at the Site.

O. Site means the Four and One-Half Acre parcel of undeveloped land, owned by Allen F. and Gretchen H. Gates, adjacent to the western portion of the former DOE Pinellas Plant, 7887 Bryan Dairy Road, Largo, Pinellas County, Florida, which is the subject of this Agreement and which is more specifically described in Attachment A, (legal description) to this Agreement.

P. Site Rehabilitation Completion Report (SRCR) means a report prepared by the DOE after conducting the remedial actions at the Site set forth in the RAP.

Q. Surficial Aquifer is the saturated water bearing strata at the Site located between the land surface and the underlying confining unit (Hawthorn Group).

V. Statement of Facts

The Parties stipulate to the facts stated herein solely for the purpose of this Agreement. Nothing in this Agreement shall be considered as admissions by any

Party, and these facts shall not be used by any person related or unrelated to the Agreement for purposes other than determining the basis of this Agreement.

A. From 1957 through 1972, the Site was owned by the DOE and was part of the DOE's Pinellas Plant. In 1972, James D. and Georgia Carabelas purchased the Site from the Federal Government and remained the owners until 1981. In 1981, Allen F. and Gretchen H. Gates bought the Site and have continued to own the Site until the present time.

B. The DOE and the Gates have had an access and land use agreement for the purpose of conducting remedial actions at the Site since 1985. The current agreement is effective until April 10, 2002. The DOE has negotiated an access agreement from April 11, 2000, until April 10, 2020. The DOE will continue to pursue a lease beyond April 10, 2020, and until the Site is completely remediated.

C. When DOE owned the Site, drums containing resinous materials and Volatile Organic Compounds (VOCs) were disposed of at the Site, which contaminated the soil and the surficial aquifer.

D. In June 1985, in coordination with the Florida Department of Environmental Regulation, now known as the FDEP, the DOE removed eighty-three (83) drums and approximately three-hundred-three (303) tons of contaminated soil from the Site. The soil was disposed of at an off-site U.S. Environmental Protection Agency (USEPA) authorized hazardous waste disposal facility.

E. In August 1986, the DOE submitted a Contamination Assessment Report (CAR) of the Site to the FDEP. The FDEP approved this CAR in March 1987.

F. In October 1987, the DOE submitted a Feasibility Study Report (FSR) on the Site to the FDEP. The FDEP approved the FSR in November 1987.

G. In November 1987, the DOE submitted to the FDEP an Interim Remedial Action Plan (IRAP) to conduct interim remedial actions at the Site. This IRAP was approved by the FDEP in September 1988.

H. In May 1990, the DOE initiated remedial actions at the Site in accordance with the provisions of the IRAP, as amended. The DOE's interim remedial actions at the Site have continued since May 1990, to the present time.

I. The DOE continues to submit quarterly reports to the FDEP on the progress of its interim remedial actions at the Site.

J. Although the groundwater in the shallow surficial aquifer under the Site has been classified as a Class G-II, DOE's position is that, because of the naturally occurring high levels of iron, calcium, magnesium, sulfides, and chlorides in the shallow surficial aquifer under the Site, it is unlikely that the aquifer could be used as a source for drinking water without extensive treatment at an exorbitant cost. It would be considerably cheaper and more practicable to obtain drinking water from the deeper aquifer under the Site, should it be necessary, than to attempt to treat the water from the surficial aquifer under the Site. Additionally, the source of most of the drinking water to facilities in and around the Site is from the local Municipal Water System.

Should the Site ever be developed for industrial use in the future, the source of drinking water would most likely be the Municipal Water System. The FDEP agrees that these statements may be true, but they will not necessarily affect the choice of remedial action.

VI. Scope of Agreement

A. This Agreement formalizes the DOE's remediation of the Site. The remedial actions at the Site will be done in accordance with a Remedial Action Plan (RAP) prepared by the DOE and approved by the FDEP. The RAP, and the remedial action goals contained therein, will be designed to meet the MCLs for Class G-II aquifer, potable water use. The DOE may, at any time during the implementation of the RAP, submit a RAP modification in accordance with Section XI. The RAP modification may include the adoption of alternative technology or seek modification of the groundwater Site Rehabilitation Levels (SRLs) in accordance with existing state regulations and regulatory guidance.

B. The DOE will continue to submit to the FDEP and the landowner quarterly reports of its interim remedial actions at the Site until the FDEP approves the RAP.

VII. Remedial Action Plan

A. The DOE will submit the RAP for the FDEP's approval within one hundred and eighty (180) days from the execution of the Agreement. The RAP will evaluate remedial action alternatives for the remediation of the groundwater in the surficial aquifer under the Site and shall include:

1. An analysis of remedial alternatives for the Site based on the following criteria:

    (a) The long- and short-term environmental impacts, if any.

    (b) The present feasibility of remediation technology to remediate the Site to MCLs for Class G-II aquifers, consistent with state-of-the-art technology.

    (c) The implementability of remedial alternative(s).

    (d) The operation and maintenance required to implement remedial alternatives.

    (e) The reliability of alternative(s)

    (f) The feasibility of the alternative(s).

    (g) The economic costs of the alternatives weighed against the benefits to be derived.

    (h) The protection of human health by the alternatives.

    (i) The long-term effectiveness of the alternatives.

    (j) The use of the Site as an industrial area.

2. The rationale for the remedial action(s) preferred and selected.

3. The design, specifications, and construction details for the remedial actions(s) selected.

4. The operational details of the remedial action(s), including the disposition of any effluent, expected contaminant concentrations in the effluent, an effluent sampling schedule, and the expected concentrations and quantities of any contaminants discharged into the air as a result of

remedial action(s).

5. The remedial action and post-remedial action groundwater (surficial aquifer) monitoring plan for the Site.

6. The milestones and deliverables associated with implementing the remedial action(s) selected.

7. The sampling and monitoring activities required to implement the remedial action(s) selected.

8. The identification of COPCs for the Site, based on the available Site specific analytical data.

9. The projected period of time in which remedial action(s) at the Site will be conducted. The remedial action selected will take into consideration the feasibility of available groundwater remediation technology to remediate the Site to MCL's for Class G-II aquifers.

10. A schedule for the remedial action(s) selected, the deliverables, if any, and the sampling and monitoring activities.

11. Prevention of, or mitigation of, off-site migration of the plume(s).

12. Manner in which access to the Site will be limited to protect public safety.

B. All sampling and analysis conducted for implementation of this RAP shall conform to approved quality control, quality assurance, and chain of custody requirements, as specified in the applicable FDEP regulations.

C. The FDEP shall approve the RAP within sixty (60) days of receipt and will advise the DOE in writing of its approval, unless it needs more time or

additional information to evaluate the RAP. If the FDEP needs more time or additional information, it will make that request in writing to the DOE within sixty (60) days from receipt of the RAP. The DOE will thereafter provide the requested information in writing to the FDEP within sixty (60) days from receipt of the FDEP's request, unless the DOE requires additional time to provide the requested information. If the DOE requires additional time to provide the requested information, the DOE shall within at least seven (7) days prior to the expiration of the sixty (60) day period, provide to the FDEP for its approval a written schedule for providing the requested information. If the FDEP does not agree to this schedule, either party may invoke the provisions in Section XVII (Resolution of Disputes) of this Agreement.

D. If, after receiving and incorporating the additional information requested, the FDEP still does not approve the RAP, the FDEP may modify the RAP. The FDEP shall provide the modified RAP to the DOE for its review and concurrence within ninety (90) days from the day it receives and incorporates the additional information provided by the DOE. The DOE shall then review and accept the modified RAP or invoke the provisions in Section XVII (Resolution of Disputes) of this Agreement. Any additional costs and requirements associated with the FDEP's modifications to the RAP are also subject to the provisions of Section XVII (Resolution of Disputes).

E. Upon conditional approval of the RAP, the DOE will announce the availability of the proposed RAP to the public for review and comment. The FDEP will address public comments and will modify the RAP, if appropriate.

Thereafter, the FDEP will provide the modified RAP to the DOE in accordance with the provisions of Paragraphs D. and E. of this Section.

F. Once the RAP is approved in final form by the FDEP, it shall become effective, and the DOE shall implement it in accordance with the schedule(s) set forth therein, subject to the provisions of Section XIV, (Funding) of this Agreement. The approved RAP shall incorporate all modifications to the RAP agreed to by the Parties or changes required by dispute resolution.

VIII. Reports

A. In addition to any other submittals required by this Agreement, the DOE shall submit to the FDEP written quarterly progress reports that, as appropriate:

1. Describe the progress on remedial actions that have been conducted pursuant to this Agreement and to the RAP.
2. Include a summary of all results of sampling and tests and all other data received or generated by the DOE or its contractor(s) during the previous quarter.
3. Identify any deliverables required by this Agreement that were completed and submitted during the previous quarter.
4. Describe all actions, including, but not limited to, data collection and implementation of the remedial actions scheduled for the next quarter. Provide other information relating to the progress of the remedial actions, such as critical path diagrams, Gantt charts, and Pert charts.

5. Include information regarding delays encountered or anticipated delays.

6. Describe any modifications to RAP schedules.

B. After conducting the remedial actions as set forth in the RAP, the DOE will submit to the FDEP an SRCR for the FDEP's approval. The SRCR will specify any needed institutional controls or uses. Within sixty (60) days of receipt of the SRCR, the FDEP shall approve the SRCR, or make a determination that the SRCR does not adequately reflect that the remedial actions required by the RAP have been conducted. If the FDEP determines that the SRCR is not adequate, the FDEP shall so notify the DOE in writing. This notice from the FDEP shall include the rationale as to why the SRCR is not adequate. Within thirty (30) days of receipt of the FDEP's notice, the DOE shall either respond or invoke the provisions of Section XVII (Resolution of Disputes) of this Agreement.

C. The remediation of the Site shall be deemed to be complete at such time as the FDEP provides the DOE with written notice that the SRCR has been approved. The DOE will provide the FDEP with a schedule for the restoration of the Site to include proper closure of wells, removal of treatment systems and associated piping and utilities, and necessary repairs to the Site.

IX. Notification

Whenever, under the terms of this Agreement, written notice is required to be given or a report is required to be sent by one Party to the other Party, it shall be directed

to the individuals at the addresses specified below via U.S. Mail or similar means of delivery, unless those individuals or their successors give notice of a change to the other Party in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice, as specified herein, shall constitute complete satisfaction of any written notice required by this Agreement.

For DOE: Mr. David Ingle, Program Manager
c/o MACTEC-ERS
7887 Bryan Dairy Rd.
Suite 260
Largo, Florida 33777

For FDEP: Mr. John Armstrong
Project Site Manager
Florida Department of Environmental Protection
Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, FL 32399-2400

X. Extensions

A. All matters subject to Section IX (Notification) of this Agreement shall be extended by the FDEP upon receipt of a timely request for extension and when good cause exists for the required extension. Any DOE request for an extension shall be submitted in writing and shall specify the following:

1. The schedule that is sought to be extended.
2. The length of the extension sought.
3. The good cause(s) for the extension.
4. Any related schedule(s) that would be affected if the extension was or was not granted.

B. Good cause for an extension shall be deemed to exist when sought in regard to:

1. An event of Force Majeure.
2. A delay caused by the other Party's failure to meet any requirement of this Agreement.
3. A delay caused by the good faith invocation of Section XVII (Resolution of Disputes) or the initiation of judicial action.
4. A delay caused, or which is likely to be caused, by the grant of an extension in regard to another timetable, deadline, or a schedule.
5. A delay caused by additional work mutually agreed to in writing by the Parties.
6. Any other event or series of events mutually agreed to by the Parties as constituting good cause.
7. Insufficient availability of appropriated funds.
8. Any other reasons beyond the control of the Parties.

C. If the Parties cannot agree as to whether good cause exists for an extension, either Party may seek and obtain a determination through the provisions of Section XVII (Resolution of Disputes) of this Agreement.

D. Within fourteen (14) days of receipt of a request for an extension of a timetable, deadline, or a schedule, the FDEP shall notify the DOE in writing as to whether it will grant or deny the extension. If the FDEP denies the extension, it shall provide to the DOE a written explanation for its denial. If the FDEP fails to respond within the fourteen- (14-) day period to a request for an extension, the FDEP shall be deemed to have denied the request, and DOE may then invoke the provisions of Section XVII (Resolution of Disputes)

of this Agreement within fourteen (14) days from this date.

E. The DOE may invoke the provisions of Section XVII (Resolution of Disputes) of this Agreement within fourteen (14) days from receipt of the FDEP's notice of denial. If the DOE fails to invoke the Resolution of Disputes provision of this Agreement within the fourteen-day (14-day) period, it will be presumed that the DOE has accepted the FDEP's denial of the request for an extension.

F. If the FDEP determines that a DOE request for an extension is warranted, the affected schedule shall be extended accordingly, and the new schedule shall automatically become part of the RAP. If the FDEP determines that all or part of the requested extension is not warranted, the schedule shall not be extended except as set forth in Paragraph B of this section, or in accordance with a determination resulting under the procedures in Section XVII (Resolution of Disputes) of this Agreement.

G. When a timely request for an extension is made, the FDEP shall not initiate an administrative, judicial, or any other enforcement action against the DOE or its authorized representatives to comply with the affected schedule until a decision is reached on whether the requested extension is granted, consistent with the provisions of this Agreement.

H. For requests for extension by the FDEP, if the DOE does not object in writing within fourteen (14) days of receipt of a written request for an extension from the FDEP, it will be presumed that the DOE has accepted the request for the extension. If the DOE provides the FDEP with written notice that its request

for extension is not acceptable, within fourteen (14) days of receipt of the request, the FDEP may invoke the provisions of Section XVII (Resolution of Disputes) of this Agreement.

XI. Additional Work or Modification to Work Performed

A. In the event that the FDEP determines that additional work, or a modification of work performed, is necessary to accomplish the objectives of this Agreement, it shall notify the DOE, in writing, of what additional work or modifications the FDEP is requesting. The DOE shall have thirty (30) days from the day of receipt of such notice in which to respond to such requests from the FDEP. Any additional work or a modification to work performed, determined to be necessary by the FDEP, shall be subject to the dispute resolution provisions set forth in Section XVII (Resolution of Disputes) of this Agreement.

B. In the event that the DOE determines that additional work or a modification to work performed, or to be performed, is necessary to accomplish the objectives of this Agreement, the DOE shall notify the FDEP, in writing, of its determination. The FDEP shall have thirty (30) days in which to respond to the DOE's determination. Any additional work, or a modification to work performed, determined to be necessary by the DOE, may be subject to approval by the FDEP prior to the DOE initiating any additional work, or modification to work performed, and shall be subject to Section XVII (Resolution of Disputes) of this Agreement.

C. Any additional work, or a modification to work performed, approved pursuant to this section, shall be completed in accordance with the standards, specifications, and schedule determined and approved by the FDEP. If any additional work, or modification to work performed, will adversely affect work scheduled, or will require significant revisions to the approved RAP, the DOE shall notify the FDEP, in writing, within seven (7) days from the time that it becomes aware of such an adverse effect. Extensions shall be subject to the provisions of Section X, (Extensions) of this Agreement. The provisions of this paragraph shall also be subject to Section XVII (Resolution of Disputes) of this Agreement.

D. Any additional work, or a modification to work performed, which would require additional funding, shall be subject to the availability of appropriated funds. The provisions of this paragraph shall also be subject to Section XVII (Resolution of Disputes) of this Agreement.

XII. Site Access

A. The United States Department of Energy has executed a lease with Allen F. Gates, Trustee of Allen F. Gates Trust, and Gretchen H. Gates, Trustee of Gretchen H. Gates Trust, for the express purpose of site access. This lease is structured with an initial ten-year (10-year) term with provision for extension to two (2) five-year (5-year) terms. This lease provides for long-term access to enable the Department of Energy and the Florida Department of Environmental Protection to inspect, monitor, and complete, as appropriate, necessary site remediation. If additional time is required to complete the RAP, terms will be

negotiated.

B. The FDEP, pursuant to this Agreement and its inherent State authority over the remedial actions being conducted on the Site, may, at reasonable times, observe the work being performed by the DOE or its contractors.

C. Individuals who enter the Site must comply with the DOE's site access, safety and health requirements.

XIII. Force Majeure

A Force Majeure shall mean any event arising from causes beyond the control of DOE that causes a delay in or prevents the performance of any provision of this Agreement, including, but not limited to, access to the Site; acts of God; fire; war; insurrection; civil disturbance or disobedience; strike or labor dispute that affects compliance with the provisions of this Agreement; explosion; unanticipated breakage or accident to machinery, equipment, or lines of pipe despite reasonably diligent maintenance; adverse weather conditions that could not be reasonably anticipated or overcome; unusual delay in transportation; restraint by court order or order by a public authority; inability to obtain, at reasonable cost and after exercise of reasonable diligence, any necessary authorizations, approvals, permits, or licenses due to action or inaction of any governmental agency or authority other than the DOE; delays caused by compliance with applicable statutes or regulations governing contracting, procurement, or acquisition procedures despite the exercise of reasonable diligence by the DOE; and insufficient availability of appropriated funds; and any other reasons outside the control of DOE. If a Force Majeure

situation or condition occurs, the DOE will be excused from any delay in performance that may result therefrom.

XIV. Funding

A. The Parties to this Agreement expect that all obligations of the DOE arising under this Agreement will be fully funded. The DOE will request through its budgetary process the funds necessary to comply with the provisions of this Agreement. However, it is expressly understood by the Parties that the ability and authority of DOE to perform any of its obligations under this Agreement is subject to annual Federal authorization and appropriation, including requisite lease payments tied to site access.

B. No provision in this Agreement shall be interpreted to require the obligation or payment of funds by the DOE in violation of the Anti-Deficiency Act, as amended, 31 U.S.C. § 1341 *et seq*. In cases where funding is insufficient to meet the requirements of this Agreement or the payment or obligation of funds would constitute a violation of the above Anti-Deficiency Act, the dates established requiring the payment or obligation of such funds shall be appropriately adjusted to avoid any such violation. The Parties agree to meet, as needed, to review milestones and deliverables required by this Agreement, to ascertain whether any adjustments are warranted because of the provisions of this Section to the Agreement.

C. If appropriated funds are not available to fulfill DOE's obligation under this Agreement, FDEP reserves the right to initiate an action against DOE or any other person which would be appropriate absent this Agreement.

XV. Sampling and Data Sharing

A. The DOE will give the FDEP at least ten (10) days notice, prior to installing any monitoring or recovery well(s) and will allow the FDEP to observe the location and installation of the wells. The DOE will obtain all approvals and permits necessary under applicable law before it installs any well.

B. Upon request, the DOE will allow the FDEP to observe the DOE or its contractors taking samples from a well and will also allow the FDEP to take split samples from said well, if desired.

XVI. Limitation of Liability

Nothing in this Agreement shall make any Party liable for any injuries or damages to persons or property resulting from any acts or omissions of the other Party, or the authorized representatives of the other Party, while carrying out remedial actions required by this Agreement.

The FDEP will not be considered to be a Party to any contract entered into by the DOE to carry out the remedial actions required by this Agreement.

XVII. Resolution of Disputes

A. Except as specifically set forth in this Agreement, if a dispute arises between the Parties with regard to matters covered by and subject to this Agreement, the procedures of this section shall apply.

B. The DOE and the FDEP agree to make a diligent effort to informally resolve any dispute without exercising the formal dispute provisions of this section. In the event of a dispute, the Parties shall engage in informal dialogue between the project managers to resolve the dispute. Efforts to resolve a

dispute will begin with the project managers for the DOE and the FDEP. The period for informally resolving the dispute shall run for thirty (30) days from initial notification of a dispute. During this informal dispute period, the DOE and the FDEP project site managers shall meet or confer by telephone, as many times as necessary, but not less than weekly, to discuss and attempt to resolve the dispute. If the dispute is resolved through the informal dispute process, a written summary of the dispute and its resolution will be prepared by the DOE and signed by the FDEP.

C. If the dispute cannot be resolved through informal discussions and negotiations, not to exceed thirty (30) days, then the parties agree to elevate the dispute to a higher level to attempt resolution. The FDEP's Division Director for Waste Management will attempt to resolve the dispute with DOE's Grand Junction Office Manager. If a resolution is not reached within twenty-one (21) days from elevation of the dispute, the FDEP Secretary and the Manager of DOE's Albuquerque Operations Office shall consult with each other and arrive at a compromised resolution. Upon resolution, the Secretary shall provide DOE with a written final decision setting forth the resolution of the dispute.

D. Any work not affected by the dispute shall continue forward. Any work affected by the dispute shall be stopped if FDEP believes such work is inadequate or defective and such inadequacy or defect is likely to adversely affect human health, welfare or the environment. The FDEP's decision to stop work is subject to immediate dispute resolution.

E. Resolution of a dispute pursuant to this section of the Agreement constitutes a final resolution of the dispute and final agency action arising under this Agreement. All parties shall abide by all terms and conditions of any final resolution except to the extent that any final resolution may be submitted by DOE to a court of competent jurisdiction for judicial review.

XVIII. Termination and Release

The DOE's compliance with the provisions of this Agreement shall be deemed to have been satisfied and terminated upon written concurrence by the FDEP with the DOE's written notice that it has complied with the provisions of this Agreement. The FDEP's written concurrence with the DOE's notice shall state that the FDEP releases the DOE from any and all obligations required by the provisions of this Agreement. Any disagreement between the Parties concerning the DOE's compliance with the provisions of this Agreement and the DOE's release from this Agreement shall be subject to Section XVII (Resolution of Disputes) of this Agreement.

XIX. Covenant Not to Sue and Reservation of Rights

In consideration of the DOE entering into this Agreement and based on the information known to the Parties on the effective date of this Agreement, the FDEP agrees that compliance with this Agreement shall stand in lieu of any administrative, legal, and equitable remedies available to the FDEP against the DOE regarding the remediation of the Site.

The FDEP and DOE expressly agree to exhaust any remedies for resolving disputes as provided in this Agreement before pursuing any remedies it may have under statutes which provide the jurisdictional basis for this Agreement. The Parties reserve all rights

to judicial review that they may have including the right to seek review of issues which were addressed in a final resolution or a dispute under Section XVII of this Agreement. The Parties agree to exhaust their rights under Section XVII prior to exercising any rights to judicial review they may have. The Parties agree that all Parties shall have the right to enforce the terms of this Agreement subject to the limitations stated in this Section.

XX. Amendment of Agreement

This Agreement may be modified only by written agreement of the Parties. Any modification to this Agreement shall be effective on the date of execution by the Parties. Based upon ample opportunity of the Parties to negotiate changes, modifications, or amendments to this Agreement, the Parties will simultaneously become signatories upon execution and signing of this Agreement.

XXI. Public Comment

Within twenty-one (21) days after the Parties sign this Agreement, the DOE will announce the availability of this Agreement to the public for review and comment. The FDEP will accept comments from the public for a period of twenty-one (21) days after such announcement. Copies of all comments received by the FDEP shall be forwarded to the DOE. At the end of the comment period, the FDEP will review all such comments and will either:

1. Determine that the Agreement should be executed in its present form, in which case the FDEP will file the Agreement with the Clerk of the FDEP, and it shall become effective on that date. Thereafter, the FDEP will sign the Agreement without any change, and it shall become effective on that date, or

2. Determine that modification of the Agreement is necessary, in which case the FDEP, after consultation with the DOE, will send to the DOE a redline/strike-out version of the Agreement, which includes all proposed changes to the Agreement, for its review and comment. The modified Agreement will become effective twenty-one (21) days after receipt by the DOE, unless the DOE notifies the FDEP, in writing, within fourteen (14) days of receipt of the modified Agreement, that the proposed Agreement is not acceptable to the DOE. The DOE's notice shall specify the areas of disagreement with the proposed modification and shall suggest alternatives for the consideration of the FDEP. If the Parties still can not agree on the proposed modification, the DOE may, within fourteen (14) days, invoke the provisions of Section XVII (Resolution of Disputes) of this Agreement with regard to the modifications proposed by the FDEP. If the DOE fails to invoke Dispute Resolution procedures within the required fourteen (14) days, it will be presumed that the DOE accepts the Agreement as modified by the FDEP. The FDEP will file the revised Agreement with the Clerk of the FDEP, and the Agreement will become final as of that date.

XXII. Effective Date

This agreement is a final order of the FDEP pursuant to Section 120.52(7), Florida Statutes, and it is final and effective on the date filed with the Clerk of the FDEP unless a Petition for Administrative Hearing is filed in accordance with Chapter 120, Florida Statutes. Upon the timely filing of a petition, this Agreement will not be effective until further order of the FDEP or such other judicial order.

XXIII. Signatories

Each undersigned representative of a Party to this Agreement certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind such Party to this Agreement:

By: Donna Bergman-Tabbert
Donna Bergman-Tabbert, Manager
U.S. Department of Energy
Grand Junction Office

Date: December 14, 2000

By: John M. Ruddell
John M. Ruddell
Director, Division of Waste Management
Florida Department of Environmental Protection

Date: 18 January 2001

XXIII. Signatories

Each undersigned representative of a Party to this Agreement certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind such Party to this Agreement:

By: Donna Bergman-Tabbert
Donna Bergman-Tabbert, Manager
U.S. Department of Energy
Grand Junction Office

Date: December 14, 2000

By: John M. Ruddell
John M. Ruddell
Director, Division of Waste Management
Florida Department of Environmental Protection

Date: 18 January 2001

FILING AND ACKNOWLEDGEMENT
FILED, on this date, pursuant to S120.52 Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.

Marie Johnson 3/12/01
Clerk Date

Attachment A

Legal Description of the Site

Surveyor's report, including legal description, follows.

LEGAL DESCRIPTION:
(SEE DATA SOURCE 3)

(A portion of that certain property described in Deed Book 1602, page 391, Public Records of Pinellas County, Florida)

That part of Lot 1 in the NW 1/4 of Section 13, Township 30 South, Range 15 East, lying South of the South line of Lot 6 in NE 1/4 of said Section 13, extended Westerly to the West boundary line of said Lot 1 in NW 1/4; all according to Plat of Pinellas Groves, Inc., recorded in Plat Book 1, page 55, Public Records of Pinellas County, Florida;

Together with:

That certain 15.00 feet of street allowance, lying East of and adjacent to that part of Lot 1 in the NW 1/4 of Section 13, Township 30 South, Range 15 East, lying South of the South line of Lot 6 in NE 1/4 of said Section 13, extended Westerly to the West boundary of said Lot 1 in NW 1/4; all according to Plat of Pinellas Groves, Inc., recorded in Plat Book 1, Page 55, Public Records of Pinellas County, Florida, vacated by Deed Book 1611, page 573 of the Public Records of Pinellas County, Florida;

ALL BEING MORE PARTICULARLY DESCRIBED IN THIS SURVEY PREPARED BY FLORIDA DESIGN CONSULTANTS, INC., AS FOLLOWS:

A parcel of land lying within Section 13, Township 30 South, Range 15 East, Pinellas County, Florida, more particularly described as follows:

Commence at the Northeast boundary corner of the Northwest 1/4 of Section 13, Township 30 South, Range 15 East, Pinellas County, Florida; Thence S 00°31'35" W, along the North/South center line of said Section 13 (being the basis of bearings for this description), for 677.84 feet to the Northeast boundary corner of the Southeast 1/4 of the Northeast 1/4 of the Northwest 1/4 of said Section 13, same also being the point of intersection with Westerly extension of the South boundary line of Lot 6, lying in the Northeast 1/4 of said Section 13, Pinellas Groves, Inc., as recorded in Plat Book 1, page 55 of the Public Records of Pinellas County, Florida, same also being the Point of Beginning; Thence leaving said North/South center line of Section 13, N 89°10'44" W, along said Westerly extension of the South boundary line of Lot 6, and along the North boundary line of that certain property described in Deed Book 1602, page 391 of the Public Records of Pinellas County, Florida, same also being the South boundary line of that certain property described in Official Records Book 8516, page 1708 of the Public Records of Pinellas County, Florida, respectively, for 398.25 feet to a Northwest boundary corner of said certain property described in Deed Book 1602, page 391, same also being the Southwest boundary corner of said certain property described in Official Records Book 8516, page 1708, same also being the point of intersection with the East boundary line of that certain property described in Official Records Book 4137, page 924 of the Public Records of Pinellas County, Florida, same also being the point of intersection with the East boundary line of Lot 2, lying in the Northwest 1/4 of aforesaid Section 13, aforesaid Pinellas Groves, Inc.; Thence S 00°33'47" W, along a West boundary line of said certain property described in Deed Book 1602, page 391, same also being said East boundary line of that certain property described in Official Records Book 4137, page 924, same also being said East boundary line of Lot 2, for 270.32 feet to a Southwest boundary corner of said certain property described in Deed Book 1602, page 391, same also being the Southeast boundary corner of said certain property described in Official Records Book 4137, page 924, same also being the point of intersection with the Northerly line of a C.S.X. Transportation Inc., Railroad Right-of-Way; Thence S 44°26'42" E, along a Southerly boundary line of said certain property described in Deed Book 1602, page 391, and its Southeasterly extension, respectively, same also being said Northerly line of a C.S.X. Transportation Inc., Railroad Right-of-Way, for 563.72 feet to the point of intersection with aforesaid North/South center line of Section 13; Thence leaving said Northerly line of a C.S.X. Transportation Inc., Railroad Right-of-Way, N 00°31'35" E, along said North/South center line of Section 13, for 667.09 feet to the Point of Beginning and containing 186,712 square feet or 4.286 acres, more or less.

Closure 0.01' ska

[The Title to said certain property described in Deed Book 1602, page 391, was transferred through several owners with the first transfer being described in Official Records Book 123, page 483 of the Public Records of Pinellas County, Florida, wherein "An accurate legal description based upon a physical survey prepared by Deuel and Day, Engineers" caused boundary discrepancies. These discrepancies were then transmitted through subsequent Deeds to the most recent Deed described in Official Records Book 5421, page 524 of the Public Records of Pinellas County, Florida.

Attachment B

Authorized Representatives

For the United States Department of Energy:

Mr. David S. Ingle
Project Manager
c/o MACTEC-ERS
7887 Bryan Dairy Road, Suite 260
Largo, Florida 33777
(727) 541-8943

For the Florida Department of Environmental Protection:

Mr. John Armstrong
Remedial Projects Manager
Florida Department of Environmental Protection
Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, Florida 32399

Attachment C

State of Florida Department of Environmental Protection
Notice of Agreement

The Department of Environmental Protection gives notice of agency action of entering into an Agreement with the Department of Energy pursuant to Section 120.57(4), Florida Statutes. The Agreement addresses the limited purpose of remediating the groundwater under a parcel of property adjacent to the United States Department of Energy's former Pinellas Plant, known as the 4.5-Acre Site. The Agreement is available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at the Department of Environmental Protection, Southwest District Office, 3804 Coconut Palm Drive, Tampa, Florida 32399.

Persons whose substantial interests are affected by this Agreement have a right to petition for an administrative hearing on the Agreement. The Petition must contain the information set forth below and must be filed (received) in the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS-35, Tallahassee, Florida 32399-3000, within twenty-one (21) days of receipt of this notice. A copy of the Petition must also be mailed at the time of filing to the District Office named above at the address indicated. Failure to file a petition within the twenty-one (21) days constitutes a waiver of any right such person has to an administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes.

The petition shall contain the following information: (a) the name, address, and telephone number of each petitioner; the Department's identification number for the Agreement and the county in which the subject matter or activity is located; (b) a statement of how and when each petitioner received notice of the Agreement; (c) a statement of how each petitioner's substantial interests are affected by the Agreement; (d) a statement of the material facts disputed by petitioner, if any; (e) a statement of facts which petitioner contends warrant reversal or modification of the Agreement; (f) a statement of which rules or statutes petitioner contends require reversal or modification of the Agreement; (g) a statement of the relief sought by petitioner, stating precisely the action petitioner wants the Department to take with respect to the Agreement.

If a petition is filed, the administrative hearing process is designed to formulate agency action. Accordingly, the Department's final action may be different from the position taken by it in this Notice. Persons whose substantial interests will be affected by any decision of the Department with regard to the subject Agreement have the right to petition to become a party to the proceeding. The petition must conform to the requirements specified above and be filed (received) within twenty-one (21) days of receipt of this notice in the Office of General Counsel at the above address of the Department. Failure to petition within the allowed timeframe constitutes a waiver of any

right such person has to request a hearing under Sections 120.569 and 120.57, Florida Statutes, and to participate as a party to this proceeding. Any subsequent intervention will only be at the approval of the presiding officer upon motion filed pursuant to Rule 28-106.205, Florida Administrative Code.

State of Florida Department of Environmental Protection
Notice of Agreement

The Department of Environmental Protection gives notice of agency action of entering into an Agreement with the Department of Energy pursuant to Section 120.57(4), Florida Statutes. The Agreement addresses the limited purpose of remediating the groundwater under a parcel of property adjacent to the United States Department of Energy's former Pinellas Plant, known as the 4.5-Acre Site. The Agreement is available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at the Department of Environmental Protection, Southwest District Office, 3804 Coconut Palm Drive, Tampa, Florida 32399.

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