

APPENDIX U
DRAFT MEMORANDUM OF AGREEMENT

Agreement Establishing Covenants and Restrictions

This Agreement Establishing Covenants and Restrictions (“Agreement”) is made between ENERGYSOLUTIONS, LLC, (“EnergySolutions”), a Utah limited liability company, and the UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY (“UDEQ”). The Director of the Division of Waste Management and Radiation Control is the UDEQ representative for this Agreement.

Recitals:

- (1) EnergySolutions is the record owner of the following-described premises located in Tooele County, Utah, described in detail in Exhibit A hereto. This property described in Exhibit A is referred to herein as the Federal Cell.
- (2) The UDEQ has issued EnergySolutions its license (No. UT add) to receive, possess, and dispose of federal concentrated depleted uranium at and upon the Federal Cell and pursuant to the terms and conditions as specified in the license.
- (3) EnergySolutions intends to retain ownership of the Federal Cell, until the Federal Cell is decommissioned. Approximately five years after decommissioning, EnergySolutions will transfer title to the Federal Cell and the federal waste therein to the United States Department of Energy (“DOE”) pursuant to the *Real Estate Transfer Agreement for the Federal Cell by and between EnergySolutions, LLC and the U.S. Department of Energy* (“Federal Land Transfer Agreement”), attached hereto as Exhibit B.
- (4) The State of Utah has the ability to enforce the Federal Land Transfer Agreement against EnergySolutions pursuant to the terms of the *Real Estate Transfer Agreement for the Federal Cell by and Between EnergySolutions and the State of Utah* (“State Land Transfer Agreement”), attached hereto as Exhibit C.
- (5) The process by which such decommissioning and transfer will occur is set forth in the *Memorandum of Agreement Governing the Long-Term Stewardship of the Federal Cell at Energy Solutions’ Clive Disposal Facility*, attached hereto as Exhibit D.
- (6) During the period of private ownership, EnergySolutions will maintain the institutional controls set forth in this Agreement such that the Federal Cell will be subject to protections equivalent to government ownership.

NOW, THEREFORE, these restrictive covenants are executed by EnergySolutions to ensure the integrity of the Federal Cell for the safety of the people of the State of Utah, to wit:

- (1) These covenants shall supersede any restrictive covenants currently on record affecting the Federal Cell, and recorded at Tooele, Utah, in the Tooele County Records.

- (2) *EnergySolutions* will ensure the Federal Cell is only used for disposal as set forth in the applicable license. Any other use of the Federal Cell is prohibited without the prior written consent of the UDEQ, or its successors or assigns, which shall not be unreasonably withheld.
- (3) *EnergySolutions*, its successors or assigns, shall erect monuments and markers surrounding the Federal Cell and shall thereafter continuously maintain these monuments and markers. These monuments and markers are to be approved by the UDEQ to warn of the presence of radioactive material at the site.
- (4) *EnergySolutions*, its successors or assigns, shall secure and monitor the Federal Cell to ensure no member of the public is exposed to any radioactive materials.
- (5) *EnergySolutions*, its successors or assigns shall maintain and decommission the Federal Cell, at the appropriate time, as set forth in the applicable license.
- (6) *EnergySolutions* shall notify the UDEQ of its intent to convey any interest in the Federal Cell described herein. Such conveyance shall not be made without the prior written approval of the UDEQ, provided however that such approval is not to be unreasonably withheld. No conveyance of title, easement, or other interest in the Federal Cell shall be consummated by *EnergySolutions* without adequate and complete provision for continued maintenance of the Federal Cell. Instruments that convey any interest in the Federal Cell shall include a notification to the person or entity who acquires the interest that the Property is subject to this Agreement and shall identify the date, entry no., book and page number at which this document is recorded in the records of the Tooele County Recorder, in the State of Utah.
- (7) Any state of Utah or federal governmental agency affected by any violations of these restricted covenants may enforce them by legal action in the state of Utah District Court for Tooele County.
- (8) Any of the parties mentioned in the previous paragraph may obtain an immediate temporary restraining order from the District Court upon allegation that these restrictive covenants have been violated without any further showing being required. *EnergySolutions*, its successors or assigns, shall then bear the burden of proof as to why such temporary restraining order should not be made a permanent injunction by the court.
- (9) *EnergySolutions*, its successors and assigns, shall not at any time institute legal proceedings, by way of quiet title or otherwise, to remove or amend these restrictive covenants unless the DEQ has given advanced written approval.

These restrictive covenants shall run with the land until such time as the Federal Cell is transferred to the DOE pursuant to the Federal Land Transfer Agreement. At such time, these

restrictive covenants shall terminate and DOE shall be responsible for maintaining the Federal Cell in conformity with applicable law.

ENERGYSOLUTIONS, LLC

[Insert Name of ES Representative]

[Insert Title of ES Representative]

Date

State of _____)

) ss:

County of _____)

Before me, a notary public, in and for said county and state, personally appeared _____, a duly authorized representative of _____, who acknowledged to me that *[he/she]* did execute the foregoing instrument on behalf of _____.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this _____ day of _____ 20____.

Notary Public

UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY

Ty L. Howard Director

Division of Waste Management and Radiation Control

Date

State of Utah)

) ss:

County of Salt Lake)

Before me, a notary public, in and for said county and state, personally appeared Ty L. Howard Director of the Utah Division of Waste Management and Radiation Control, who acknowledged to me that he did execute the foregoing instrument.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal
this ____ day of _____, 20 .

Notary Public



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