

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA

Plaintiff,

v.

ATLANTA GAS LIGHT COMPANY,
CONTINENTAL HOLDINGS INC.,
DUKE ENERGY FLORIDA, INC., BLAINE
PIERCE, ORLAGROUP, LLC, and
CITY OF ORLANDO

Defendants.

Civil Action No. _____

CONSENT DECREE FOR REMEDIAL DESIGN/REMEDIAL ACTION (RD/RA)
FOR OU1, ORLANDO FORMER GASIFICATION PLANT

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I. BACKGROUND

A. The United States of America (“United States”), on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. §§ 9606, 9607.

B. The United States in its complaint seeks, *inter alia*: (1) reimbursement of costs incurred by EPA and the Department of Justice (“DOJ”) for response actions at the Orlando Former Gasification Plant Superfund Site (the “Site”) in Orlando, Orange County, Florida, together with accrued interest; and (2) performance of response actions by the defendants at the Site consistent with the National Contingency Plan (“NCP”), 40 C.F.R. Part 300.

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of Florida (the “State”) on September 26, 2013 of negotiations with potentially responsible parties (“PRPs”) regarding the implementation of the remedial design and remedial action for Operable Unit One (“OU1”), and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.

D. The defendants that have entered into this Consent Decree (“Settling Defendants”) do not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaints, nor do they acknowledge that the release or

threatened release of hazardous substances at or from the Site constitutes an imminent or substantial endangerment to the public health or welfare or the environment.

E. In response to a release or a substantial threat of a release of hazardous substances at or from the Site, PRPs at the Site commenced on September 30, 2003, a Remedial Investigation and Feasibility Study (“RI/FS”) for the Site pursuant to 40 C.F.R. § 300.430.

F. Settling Defendants completed a Remedial Investigation (“RI”) Report on January 15, 2009, and Settling Defendants completed a Feasibility Study (“FS”) - OU1 Report on February 28, 2013.

G. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS – OU1 and of the proposed plan for remedial action on June 28, 2013 in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action for OU1. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator, or Director, Superfund Division, EPA Region 4, based the selection of the response action.

H. The decision by EPA on the remedial action for OU1 to be implemented for OU1 at the Site is embodied in a final Record of Decision “ROD,” for OU1, executed on September 25, 2013. Notice of the final plan was published in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b).

I. Based on the information presently available to EPA, EPA believes that the Work, as defined below, will be properly and promptly conducted by Settling

Defendants if conducted in accordance with the requirements of this Consent Decree and its appendices.

J. Solely for the purposes of Section 113(j) of CERCLA, 42 U.S.C. § 9613(j), the remedy set forth in the ROD for OU1 and the Work to be performed by Settling Defendants shall constitute a response action taken or ordered by the President for which judicial review shall be limited to the administrative record.

K. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of this Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States and upon Settling Defendants and their successors, and assigns. Any change in ownership or corporate status of a Settling Defendant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling Defendant's responsibilities under this Consent Decree.

3. Settling Defendants shall provide a copy of this Consent Decree to each contractor hired to perform the Work required by this Consent Decree and to each person representing any Settling Defendant with respect to the Site or the Work, and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. Settling Defendants or their contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. Settling Defendants shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work in accordance with the terms of this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with Settling Defendants within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

4. Unless otherwise expressly provided in this Consent Decree, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations.

Whenever terms listed below are used in this Consent Decree or in the appendices, the following definitions shall apply solely for purposes of this Consent Decree:

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601, *et seq.*

“City” shall mean City of Orlando.

“Consent Decree” shall mean this Consent Decree and all appendices attached hereto (listed in Section XXVIII). In the event of conflict between this Consent Decree and any appendix, this Consent Decree shall control.

“Day” or “day” shall mean a calendar day unless expressly stated to be a working day. The term “working day” shall mean a day other than a Saturday, Sunday, or federal or state holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal or state holiday, the period shall run until the close of business of the next working day.

“DOJ” shall mean the United States Department of Justice and its successor departments, agencies, or instrumentalities.

“Effective Date” shall mean the date upon which this Consent Decree is entered by the Court as recorded on the Court docket, or, if the Court instead issues an order approving the Consent Decree, the date such order is recorded on the Court docket.

“EPA” shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

“EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

“FDEP” shall mean the Florida Department of Environmental Protection and any successor departments or agencies of the State.

“Future Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports, and other deliverables submitted pursuant to this Consent Decree, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Paragraph 9 (Notice to Successors-in-Title and Transfers of Real Property), Sections VII (Remedy Review), IX (Access and Institutional Controls) (including, but not limited to, the cost of attorney time and any monies paid to secure access and/or to secure, implement, monitor, maintain, or enforce Institutional Controls including, but not limited to, the amount of just compensation), XV (Emergency Response), Paragraph 47 (Funding for Work Takeover), and Section XXIX (Community Involvement). Future Response Costs shall also include all Interim Response Costs, and all Interest on those Past Response Costs Settling Defendants have agreed to pay under this Consent Decree that has accrued pursuant to 42 U.S.C. § 9607(a) during the period from March 11, 2014 to the Effective Date.

“Institutional Controls” or “ICs” shall mean Proprietary Controls and state or local laws, regulations, ordinances, zoning restrictions, restrictive covenants, or other governmental controls or notices that: (a) limit land, water, and/or resource use to minimize the potential for human exposure to Waste Material at or in connection with the Site; (b) limit land, water, and/or resource use to implement, ensure non-interference

with, or ensure the protectiveness of the Remedial Action; and/or (c) provide information intended to modify or guide human behavior at or in connection with the Site.

“Interim Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, (a) paid by the United States in connection with the Site between March 11, 2014 and the Effective Date, or (b) incurred between March 11, 2014 and the Effective Date but paid after the Effective Date.

“Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

“Operable Unit One” (“OU1”) shall mean the contaminated on-site soils and groundwater in the surficial aquifer, as it is defined in the ROD for OU1.

“Operation and Maintenance” or “O&M” shall mean all activities required to maintain the effectiveness of the Remedial Action as required under the Operation and Maintenance Plan approved or developed by EPA pursuant to Section VI (Performance of the Work by Settling Defendants) and the SOW, and maintenance, monitoring, and enforcement of Institutional Controls.

“Owner Settling Defendant” shall mean any of the Settling Defendants that hold a real property interest in any portion of the Site. As of the date of this Consent Decree, the only Owner Settling Defendants are the City of Orlando (“City”), and Blaine Pierce.

“Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

“Parties” shall mean the United States and Settling Defendants.

“Past Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site through March 11, 2014, plus Interest on all such costs that has accrued pursuant to 42 U.S.C. § 9607(a) through such date.

“Performance Standards” shall mean the cleanup standards and other measures of achievement of the goals of the Remedial Action, set forth in the ROD for OU1 and the SOW and any modified standards established pursuant to this Consent Decree.

“Plaintiff” shall mean the United States.

“Proprietary Controls” shall mean easements or covenants running with the land that (a) limit land, water, or resource use and/or provide access rights and (b) are created pursuant to common law or statutory law by an instrument that is recorded by the owner in the appropriate land records office.

“RCRA” shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

“Record of Decision for OU1” or “ROD for OU1” shall mean the EPA Record of Decision relating to OU1 signed on September 25, 2013, by the Regional Administrator,

EPA Region 4, or her delegate, and all attachments thereto. The ROD for OU1 is attached as Appendix A.

“Remedial Action” shall mean all activities Settling Defendants are required to perform under the Consent Decree to implement the ROD for OU1, in accordance with the SOW, the final approved remedial design submission, the approved Remedial Action Work Plan and other plans approved by EPA, including implementation of Institutional Controls, until the Performance Standards are met, and excluding performance of the Remedial Design, O&M, and the activities required under Section XXV (Retention of Records).

“Remedial Action Work Plan” shall mean the document developed pursuant to Paragraph 12 (Remedial Action Work Plan) and approved by EPA, and any amendments thereto.

“Remedial Design” shall mean those activities to be undertaken by Settling Defendants to develop the final plans and specifications for the Remedial Action pursuant to the Remedial Design Work Plan.

“Remedial Design Work Plan” shall mean the document developed pursuant to Paragraph 11 (Remedial Design Work Plan) and approved by EPA, and any modifications thereto.

“ROD for OU1” shall mean the Record of Decision for OU1.

“Section” shall mean a portion of this Consent Decree identified by a Roman numeral.

“Settling Defendants” shall mean Atlanta Gas Light Company, Continental Holdings, Inc., Duke Energy Florida, Inc., the City of Orlando, OrlaGroup, LLC, and Blaine Pierce.

“Site” shall mean the Orlando Former Gasification Plant, encompassing approximately four (4) acres, located at the 500 and 600 blocks of West Robinson Street, Orlando, Orange County, Florida, and depicted generally on the map attached as Appendix B.

“State” shall mean the State of Florida.

“Statement of Work” or “SOW” shall mean the statement of work for implementation of the Remedial Design, Remedial Action, and O&M at the Site, as set forth in Appendix C to this Consent Decree and any modifications made in accordance with this Consent Decree.

“Supervising Contractor” shall mean the principal contractor retained by Settling Defendants to supervise and direct the implementation of the Work under this Consent Decree.

“Transfer” shall mean to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

“United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

“Waste Material” shall mean (1) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant

under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

“Work” shall mean all activities and obligations Settling Defendants are required to perform under this Consent Decree, except the activities required under Section XXV (Retention of Records).

V. GENERAL PROVISIONS

5. Objectives of the Parties. The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare or the environment by the design and implementation of response actions at the Site by Settling Defendants, to pay response costs of the Plaintiff, and to resolve the claims of Plaintiff against Settling Defendants as provided in this Consent Decree.

6. Commitments by Settling Defendants.

a. Settling Defendants shall finance and perform the Work in accordance with this Consent Decree, the ROD for OU1, the SOW, and all work plans and other plans, standards, specifications, and schedules set forth in this Consent Decree or developed by Settling Defendants and approved by EPA pursuant to this Consent Decree. Settling Defendants shall pay the United States for Past Response Costs and Future Response Costs as provided in this Consent Decree.

b. The obligations of Settling Defendants to finance and perform the Work, including obligations to pay amounts due under this Consent Decree, are joint and several. In the event of the insolvency of any Settling Defendant or the failure by any

Settling Defendant to implement any requirement of this Consent Decree, the remaining Settling Defendants shall complete all such requirements.

7. Compliance With Applicable Law. All activities undertaken by Settling Defendants pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Settling Defendants must also comply with all applicable or relevant and appropriate requirements of all federal and state environmental laws as set forth in the ROD for OU1 and the SOW. The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be deemed to be consistent with the NCP.

8. Permits.

a. As provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-site requires a federal or state permit or approval, Settling Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. Settling Defendants may seek relief under the provisions of Section XVIII (Force Majeure) for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval referenced in Paragraph 8.a and required for the Work, provided that they have submitted timely and

complete applications and taken all other actions necessary to obtain all such permits or approvals required for the Work.

c. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

9. Notice to Successors-in-Title and Transfers of Real Property.

a. For any real property owned or controlled by any Owner Settling Defendant located at the Site, except for the City, Owner Settling Defendant shall, within 15 days after the Effective Date, submit to EPA for review and approval a proposed notice to be filed with the appropriate land records office that provides a description of the real property and provides notice to all successors-in-title that the real property is part of the Site, that EPA has selected a remedy for the Site, and that potentially responsible parties have entered into a Consent Decree requiring implementation of the remedy. The notice also shall describe the land use restrictions, if any, set forth in Paragraphs 26.a(11) and 27.b and shall identify the United States District Court in which the Consent Decree was filed, the name and civil action number of this case, and the date the Consent Decree was entered by the Court. Owner Settling Defendant, except for the City, shall record the notice within ten days after EPA's approval of the notice. Owner Settling Defendant, except for the City shall provide EPA with a certified copy of the recorded notice within ten days after recording such notice.

b. Owner Settling Defendant shall, at least 60 days prior to any Transfer of any real property located at the Site, give written notice: (1) to the transferee regarding the Consent Decree and any Institutional Controls regarding the real property;

and (2) to EPA and the State regarding the proposed Transfer, including the name and address of the transferee and the date on which the transferee was notified of the Consent Decree and any Institutional Controls.

c. Owner Settling Defendant may Transfer any real property located at the Site only if: (1) any Proprietary Controls required by Section IX (Access and Institutional Controls) have been recorded with respect to the real property; or (2) Owner Settling Defendant has obtained an agreement from the transferee, enforceable by Settling Defendants and the United States, to (i) allow access and restrict land/water use, pursuant to Paragraphs 27.a and 27.b, (ii) record any Proprietary Controls on the real property, pursuant to Paragraph 27.c, and (iii) subordinate its rights to any such Proprietary Controls, pursuant to Paragraph 27.c, and EPA has approved the agreement in writing. If, after a Transfer of the real property, the transferee fails to comply with the agreement provided for in this Paragraph 9, Owner Settling Defendant shall take all reasonable steps to obtain the transferee's compliance with such agreement. The United States may seek the transferee's compliance with the agreement and/or assist Owner Settling Defendant in obtaining compliance with the agreement. Settling Defendants shall reimburse the United States under Section XVI (Payments for Response Costs), for all costs incurred, direct or indirect, by the United States regarding obtaining compliance with such agreement, including, but not limited to, the cost of attorney time.

In the event of any Transfer of real property located at the Site, unless the United States otherwise consents in writing, Settling Defendants shall continue to comply with their obligations under the Consent Decree, including, but not limited to, their

obligation to provide and/or secure access, to implement, maintain, monitor, and report on Institutional Controls, and to abide by such Institutional Controls.

VI. PERFORMANCE OF THE WORK BY SETTTLING DEFENDANTS

10. Selection of Supervising Contractor.

a. All aspects of the Work to be performed by Settling Defendants pursuant to Sections VI (Performance of the Work by Settling Defendants), VII (Remedy Review), VIII (Quality Assurance, Sampling, and Data Analysis), IX (Access and Institutional Controls), and XV (Emergency Response) of this Consent Decree shall be under the direction and supervision of the Supervising Contractor, the selection of which shall be subject to disapproval on a reasonable basis set forth in writing by EPA.

Settling Defendants have selected and, after reasonable opportunity for review and comment by the State, EPA has issued an authorization to proceed regarding hiring of the following person as Supervising Contractor: Geosyntec Consultants, Inc., ATTN: Mr. Jim Langenbach, 6770 South Washington Avenue, Suite 3, Titusville, FL 32780. If at any time hereafter, Settling Defendants propose to change this Supervising Contractor, Settling Defendants shall give such notice to EPA and must obtain an authorization to proceed from EPA before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree. Settling Defendants shall demonstrate that the proposed replacement contractor has a quality assurance system that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's

Quality Management Plan (“QMP”). The QMP should be prepared in accordance with “EPA Requirements for Quality Management Plans (QA/R-2)” (EPA/240/B-01/002, March 2001, reissued May 2006) or equivalent documentation as determined by EPA.

b. If EPA disapproves a proposed Supervising Contractor, EPA will notify Settling Defendants in writing. Settling Defendants shall submit to EPA a list of contractors, including the qualifications of each contractor, that would be acceptable to them within 30 days after receipt of EPA’s disapproval of the contractor previously proposed. EPA will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. Settling Defendants may select any contractor from that list that is not disapproved and shall notify EPA of the name of the contractor selected within 21 days after EPA’s authorization to proceed.

c. If EPA fails to provide written notice of its authorization to proceed or disapproval as provided in this Paragraph and this failure prevents Settling Defendants from meeting one or more deadlines in a plan approved by EPA pursuant to this Consent Decree, Settling Defendants may seek relief under Section XVIII (Force Majeure).

11. Remedial Design Work Plan.

a. Not later than 90 days after EPA’s issuance of an authorization to proceed pursuant to Paragraph 10 (Selection of Supervising Contractor), Settling Defendants shall submit to EPA and the State a work plan for the design of the Remedial Action at the Site (“Remedial Design Work Plan”). The Remedial Design Work Plan

shall provide for design of the remedy set forth in the ROD for OU1, in accordance with the SOW and for achievement of the Performance Standards and other requirements set forth in the ROD for OU1, this Consent Decree, and/or the SOW. Upon its approval by EPA, the Remedial Design Work Plan shall be incorporated into and become enforceable under this Consent Decree. Within 30 days after EPA's issuance of an authorization to proceed under Paragraph 10, Settling Defendants shall submit to EPA and the State a Health and Safety Plan for field design activities that conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

b. The Remedial Design Work Plan shall include plans and schedules for implementation of all remedial design and pre-design tasks identified in the SOW, including, but not limited to, plans and schedules for the completion of: (1) design sampling and analysis plan (including, but not limited to, a Remedial Design Quality Assurance Project Plan in accordance with Section VIII (Quality Assurance, Sampling, and Data Analysis), as needed; and (2) a Construction Quality Assurance Plan ("CQAP"); and may also include: (i) a treatability study, (ii) a Pre-design Work Plan, (iii) a preliminary design submittal, and (iv) a pre-final/final design submittal. In addition, the Remedial Design Work Plan shall include a schedule for completion of the Remedial Action Work Plan.

c. Upon approval of the Remedial Design Work Plan by EPA, after a reasonable opportunity for review and comment by the State, and submittal of the Health and Safety Plan for all field activities to EPA and the State, Settling Defendants shall

implement the Remedial Design Work Plan. Settling Defendants shall submit to EPA and the State all plans, reports, and other deliverables required under the approved Remedial Design Work Plan in accordance with the approved schedule for review and approval pursuant to Section XI (EPA Approval of Plans, Reports, and Other Deliverables).

d. The preliminary design submittal shall include, at a minimum, the following: (1) design criteria; (2) results of treatability studies; (3) results of additional field sampling and pre-design work; (4) project delivery strategy; (5) preliminary plans, drawings, and sketches; (6) required specifications in outline form; and (7) preliminary construction schedule.

e. The final design submittal shall include, at a minimum, the following: (1) final plans and specifications; (2) Operation and Maintenance Plan; (3) CQAP; (4) Field Sampling Plan (directed at measuring progress towards meeting Performance Standards); and (5) Contingency Plan. The CQAP, which shall detail the approach to quality assurance during construction activities at the Site, shall specify a quality assurance official, independent of the Supervising Contractor, to conduct a quality assurance program during the construction phase of the project.

12. Remedial Action Work Plan.

a. Not later than 90 days after the approval of the final design submission, Settling Defendants shall submit to EPA and the State a work plan for the performance of the Remedial Action at the Site (“Remedial Action Work Plan”). The Remedial Action Work Plan shall provide for construction and implementation of the

remedy set forth in the ROD for OU1 and achievement of the Performance Standards, in accordance with this Consent Decree, the ROD for OU1, the SOW, and the design plans and specifications developed in accordance with the Remedial Design Work Plan and approved by EPA. Upon its approval by EPA, the Remedial Action Work Plan shall be incorporated into and become enforceable under this Consent Decree. At the same time as they submit the Remedial Action Work Plan, Settling Defendants shall submit to EPA and the State a Health and Safety Plan for field activities required by the Remedial Action Work Plan that conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

b. The Remedial Action Work Plan shall include the following: (1) schedule for completion of the Remedial Action; (2) method for selection of the contractor; (3) schedule for developing and submitting other required Remedial Action plans; (4) schedule for groundwater monitoring plan; (5) methods for satisfying permitting requirements; (6) methodology for implementing the Operation and Maintenance Plan; (7) methodology for implementing the Contingency Plan; (8) tentative formulation of the Remedial Action team; (9) schedule for CQAP (by construction contractor); and (10) procedures and plans for the decontamination of equipment and the disposal of contaminated materials. The Remedial Action Work Plan also shall include the methodology for implementing the CQAP and a schedule for implementing all Remedial Action tasks identified in the final design submission and shall identify the

initial formulation of Settling Defendants' Remedial Action project team (including, but not limited to, the Supervising Contractor).

c. Upon approval of the Remedial Action Work Plan by EPA, after a reasonable opportunity for review and comment by the State, Settling Defendants shall implement the activities required under the Remedial Action Work Plan. Settling Defendants shall submit to EPA and the State all reports and other deliverables required under the approved Remedial Action Work Plan in accordance with the approved schedule for review and approval pursuant to Section XI (EPA Approval of Plans, Reports, and Other Deliverables). Unless otherwise directed by EPA, Settling Defendants shall not commence physical Remedial Action activities at the Site without prior notice to and approval from EPA.

13. Settling Defendants shall continue to implement the Remedial Action until the Performance Standards are achieved. Settling Defendants shall implement O&M for so long thereafter as is required by this Consent Decree.

14. Modification of SOW or Related Work Plans.

a. If EPA determines modification to the work specified in the SOW and/or in work plans developed pursuant to the SOW is necessary to achieve and maintain the Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the ROD for OU1, EPA may require that such modification be incorporated in the SOW and/or such work plans, provided, however, that a modification may only be required pursuant to this Paragraph to the extent that it is consistent with the scope of the remedy selected in the ROD for OU1. For the purposes of this

Paragraph and Paragraph 49 (Completion of the Work) only, the “scope of the remedy set forth in the ROD for OUI” is:

- (1) Excavation and offsite disposal of surface soil containing Site-specific contaminants of concern at concentrations above the cleanup levels;
- (2) Excavation and off-site disposal of unsaturated soils in the area(s) along the northern and eastern boundaries of parcel 2 where mobile light non-aqueous phase liquid was observed during the remedial investigation;
- (3) Implementation of in-situ stabilization and solidification (ISS) in the saturated zone where saturated and/or mobile dense non aqueous phase liquid was observed in the area(s) along the northern boundary of parcel 3;
- (4) Removal and off-site disposal of former manufactured gas plant (“MGP”) structures such as the tar well and associated piping encountered during excavation activities;
- (5) Demolition of the building on parcel 2 and off-site disposal of building materials;
- (6) Installation of an engineered capping system over the footprint of the “source area” to minimize infiltration;
- (7) Backfilling of the excavated areas with clean backfill material and restoration of construction-impacted hardscape areas as needed;

- (8) Installation of an ISS wall along the perimeter of the highly impacted soil and groundwater areas also identified as “source area” (where residual MGP impacts were observed) and where groundwater concentrations are greater than or equal to FDEP natural attenuation default concentrations;
- (9) Implementation of a short-term groundwater monitoring program subsequent to the construction of the “source area” containment system to determine the extent of the areas within the dissolved groundwater plume where in-situ enhanced bioremediation/biosparging or MNA will be implemented. It is anticipated this groundwater monitoring program will be conducted over a period of approximately three years;
- (10) Implementation of a long-term groundwater monitoring program to assess the effectiveness of the remedy;
- (11) Implementation of Institutional Controls such as restrictive covenants or land and groundwater use restrictions to ensure the effectiveness of the remedy.

If Settling Defendants object to any modification determined by EPA to be necessary pursuant to this Paragraph, they may seek dispute resolution under Section XIX (Dispute Resolution). The SOW and/or related work plans shall be modified in accordance with final resolution of the dispute.

b. The SOW and/or related work plans shall be modified: (1) in accordance with the modification issued by EPA; or (2) if Settling Defendants invoke dispute resolution, in accordance with the final resolution of the dispute. The modification shall be incorporated into and enforceable under this Consent Decree, and Settling Defendants shall implement all work required by such modification. Settling Defendants shall incorporate the modification into the Remedial Design or Remedial Action Work Plan under Paragraph 11 (Remedial Design Work Plan) or Paragraph 12 (Remedial Action Work Plan), as appropriate. Settling Defendants shall implement any work required by any modifications incorporated in the SOW and/or in work plans developed pursuant to the SOW in accordance with this Paragraph.

c. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this Consent Decree.

d. Based upon information currently available to EPA, EPA has reviewed the potential protective plan to be followed during the implementation of the proposed remedies and has concluded, based on information currently available that, upon review and approval of such measures, the proposed response actions should not pose any unacceptable threat to human health of the community or nearby residents.

15. Settling Defendants acknowledge and agree that nothing in this Consent Decree, the SOW, or the Remedial Design or Remedial Action Work Plans constitutes a warranty or representation of any kind by Plaintiff that compliance with the work

requirements set forth in the SOW and the Work Plans will achieve the Performance Standards.

16. Off-Site Shipment of Waste Material.

a. Settling Defendants may ship Waste Material from the Site to an off-Site facility only if they verify, prior to any shipment, that the off-Site facility is operating in compliance with the requirements of Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440, by obtaining a determination from EPA that the proposed receiving facility is operating in compliance with 42 U.S.C. § 9621(d)(3) and 40 C.F.R. § 300.440.

b. Settling Defendants may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, they provide written notice to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator. This notice requirement shall not apply to any off-Site shipments when the total quantity of all such shipments will not exceed ten cubic yards. The written notice shall include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. Settling Defendants also shall notify the state environmental official referenced above and the EPA Project Coordinator of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Settling Defendants shall provide the written notice after the award of the contract for Remedial Action construction and before the Waste Material is shipped.

VII. REMEDY REVIEW

17. Periodic Review. Settling Defendants shall conduct any studies and investigations that EPA requests in order to permit EPA to conduct reviews of whether the Remedial Action is protective of human health and the environment at least every five years as required by Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and any applicable regulations.

18. EPA Selection of Further Response Actions. If EPA determines, at any time, that the Remedial Action is not protective of human health and the environment, EPA may select further response actions for the Site in accordance with the requirements of CERCLA and the NCP.

19. Opportunity To Comment. Settling Defendants and, if required by Sections 113(k)(2) or 117 of CERCLA, 42 U.S.C. § 9613(k)(2) or 9617, the public, will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record during the comment period.

20. Settling Defendants' Obligation To Perform Further Response Actions. If EPA selects further response actions relating to the Site, EPA may require Settling Defendants to perform such further response actions, but only to the extent that the reopener conditions in Paragraph 84 or Paragraph 85 (United States' Pre- and Post-Certification Reservations) are satisfied. Settling Defendants may invoke the procedures set forth in Section XIX (Dispute Resolution) to dispute (a) EPA's determination that the reopener conditions of Paragraph 84 or Paragraph 85 are satisfied, (b) EPA's

determination that the Remedial Action is not protective of human health and the environment, or (c) EPA's selection of the further response actions. Disputes pertaining to whether the Remedial Action is protective or to EPA's selection of further response actions shall be resolved pursuant to Paragraph 68 (Record Review).

21. Submission of Plans. If Settling Defendants are required to perform further response actions pursuant to Paragraph 20, they shall submit a plan for such response action to EPA for approval in accordance with the procedures of Section VI (Performance of the Work by Settling Defendants). Settling Defendants shall implement the approved plan in accordance with this Consent Decree.

VIII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

22. Quality Assurance.

a. Settling Defendants shall use quality assurance, quality control, and chain of custody procedures for all treatability, design, compliance, and monitoring samples in accordance with "EPA Requirements for Quality Assurance Project Plans (QA/R5)" (EPA/240/B-01/003, March 2001, reissued May 2006), "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/240/R-02/009, December 2002), and subsequent amendments to such guidelines upon notification by EPA to Settling Defendants of such amendment. Amended guidelines shall apply only to procedures conducted after such notification.

b. Prior to the commencement of any monitoring project under this Consent Decree, Settling Defendants shall submit to EPA for approval, after a reasonable opportunity for review and comment by the State, a Quality Assurance Project Plan

(“QAPP”) that is consistent with the SOW, the NCP, and applicable guidance documents. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Consent Decree. Settling Defendants shall ensure that EPA personnel and its authorized representatives are allowed access at reasonable times to all laboratories utilized by Settling Defendants in implementing this Consent Decree. In addition, Settling Defendants shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Settling Defendants shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Consent Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods that are documented in the “USEPA Contract Laboratory Program Statement of Work for Inorganic Analysis, ILM05.4,” and the “USEPA Contract Laboratory Program Statement of Work for Organic Analysis, SOM01.2,” and any amendments made thereto during the course of the implementation of this Consent Decree; however, upon approval by EPA, after opportunity for review and comment by the State, Settling Defendants may use other analytical methods that are as stringent as or more stringent than the CLP-approved methods. Settling Defendants shall ensure that all laboratories they use for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent quality assurance/quality control (“QA/QC”) program. Settling Defendants shall use only laboratories that have a documented Quality System that complies with ANSI/ASQC E4-1994, “Specifications and Guidelines for Quality Systems for

Environmental Data Collection and Environmental Technology Programs” (American National Standard, January 5, 1995), and “EPA Requirements for Quality Management Plans (QA/R-2)” (EPA/240/B-01/002, March 2001, reissued May 2006) or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (“NELAP”) as meeting the Quality System requirements. Settling Defendants shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Consent Decree are conducted in accordance with the procedures set forth in the QAPP approved by EPA.

23. Upon request, Settling Defendants shall allow split or duplicate samples to be taken by EPA or its authorized representatives. Settling Defendants shall notify EPA not less than thirty (30) days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow Settling Defendants to take split or duplicate samples of any samples they take as part of Plaintiff’s oversight of Settling Defendants’ implementation of the Work.

24. Settling Defendants shall submit to EPA two (2) copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Settling Defendants with respect to the Site and/or the implementation of this Consent Decree unless EPA agrees otherwise.

25. Notwithstanding any provision of this Consent Decree, the United States retains all of its information gathering and inspection authorities and rights, including

enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

IX. ACCESS AND INSTITUTIONAL CONTROLS

26. If the Site, or any other real property where access and/or land/water use restrictions and Institutional Controls are needed to implement this Consent Decree, is owned or controlled by any of the Settling Defendants, such Settling Defendants shall:

a. Commencing on the date of entry of this Consent Decree, provide the United States and the other Settling Defendants, and their representatives, contractors, and subcontractors, with access at all reasonable times to the Site, or such other real property, to conduct any activity regarding the Consent Decree including, but not limited to, the following activities:

- (1) Monitoring the Work;
- (2) Verifying any data or information submitted to the United States;
- (3) Conducting investigations regarding contamination at or near the Site;
- (4) Obtaining samples;
- (5) Assessing the need for, planning, or implementing additional response actions at or near the Site;
- (6) Assessing implementation of quality assurance and quality control practices as defined in the approved CQAP;
- (7) Implementing the Work pursuant to the conditions set forth in Paragraph 88.a (Work Takeover);

- (8) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, consistent with Section XXIV (Access to Information);
- (9) Assessing Settling Defendants' compliance with this Consent Decree;
- (10) Determining whether the Site or other real property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Consent Decree; and
- (11) Implementing, monitoring, maintaining, reporting on, and enforcing any Institutional Controls.

b. Commencing on the date of entry of the Consent Decree, such Settling Defendants shall not use the Site, or such other real property, in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material or interfere with or adversely affect the implementation, integrity, or protectiveness of the Remedial Action or O&M.

c. Within 120 days of EPA's request, execute and record in the appropriate land records office of Orange County, State of Florida, a restrictive covenant running with the land, that: (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 26.a of this Consent Decree and the ROD for OU1, and (ii) grants the right to enforce the land/water use restrictions and Institutional Controls as outlined in the

ROD for OU1 and this Consent Decree, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. Such Settling Defendants shall grant the access rights and the rights to enforce the land/water use restrictions and Institutional Controls to one or more of the following persons, as determined by EPA: (i) the United States, on behalf of EPA, and its representatives; (ii) the State and its representatives; (iii) the other Settling Defendants and their representatives; and/or (iv) other appropriate grantees. Such Settling Defendants shall, prior to the execution and recordation of the restrictive covenants required in this paragraph, submit to EPA for review and approval with respect to such property:

(1) A draft restrictive covenant, materially consistent with the form attached hereto as Appendix D, that is enforceable under the laws of the State of Florida.

(2) A current title report or some other evidence of title acceptable to EPA, which shows title to the land described in the restrictive covenant to be free and clear of all prior liens and encumbrances (except when those liens or encumbrances are approved by EPA or when, despite best efforts, Settling Defendants are unable to obtain release or subordination of such prior liens or encumbrances).

If the title evidence is over six (6) months old at the time of EPA's approval and acceptance of the restrictive covenant, then within fifteen (15) days after such acceptance, the Settling Defendants shall update the title search. If the title evidence is less than six

(6) months old at the time of EPA's approval and acceptance of the restrictive covenant or the title update shows that nothing has occurred since the effective date of the title evidence to affect the title adversely, then Settling Defendants shall record the restrictive covenant with the appropriate land records office of Orange County, Florida within 15 days. Within 30 days of recording the restrictive covenant, such Settling Defendants shall provide EPA with a final title report or other title evidence acceptable to EPA, and a certified copy of the original recorded restrictive covenant showing the clerk's recording stamps. If the restrictive covenant is to be conveyed to the United States, the restrictive covenant and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title must be obtained as required by 40 U.S.C. § 3111.

27. If the Site, or any other real property where access and/or land/water use restrictions are needed, is owned or controlled by persons other than any Settling Defendant, Settling Defendants shall use best efforts to secure from such persons:

a. an agreement to provide access thereto for the United States and Settling Defendants, and their representatives, contractors, and subcontractors, to conduct any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 26.a of this Consent Decree and the ROD for OU1;

b. an agreement, enforceable by the Settling Defendants and the United States, to refrain from using the Site, or such other real property, in any manner that would interfere with or adversely affect the implementation, integrity, or

protectiveness of the remedial measures to be performed pursuant to this Consent Decree and the ROD for OU1; and

c. The execution and recordation in the appropriate land records office of Orange County, State of Florida, of a restrictive covenant, running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 26.a of this Consent Decree and the ROD for OU1, and (ii) grants the right to enforce the land/water use restrictions and Institutional Controls as outlined in the ROD for OU1 and this Consent Decree, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performance pursuant to this Consent Decree. The access rights and/or rights to enforce land/water use restrictions and Institutional Controls shall be granted to one or more of the following persons, as determined by EPA: (i) the United States, on behalf of EPA, and its representatives, (ii) the State and its representatives, (iii) Settling Defendants and their representatives, and/or (iv) other appropriate grantees. Prior to the execution and recordation of the restrictive covenants required in this paragraph, Settling Defendants shall submit to EPA for review and approval with respect to such property:

- (i) draft restrictive covenant, materially consistent with the form attached hereto as Appendix D, enforceable under the laws of the State of Florida; and
- (ii) a current title report, or some other evidence of title acceptable to EPA, which shows title to the land affected by the restrictive

covenant to be free and clear of all prior liens and encumbrances (except when those liens or encumbrances are deemed acceptable by EPA or when, despite best efforts, Settling Defendants are unable to obtain release or subordination of such prior liens or encumbrances).

If the title evidence is over six (6) months old at the time of EPA's approval and acceptance of the restrictive covenant, then within 15 days after such acceptance, the Settling Defendants shall update the title search. If the title evidence is less than six (6) months old at the time of EPA's approval and acceptance of the restrictive covenant or the title update shows that nothing has occurred since the effective date of the title evidence to affect the title adversely, then Settling Defendants shall record the restrictive covenant with the appropriate land records office of Orange County, Florida within 15 days. Within 30 days of recording of the restrictive covenant, such Settling Defendants shall provide EPA with a final title report, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded restrictive covenant showing the clerk's recording stamps. If the restrictive covenant is to be conveyed to the United States, the restrictive covenant and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title must be obtained as required by 40 U.S.C. § 3111.

28. As used in this Consent Decree, "best efforts" includes the payment of reasonable sums of money in consideration of access, access easements, land/water use restrictions, restrictive covenants and Institutional Controls and/or an agreement to

release or subordinate a prior lien or encumbrance. If, (a) any access or land/water use restriction agreements required by this Consent Decree are not obtained within 45 days of the date of entry of this Consent Decree, (b) any access easements or restrictive covenants required by Paragraph 27.c of this Consent Decree are not submitted to EPA in draft form within 45 days of the date of entry of this Consent Decree, or (c) Settling Defendants are unable to obtain an agreement pursuant to Paragraph 26 or 27 from the holder of a prior lien or encumbrance to release or subordinate such lien or encumbrance or to release or subordinate such encumbrance to the easement being created pursuant to this Consent Decree within 45 days of the date of entry of this Consent Decree, Settling Defendants shall promptly notify the United States in writing, and shall include in that notification a summary of the steps that Settling Defendants have taken to attempt to comply with Paragraph 26 or 27 of this Consent Decree. The United States may, as it deems appropriate, assist Settling Defendants in obtaining access, land/water use restrictions or restrictive covenants, either in the form of contractual agreements or in the form of easements running with the land, or in obtaining the release or subordination of a prior lien or encumbrance on any property including but not limited to the property currently owned or controlled by Blaine Pierce (Parcel 3 as shown in the ROD) or by Peoples Gas System (Parcels 2 and 6 as shown in the ROD). Settling Defendants shall reimburse the United States in accordance with the procedures in Section XVI (Payments for Response Costs) for all costs, direct or indirect, incurred not inconsistent with the National Contingency Plan (NCP), by the United States in obtaining such access, land/water use restrictions, restrictive covenants and/or the release/subordination of prior

liens or encumbrances including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation. Disputes pertaining to whether the United States' costs are not inconsistent with the NCP shall be resolved pursuant to Paragraphs 68-70.

29. If EPA determines that Institutional Controls in the form of state or local laws, regulations, ordinances, or other governmental controls are needed to implement the remedy selected in the ROD for OU1, Settling Defendants shall cooperate with EPA's efforts to secure and ensure such governmental controls.

30. Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, as well as all of its rights to require Institutional Controls, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

X. REPORTING REQUIREMENTS

31. In addition to any other requirement of this Consent Decree, Settling Defendants shall submit to EPA and the State two (2) copies of written monthly progress reports that: (a) describe the actions that have been taken toward achieving compliance with this Consent Decree during the previous month; (b) include a summary of all results of sampling and tests and all other data received or generated by Settling Defendants or their contractors or agents in the previous month; (c) identify all work plans, reports, and other deliverables required by this Consent Decree completed and submitted during the previous month; (d) describe all actions, including, but not limited to, data collection and implementation of work plans, that are scheduled for the next six weeks and provide

other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts and Pert charts; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that Settling Defendants have proposed to EPA or that have been approved by EPA; and (g) describe all activities undertaken in support of the Community Involvement Plan during the previous month and those to be undertaken in the next six weeks. Settling Defendants shall submit these progress reports to EPA and the State by the tenth day of every month following the entry of this Consent Decree until EPA notifies Settling Defendants pursuant to Section XIV (Certification of Completion). If requested by EPA, Settling Defendants shall also provide briefings for EPA to discuss the progress of the Work.

32. Settling Defendants shall notify EPA of any change in the schedule described in the monthly progress report for the performance of any activity, including, but not limited to, data collection and implementation of work plans, no later than seven days prior to the performance of the activity.

33. Upon the occurrence of any event during performance of the Work that Settling Defendants are required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-know Act (“EPCRA”), 42 U.S.C. § 11004, Settling Defendants shall within 24 hours of the onset of such event orally notify the EPA Project Coordinator or the Alternate EPA

Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator nor Alternate EPA Project Coordinator is available, the Emergency Response Section, Region 4, United States Environmental Protection Agency. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

34. Within twenty (20) days of the onset of such an event, Settling Defendants shall furnish to EPA a written report, signed by Settling Defendants' Project Coordinator, setting forth the events that occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, Settling Defendants shall submit a report setting forth all actions taken in response thereto.

35. Settling Defendants shall submit 2 copies of all plans, reports, data, and other deliverables required by the SOW, the Remedial Design Work Plan, the Remedial Action Work Plan, or any other approved plans to EPA in accordance with the schedules set forth in such plans. Settling Defendants shall simultaneously submit 2 copies of all such plans, reports, and data to the State. Upon request by EPA, Settling Defendants shall submit in electronic form all or any portion of any deliverables Settling Defendants are required to submit pursuant to the provisions of this Consent Decree.

36. All reports and other documents submitted by Settling Defendants to EPA (other than the monthly progress reports referred to above) which purport to document Settling Defendants' compliance with the terms of this Consent Decree shall be signed by an authorized representative of the Settling Defendants.

XI. EPA APPROVAL OF PLANS, REPORTS, AND OTHER SUBMISSIONS

37. Initial Submissions. After review of any plan, report, or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA, after reasonable opportunity for review and comment by the State, shall: (1) approve, in whole or in part, the submission; (2) approve the submission upon specified conditions; (3) disapprove, in whole or in part, the submission; or (4) any combination of the foregoing. The provisions of Section XIX (Dispute Resolution) shall govern any dispute pertaining to this Section XI.

a. EPA also may modify the initial submission to cure deficiencies in the submission if: (1) EPA determines that disapproving the submission and awaiting a resubmission would cause substantial disruption to the Work; or (2) previous submission(s) have been disapproved due to material defects and the deficiencies in the initial submission under consideration indicate a bad faith lack of effort to submit an acceptable plan, report, or deliverable.

b. Resubmissions. Upon receipt of a notice of disapproval under Paragraph 37(3) or (4), or if required by a notice of approval upon specified conditions under Paragraph 37(2), Settling Defendants shall, within thirty (30) days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other deliverable for approval. After review of the resubmitted plan, report, or other deliverable, EPA may: (1) approve, in whole or in part, the resubmission; (2) approve the resubmission upon specified conditions; (3) modify the resubmission;

(4) disapprove, in whole or in part, the resubmission, requiring Settling Defendants to correct the deficiencies; or (5) any combination of the foregoing.

38. Material Defects. If an initially submitted or resubmitted plan, report, or other deliverable contains a material defect, and the plan, report, or other deliverable is disapproved or modified by EPA under Paragraph 37 due to such material defect, then the material defect shall constitute a lack of compliance for purposes of Paragraph 73. The provisions of Section XIX (Dispute Resolution) and Section XX (Stipulated Penalties) shall govern the accrual and payment of any stipulated penalties regarding Settling Defendants' submissions under this Section.

39. Implementation. Upon approval, approval upon conditions, or modification by EPA under Paragraph 37 (Initial Submissions) or Paragraph 37.b (Resubmissions), of any plan, report, or other deliverable, or any portion thereof: (a) such plan, report, or other deliverable, or portion thereof, shall be incorporated into and enforceable under this Consent Decree; and (b) Settling Defendants shall take any action required by such plan, report, or other deliverable, or portion thereof, subject only to their right to invoke the Dispute Resolution procedures set forth in Section XIX (Dispute Resolution) with respect to the modifications or conditions made by EPA. The implementation of any non-deficient portion of a plan, report, or other deliverable submitted or resubmitted under Paragraph 37 shall not relieve Settling Defendants of any liability for stipulated penalties under Section XX (Stipulated Penalties).

XII. PROJECT COORDINATORS

40. Within 20 days of entry of this Consent Decree, Settling Defendants and EPA will notify each other, in writing, of the name, address, telephone number, and email address of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other Parties at least five (5) working days before the change occurs, unless impracticable, but in no event later than the actual day the change is made. Settling Defendants' Project Coordinator shall be subject to disapproval on a reasonable basis set forth in writing by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. Settling Defendants' Project Coordinator shall not be an attorney for any Settling Defendant in this matter. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

41. Plaintiff may designate other representatives, including, but not limited to, EPA employees, and federal contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager ("RPM") and an On-Scene Coordinator ("OSC") by the NCP, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the NCP, to halt any Work required by this Consent Decree and to take any necessary response action when he or she determines

that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material.

42. EPA's Project Coordinator and Settling Defendants' Project Coordinator will meet, at a minimum, on a monthly basis. This meeting may be conducted by telephone conference call.

XIII. PERFORMANCE GUARANTEE

43. In order to ensure the full and final completion of the Work, Settling Defendants shall establish and maintain a performance guarantee, initially in the amount of \$18,000,000, for the benefit of EPA (hereinafter "Estimated Cost of the Work"). The performance guarantee, which must be satisfactory in form and substance to EPA, shall be in the form of one or more of the following mechanisms:

a. A surety bond unconditionally guaranteeing payment and/or performance of the Work that is issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;

b. One or more irrevocable letters of credit, payable to or at the direction of EPA, that is issued by one or more financial institution(s) (1) that has the authority to issue letters of credit and (2) whose letter-of-credit operations are regulated and examined by a federal or state agency;

c. A trust fund established for the benefit of EPA that is administered by a trustee (1) that has the authority to act as a trustee and (2) whose trust operations are regulated and examined by a federal or state agency;

d. A policy of insurance that (1) provides EPA with acceptable rights as a beneficiary thereof; and (2) is issued by an insurance carrier (i) that has the authority to issue insurance policies in the applicable jurisdiction(s) and (ii) whose insurance operations are regulated and examined by a federal or state agency;

e. A demonstration of financial capability made pursuant to 40 C.F.R. § 264.143(f), as more fully set forth below.

44. Settling Defendants have selected, and EPA has approved as an acceptable performance guarantee for all Settling Defendants, a demonstration of financial capability pursuant to 40 C.F.R. § 264.143(f) by Defendants Atlanta Gas Light Company and Duke Energy Florida, Inc., combined with a trust fund in the amount of One Million Dollars (\$1,000,000), established for the benefit of EPA that is administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a state or federal agency.

45. If, at any time after the Effective Date and before issuance of the Certification of Completion of the Work pursuant to Section XIV (Certificate of Completion), Settling Defendants provide a performance guarantee for completion of the Work by means of a demonstration or guarantee pursuant to Paragraph 43 or 44, the relevant Settling Defendants shall also comply with the other relevant requirements of 40 C.F.R. § 264.143(f) relating to these mechanisms unless otherwise provided in this

Consent Decree, including but not limited to: (a) the initial submission of required financial reports and statements from the relevant entity's chief financial officer ("CFO") and independent certified public accountant ("CPA"), in the form prescribed by EPA in its financial test sample CFO letters and CPA reports available at:

<http://www.epa.gov/compliance/resources/policies/cleanup/superfund/fa-test-samples.pdf>; (b) the annual resubmission of such reports and statements within 90 days after the close of each such entity's fiscal year; and (c) the prompt notification of EPA after each such entity determines that it no longer satisfies the financial test requirements set forth at 40 C.F.R. § 264.143(f)(1) and in any event within 90 days after the close of any fiscal year in which such entity no longer satisfies such financial test requirements. For purposes of the performance guarantee mechanisms specified in this Section XIII, references in 40 C.F.R. Part 264, Subpart H, to "closure," "post-closure," and "plugging and abandonment" shall be deemed to include the Work; the terms "current closure cost estimate," "current post-closure cost estimate," and "current plugging and abandonment cost estimate" shall be deemed to include the Estimated Cost of the Work; the terms "owner" and "operator" shall be deemed to refer to each Settling Defendant making a demonstration under Paragraph 44; and the terms "facility" and "hazardous waste facility" shall be deemed to include the Site.

46. In the event that EPA determines at any time that a performance guarantee provided by any Settling Defendant pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, or in the event that

any Settling Defendant becomes aware of information indicating that a performance guarantee provided pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, Settling Defendants, within 30 days after receipt of notice of EPA's determination or, as the case may be, within 30 days after any Settling Defendant becoming aware of such information, shall obtain and present to EPA for approval a proposal for a revised or alternative form of performance guarantee listed in Paragraph 43 and 44 that satisfies all requirements set forth in this Section XIII; provided, however, that if any Settling Defendant cannot obtain such revised or alternative form of performance guarantee within such 30-day period, and provided further that the Settling Defendant shall have commenced to obtain such revised or alternative form of performance guarantee within such 30-day period, and thereafter diligently proceeds to obtain the same, EPA shall extend such period for such time as is reasonably necessary for the Settling Defendant in the exercise of due diligence to obtain such revised or alternative form of performance guarantee, such additional period not to exceed sixty (60) days. In seeking approval for a revised or alternative form of performance guarantee, Settling Defendants shall follow the procedures set forth in Paragraph 48.b(2). Settling Defendants' inability to post a performance guarantee for completion of the Work shall in no way excuse performance of any other requirements of this Consent Decree, including, without limitation, the obligation of Settling Defendants to complete the Work in strict accordance with the terms of this Consent Decree.

47. Funding for Work Takeover. The commencement of any Work Takeover pursuant to Paragraph 88 shall trigger EPA's right to receive the benefit of any performance guarantee(s) provided pursuant to Paragraphs 43 and 44, and at such time EPA shall have immediate access to resources guaranteed under any such performance guarantee(s), whether in cash or in kind, as needed to continue and complete the Work assumed by EPA under the Work Takeover. Upon the commencement of any Work Takeover, if (a) for any reason EPA is unable to promptly secure the resources guaranteed under any such performance guarantee(s), whether in cash or in kind, necessary to continue and complete the Work assumed by EPA under the Work Takeover, or (b) in the event that the performance guarantee involves a demonstration of satisfaction of the financial test criteria pursuant to Paragraph 43 or Paragraph 44, Settling Defendants (or the guarantor) shall immediately upon written demand from EPA deposit into a special account within the EPA Hazardous Substance Superfund or such other account as EPA may specify, in immediately available funds and without setoff, counterclaim, or condition of any kind, a cash amount up to but not exceeding the estimated cost of completing the Work as of such date, as determined by EPA. In addition, if at any time EPA is notified by the issuer of a performance guarantee that such issuer intends to cancel the performance guarantee mechanism it has issued, then, unless Settling Defendants provide a substitute performance guarantee mechanism in accordance with this Section XIII no later than 30 days prior to the impending cancellation date, EPA shall be entitled (as of and after the date that is 30 days prior to the impending cancellation) to draw fully on the funds guaranteed under the then-existing

performance guarantee. All EPA Work Takeover costs not reimbursed under this Paragraph shall be reimbursed under Section XVI (Payments for Response Costs).

48. Modification of Amount and/or Form of Performance Guarantee.

a. Reduction of Amount of Performance Guarantee. If Settling Defendants believe that the estimated cost of completing the Work has diminished below the amount set forth in Paragraph 44 (\$1,000,000), Settling Defendants may, on any anniversary of the Effective Date, or at any other time agreed to by the Parties, petition EPA in writing to request a reduction in the amount of the performance guarantee provided pursuant to this Section so that the amount of the performance guarantee is equal to the estimated cost of completing the Work. Settling Defendants shall submit a written proposal for such reduction to EPA that shall specify, at a minimum, the estimated cost of completing the Work and the basis upon which such cost was calculated. In seeking approval for a reduction in the amount of the performance guarantee, Settling Defendants shall follow the procedures set forth in Paragraph 48.b(2) for requesting a revised or alternative form of performance guarantee, except as specifically provided in this Paragraph 48.a. If EPA decides to accept Settling Defendants' proposal for a reduction in the amount of the performance guarantee, either to the amount set forth in Settling Defendants' written proposal or to some other amount as selected by EPA, EPA will notify the petitioning Settling Defendants of such decision in writing. Upon EPA's acceptance of a reduction in the amount of the performance guarantee, the Estimated Cost of the Work shall be deemed to be the estimated cost of completing the Work set forth in EPA's written decision. After receiving EPA's written

decision, Settling Defendants may reduce the amount of the performance guarantee in accordance with and to the extent permitted by such written acceptance and shall submit copies of all executed and/or otherwise finalized instruments or other documents required in order to make the selected performance guarantee(s) legally binding in accordance with Paragraph 48.b(2). In the event of a dispute, Settling Defendants may reduce the amount of the performance guarantee required hereunder only in accordance with a final administrative or judicial decision resolving such dispute pursuant to Section XIX (Dispute Resolution). No change to the form or terms of any performance guarantee provided under this Section, other than a reduction in amount, is authorized except as provided in Paragraphs 46 or 48.b.

b. Change of Form of Performance Guarantee.

(1) If, after the Effective Date, Settling Defendants desire to change the form or terms of any performance guarantee(s) provided pursuant to this Section, Settling Defendants may, on any anniversary of the Effective Date, or at any other time agreed to by the Parties, petition EPA in writing to request a change in the form or terms of the performance guarantee provided hereunder. The submission of such proposed revised or alternative performance guarantee shall be as provided in Paragraph 48.b(2). Any decision made by EPA on a petition submitted under this Paragraph shall be made in EPA's sole and unreviewable discretion, and such decision shall not be subject to challenge by Settling Defendants pursuant to the dispute resolution provisions of this Consent Decree or in any other forum.

(2) Settling Defendants shall submit a written proposal for a revised or alternative performance guarantee to EPA that shall specify, at a minimum, the estimated cost of completing the Work, the basis upon which such cost was calculated, and the proposed revised performance guarantee, including all proposed instruments or other documents required in order to make the proposed performance guarantee legally binding. The proposed revised or alternative performance guarantee must satisfy all requirements set forth or incorporated by reference in this Section. Settling Defendants shall submit such proposed revised or alternative performance guarantee to the EPA Superfund Financial Management Officer in accordance with Section XXVI (Notices and Submissions), with a copy to Paula Painter and to the US EPA Region 4. EPA will notify Settling Defendants in writing of its decision to accept or reject a revised or alternative performance guarantee submitted pursuant to this Paragraph. Within ten days after receiving a written decision approving the proposed revised or alternative performance guarantee, Settling Defendants shall execute and/or otherwise finalize all instruments or other documents required in order to make the selected performance guarantee(s) legally binding in a form substantially identical to the documents submitted to EPA as part of the proposal, and such performance guarantee(s) shall thereupon be fully effective. Settling Defendants shall submit copies of all executed and/or otherwise finalized instruments or other documents required in order to make the selected performance guarantee(s) legally binding to the EPA Superfund Financial

Management Officer within 30 days after receiving a written decision approving the proposed revised or alternative performance guarantee in accordance with Section XXVI (Notices and Submissions), with a copy to Paula Painter and to the United States and the EPA as specified in Section XXVI.

c. Release of Performance Guarantee. Settling Defendants shall not release, cancel, or discontinue any performance guarantee provided pursuant to this Section except as provided in this Paragraph. If Settling Defendants receive written notice from EPA in accordance with Section XIV (Certification of Completion) that the Work has been fully and finally completed in accordance with the terms of this Consent Decree, or if EPA otherwise so notifies Settling Defendants in writing, Settling Defendants may thereafter release, cancel, or discontinue the performance guarantee(s) provided pursuant to this Section. In the event of a dispute, Settling Defendants may release, cancel, or discontinue the performance guarantee(s) required hereunder only in accordance with a final administrative or judicial decision resolving such dispute pursuant to Section XIX (Dispute Resolution).

XIV. CERTIFICATION OF COMPLETION

49. Completion of the Work.

a. Within 90 days after Settling Defendants conclude that all phases of the Work (including O & M), have been fully performed, Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Defendants and EPA. If, after the pre-certification inspection, the Settling Defendants still believe that the Work has been fully performed, Settling Defendants shall submit a written report

by a registered professional engineer stating that the Work has been completed in full satisfaction of the requirements of this Consent Decree. Settling Defendants may elect to certify completion of the remedy and restoration for the soil component initially, leaving certification for completion of groundwater for a separate submission. The report shall contain the following statement, signed by a responsible corporate official of a Settling Defendant or the Settling Defendants' Project Coordinator:

To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

If, after review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that any portion of the Work has not been completed in accordance with this Consent Decree, EPA will notify Settling Defendants in writing of the activities that must be undertaken by Settling Defendants pursuant to this Consent Decree to complete the Work, provided, however, that EPA may only require Settling Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the ROD for OU1," as that term is defined in Paragraph 14.a. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Settling Defendants to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans, Reports, and Other Submissions). Settling

Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to their right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent request for Certification of Completion by Settling Defendants and after a reasonable opportunity for review and comment by the State, that all phases of the Work have been performed in accordance with this Consent Decree, and Performance Standards have been achieved, EPA will so notify the Settling Defendants in writing.

XV. EMERGENCY RESPONSE

50. If any action or occurrence during the performance of the Work causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Defendants shall, subject to Paragraph 51, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, Settling Defendants shall notify the EPA Emergency Response Unit, Region 4 at 1-800-424-8802. Settling Defendants shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the SOW. In the event that Settling Defendants fail to take appropriate response action as required by this

Section, and EPA takes such action instead, Settling Defendants shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XVI (Payments for Response Costs).

51. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States (a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, or (b) to direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, subject to Section XXI (Covenants Not to Sue by Plaintiff).

XVI. PAYMENTS FOR RESPONSE COSTS

52. Payment by Settling Defendants for Past Response Costs.

a. Within 30 days of the Effective Date, Settling Defendants shall pay to EPA \$46,417.08 in payment for Past Response Costs. Payment shall be made in accordance with Paragraph 54.a (Instructions for Past Response Costs Payments).

b. The total amount to be paid by Settling Defendants pursuant to Paragraph 52.a shall be deposited by EPA in the Orlando Former Gasification Plant Site Special Account within the EPA Hazardous Substance Superfund, to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

53. Payments by Settling Defendants for Future Response Costs. Settling Defendants shall pay to EPA all Future Response Costs not inconsistent with the NCP.

a. On a periodic basis, EPA will send Settling Defendants a bill requiring payment that includes a cost summary, which includes direct and indirect costs incurred by EPA, its contractors, and DOJ. Settling Defendants shall make all payments within 30 days after Settling Defendants' receipt of each bill requiring payment, except as otherwise provided in Paragraph 55, in accordance with Paragraph 54.b (Instructions for Future Response Costs Payments and Stipulated Penalties).

b. The total amount to be paid by Settling Defendants pursuant to Paragraph 53.a shall be deposited by EPA in the Orlando Former Gasification Plant Site Special Account within the EPA Hazardous Substance Superfund, to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

54. Payment Instructions for Settling Defendants.

a. Instructions for Past Response Costs Payments. All payments required, elsewhere in this Consent Decree, to be made in accordance with this Paragraph 54.a shall be made at <https://www.pay.gov> to the U.S. Department of Justice account, in accordance with instructions provided to Settling Defendants by the Financial Litigation Unit ("FLU") of the United States Attorney's Office for the Middle District of Florida after the Effective Date. The payment instructions provided by the Financial Litigation Unit shall include a Consolidated Debt Collection System ("CDCS") number,

which shall be used to identify all payments required to be made in accordance with this Consent Decree. The FLU shall provide the payment instructions to:

Mr. Greg Corbett
Director, Environmental Services
AGL Resources, Inc.
10 Peachtree Place NE
Atlanta, GA 30309

on behalf of Settling Defendants. Settling Defendants may change the individual to receive payment instructions on their behalf by providing written notice of such change in accordance with Section XXVI (Notices and Submissions). When making payments under this Paragraph 54.a, Settling Defendants shall also comply with Paragraph 54.c.

b. Instructions for Future Response Costs Payments and Stipulated Penalties. All payments required, elsewhere in this Consent Decree, to be made in accordance with this Paragraph 54.b shall be made by Fedwire EFT to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read “D 68010727 Environmental Protection Agency”

When making payments under this Paragraph 54.b, Settling Defendants shall also comply with Paragraph 54.c.

For ACH payment:

PNC Bank
808 17th Street, NW
Washington, DC 20074

Contact B Jesse White 301-887-6548
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
CTX Format

For online payment:

Payment shall be made at <https://www.pay.gov> to the U.S. EPA account in accordance with instructions to be provided to Settling Defendants by EPA following entry of the Consent Decree.

c. Instructions for All Payments. All payments made under Paragraphs 52.a (Instructions for Past Response Cost Payments) or 54.b (Instructions for Future Response Costs Payments and Stipulated Penalties) shall reference the CDCS Number, Site/Spill ID Number A4W3, and DOJ Case Number _____. At the time of any payment required to be made in accordance with Paragraphs 54.a or 54.b, Settling Defendants shall send notice that payment has been made to the United States, and EPA, in accordance with Section XXVI (Notices and Submissions), and to the EPA Cincinnati Finance Office by email at acctsreceivable.cinwd@epa.gov, or by mail at 26 Martin Luther King Drive, Cincinnati, Ohio 45268. Such notice shall also reference the CDCS Number, Site/Spill ID Number, and DOJ Case Number.

55. Settling Defendants may contest payment of any Future Response Costs if they determine that EPA has made an accounting error or if they allege that a cost item that is included represents costs inconsistent with the NCP. Such objection shall be made

in writing within 30 days of receipt of the bill and must be sent to the United States or the State (if the State's accounting is being disputed) pursuant to Section XXVI (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, the Settling Defendants shall pay all uncontested Future Response Costs to the United States within 30 days of receipt of the bill requiring payment in the manner described in Paragraph 54. Simultaneously, the Settling Defendants shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Florida and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Settling Defendants shall send to the United States, as provided in Section XXVI (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Settling Defendants shall initiate the Dispute Resolution procedures in Section XIX (Dispute Resolution). If the United States prevails in the dispute, Settling Defendants shall pay the sums due (with accrued interest) to the United States within five days after the resolution of the dispute. If Settling Defendants prevail concerning any aspect of the contested costs, Settling Defendants shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to the United States within five days after the resolution of the

dispute. Settling Defendants shall be disbursed any balance of the escrow account. All payments to the United States under this Paragraph shall be made in accordance with Paragraphs 54.b (Instructions for Future Response Costs Payments and Stipulated Penalties). The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Settling Defendants' obligation to reimburse the United States for its Future Response Costs.

56. Interest. In the event that any payments required by Paragraph 54.a are not made within 30 days of the Effective Date or the payments required by Paragraph 54.b are not made within 30 days of the Settling Defendants' receipt of the bill, Settling Defendants shall pay Interest on the unpaid balance. The Interest on Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of Settling Defendants' payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiff by virtue of Settling Defendants' failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to Paragraph 72. The Settling Defendants shall make all payments required by this Paragraph in the manner described in Paragraph 54.

XVII. INDEMNIFICATION AND INSURANCE

57. Settling Defendants' Indemnification of the United States.

a. The United States does not assume any liability by entering into this Consent Decree or by virtue of any designation of Settling Defendants as EPA's

authorized representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e).

Settling Defendants shall indemnify, save and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Further, Settling Defendants agree to pay the United States all costs it incurs including, but not limited to, attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. The United States shall not be held out as a party to any contract entered into by or on behalf of Settling Defendants in carrying out activities pursuant to this Consent Decree. Neither Settling Defendants nor any such contractor shall be considered an agent of the United States.

b. The United States shall give Settling Defendants reasonable notice of any claim for which the United States plans to seek indemnification pursuant to this Paragraph 57, and shall consult with Settling Defendants prior to settling such claim.

58. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Settling Defendants shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

59. Regarding Settling Defendant, City of Orlando, the indemnification and hold harmless provision referenced in Paragraph 57 above is made subject to the limitations of Section 768.28, Florida Statutes. The City of Orlando is prohibited by the foregoing statute from entering into agreements which include an indemnification of other Parties. To the extent allowed by law, the City of Orlando assumes liability for its acts and omissions and the acts or omissions of the City's officers, employees, receivers, trustees, agents, or assigns in carrying out the activities pursuant to this Consent Decree. Nothing herein shall be construed to waive the City of Orlando's sovereign immunity.

60. No later than 15 days before commencing any on-site Work, Settling Defendants shall secure, and shall maintain until the first anniversary of EPA's Certification of Completion of the Remedial Action pursuant to Section XIV

(Certification of Completion) comprehensive general liability insurance with limits of one (1) million dollars, combined single limit, and automobile liability insurance with limits of one (1) million dollars, combined single limit, naming the United States as an additional insured. In addition, for the duration of this Consent Decree, Settling Defendants shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Settling Defendants in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Settling Defendants shall provide to EPA certificates of such insurance and a copy of each insurance policy. Settling Defendants shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If Settling Defendants demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Settling Defendants need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor.

XVIII. FORCE MAJEURE

61. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Settling Defendants, of any entity controlled by Settling Defendants, or of Settling Defendants' contractors that delays or prevents the performance of any obligation under this Consent Decree despite Settling Defendants' best efforts to fulfill the obligation. The requirement that Settling

Defendants exercise “best efforts to fulfill the obligation” includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event such that the delay is minimized to the greatest extent possible. “Force majeure” does not include financial inability to complete the Work or a failure to achieve the Performance Standards.

62. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree for which Settling Defendants intend or may intend to assert a claim of force majeure, Settling Defendants shall notify EPA’s Project Coordinator orally or, in his or her absence, EPA’s Alternate Project Coordinator or, in the event both of EPA’s designated representatives are unavailable, the Director of the Superfund Division, EPA Region 4, within ten (10) days of when Settling Defendants first knew that the event might cause a delay. Within ten (10) days thereafter, Settling Defendants shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Settling Defendants’ rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of Settling Defendants, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Settling Defendants shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure

event. Settling Defendants shall be deemed to know of any circumstance of which Settling Defendants, any entity controlled by Settling Defendants, or Settling Defendants' contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Settling Defendants from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late notice, is able to assess to its satisfaction whether the event is a force majeure under Paragraph 61 and whether Settling Defendants have exercised their best efforts under Paragraph 61, EPA may, in its unreviewable discretion, excuse in writing Settling Defendants' failure to submit timely notices under this Paragraph.

63. If EPA agrees that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this Consent Decree that are affected by the force majeure will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Settling Defendants in writing of its decision. If EPA agrees that the delay is attributable to a force majeure, EPA will notify Settling Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

64. If Settling Defendants elect to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution) in response to EPA's force majeure decision, they shall do so no later than 15 days after receipt of EPA's notice. In any such

proceeding, Settling Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Defendants complied with the requirements of Paragraphs 61 and 62. If Settling Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Settling Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

XIX. DISPUTE RESOLUTION

65. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of Settling Defendants that have not been disputed in accordance with this Section.

66. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

67. Statements of Position.

a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within thirty (30) days after the conclusion of the informal negotiation period, Settling Defendants invoke the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by Settling Defendants. The Statement of Position shall specify Settling Defendants' position as to whether formal dispute resolution should proceed under Paragraph 68 (Record Review) or 69.

b. Within thirty (30) days after receipt of Settling Defendants' Statement of Position, EPA will serve on Settling Defendants its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 68 (Record Review) or Paragraph 69. Within twenty (20) days after receipt of EPA's Statement of Position, Settling Defendants may submit a Reply.

c. If there is disagreement between EPA and Settling Defendants as to whether dispute resolution should proceed under Paragraph 68 (Record Review) or 69, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if Settling Defendants ultimately appeal to the Court

to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 68 and 69.

68. Record Review. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by Settling Defendants regarding the validity of the ROD for OU1's provisions.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

b. The Director of the Superfund Division, EPA Region 4, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 68.a. This decision shall be binding upon Settling Defendants, subject only to the right to seek judicial review pursuant to Paragraphs 68.c and 68.d.

c. Any administrative decision made by EPA pursuant to Paragraph 68.b shall be reviewable by this Court, provided that a motion for judicial

review of the decision is filed by Settling Defendants with the Court and served on all Parties within ten days after receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Defendants' motion.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendants shall have the burden of demonstrating that the decision of the Superfund Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 68.a.

69. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law shall be governed by this Paragraph.

a. Following receipt of Settling Defendants' Statement of Position submitted pursuant to Paragraph 67, the Director of the Superfund Division, EPA Region 4, will issue a final decision resolving the dispute. The Superfund Division Director's decision shall be binding on Settling Defendants unless, within ten (10) days of receipt of the decision, Settling Defendants file with the Court and serve on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the

dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendants' motion.

b. Judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

70. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of Settling Defendants under this Consent Decree, not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 78. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that Settling Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XX (Stipulated Penalties).

XX. STIPULATED PENALTIES

71. Settling Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraphs 72 and 73 to the United States for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XVIII (Force Majeure). "Compliance" by Settling Defendants shall include completion of all payments and activities required under this Consent Decree, or any plan, report, or other deliverable approved under this Consent Decree, in accordance with all applicable requirements of law, this Consent Decree, the SOW, and any plans, reports, or other

deliverables approved under this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

72. Stipulated Penalty Amounts - Work (Including Payments and Excluding Plans, Reports, and Other Deliverables).

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 72.b:

Penalty Per Violation Per Day	Period of Noncompliance
\$1,250.00	1st through 14th day
\$2,500.00	15th through 30th day
\$5,000.00	31st day and beyond

b. Compliance Milestones.

- (1) Submittal and, if necessary, modification of any and all draft and final Remedial Action Work Plans;
- (2) Submittal and, if necessary, modification of any significant deliverables as identified in the EPA approved Remedial Action Work Plan;
- (3) Implementation of the approved Remedial Action Work Plan;
- (4) Completion of the Remedial Action required under this Consent Decree and the SOW;
- (5) Submittal and, if necessary, modification of Remedial Action Reports as required by SOW Task III C;
- (6) Submittal and, if necessary, modification of the Performance Standard Verification and Operation and Maintenance Plan;

- (7) Establishment of financial assurance as required by Paragraphs 43 and 44;
- (8) Procurement or proof of insurance;
- (9) Submittal and, if necessary, modification of any Work Plan(s) for further response actions and additional Work pursuant to Sections VI, VII, VIII, or IX, hereof;
- (10) Implementation of further response actions and additional Work pursuant to Sections VI, VII, VIII, or IX, hereof;
- (11) Payment of all monies required to be paid pursuant to Section XVI.

73. Stipulated Penalty Amounts - Plans, Reports, and other Deliverables. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other plans or deliverables pursuant to the Consent Decree:

Penalty Per Violation Per Day	Period of Noncompliance
\$500.00	1st through 14th day
\$1,000.00	15th through 30th day
\$1,500.00	31st day and beyond

74. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 88 (Work Takeover), Settling Defendants shall be liable for a stipulated penalty in the amount of \$25,000.00. Stipulated penalties under this Paragraph are in addition to the remedies available under Paragraphs 47 (Funding for Work Takeover) and 88 (Work Takeover).

75. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Section XI (EPA Approval of Plans, Reports, and Other Deliverables), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Settling Defendants of any deficiency; (b) with respect to a decision by the Director of the Superfund Division, EPA Region 4, under Paragraph 68.b or 69.a of Section XIX (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Settling Defendants' reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (c) with respect to judicial review by this Court of any dispute under Section XIX (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing in this Consent Decree shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

76. Following EPA's determination that Settling Defendants have failed to comply with a requirement of this Consent Decree, EPA may give Settling Defendants written notification of the same and describe the noncompliance. EPA may send Settling Defendants a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Settling Defendants of a violation.

77. All penalties accruing under this Section shall be due and payable to the United States within 30 days after Settling Defendants' receipt from EPA of a demand for payment of the penalties, unless Settling Defendants invoke the Dispute Resolution procedures under Section XIX (Dispute Resolution) within the 30-day period. All payments to the United States under this Section shall indicate that the payment is for stipulated penalties and shall be made in accordance with Paragraph 54.b (Instructions for Future Response Costs Payments and Stipulated Penalties).

78. Penalties shall continue to accrue as provided in Paragraph 75 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement of the Parties or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owed shall be paid to EPA within 15 days after the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Settling Defendants shall pay all accrued penalties determined by the Court to be owed to EPA within 60 days after receipt of the Court's decision or order, except as provided in Paragraph 78.c;

c. If the District Court's decision is appealed by any Party, Settling Defendants shall pay all accrued penalties determined by the District Court to be owed to the United States into an interest-bearing escrow account, established at a duly chartered bank or trust company that is insured by the FDIC, within 60 days after receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to

accrue, at least every 60 days. Within 15 days after receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to Settling Defendants to the extent that they prevail.

79. If Settling Defendants fail to pay stipulated penalties when due, Settling Defendants shall pay Interest on the unpaid stipulated penalties as follows: (a) if Settling Defendants have timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to Paragraph 78 until the date of payment; and (b) if Settling Defendants fail to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 77 until the date of payment. If Settling Defendants fail to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

80. The payment of penalties and Interest, if any, shall not alter in any way Settling Defendants' obligation to complete the performance of the Work required under this Consent Decree.

81. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Settling Defendants' violation of this Consent Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA, 42 U.S.C. § 9622(l), provided, however, that the United States shall not seek civil penalties pursuant to Section 122(l) of

CERCLA for any violation for which a stipulated penalty is provided in this Consent Decree, except in the case of a willful violation of this Consent Decree.

82. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree.

XXI. COVENANTS BY PLAINTIFF

83. Covenants for Settling Defendants by United States. In consideration of the actions that will be performed and the payments that will be made by Settling Defendants under this Consent Decree, and except as specifically provided in Paragraph 87 (General Reservations of Rights) of this Section, the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA for the Work. These covenants not to sue shall take effect upon the receipt by EPA of the payments required by Paragraph 52.a (Payments for Past Response Costs) and, as to OrlaGroup, LLC, when OrlaGroup acquires any ownership interest in any real property located at the Site, provided that OrlaGroup does not deny access to the United States or any Settling Defendants. These covenants not to sue are conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree, including, but not limited to, any payments required under Paragraph 56 (Interest) or Section XX (Stipulated Penalties), if any. These covenants extend only to Settling Defendants and do not extend to any other person.

84. United States' Pre-Certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is

without prejudice to, the right to institute proceedings in this action or in a new action, and/or to issue an administrative order seeking to compel Settling Defendants to perform further response actions relating to the Site and/or to pay the United States for additional costs of response if, (a) prior to Certification of Completion of the Remedial Action, (1) conditions at the Site, previously unknown to EPA, are discovered, or (2) information, previously unknown to EPA, is received, in whole or in part, and (b) EPA determines that these previously unknown conditions or information together with any other relevant information indicates that the Remedial Action is not protective of human health or the environment.

85. United States' Post-Certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, and/or to issue an administrative order, seeking to compel Settling Defendants to perform further response actions relating to the Site and/or to pay the United States for additional costs of response if, (a) subsequent to Certification of Completion of the Remedial Action, (1) conditions at the Site, previously unknown to EPA, are discovered, or (2) information, previously unknown to EPA, is received, in whole or in part, and (b) EPA determines that these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action is not protective of human health or the environment.

86. For purposes of Paragraph 84 (United States' Pre-Certification Reservations), the information and the conditions known to EPA will include only that

information and those conditions known to EPA as of the date the ROD for OU1 was signed and set forth in the ROD for OU1 for the Site and the administrative record supporting the ROD for OU1. For purposes of Paragraph 85 (United States' Post-Certification Reservations), the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of Completion of the Remedial Action and set forth in the ROD for OU1, the administrative record supporting the ROD for OU1, the post-ROD for OU1 administrative record, or in any information received by EPA pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial Action.

87. General Reservations of Rights. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all matters not expressly included within Plaintiff's covenant. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendants with respect to:

- a. liability for failure by Settling Defendants to meet a requirement of this Consent Decree;
- b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Site;
- c. liability for matters not addressed by this Consent Decree based on the ownership of the Site by Settling Defendants when such

ownership commences after signature of this Consent Decree by Settling Defendants;

- d. liability for matters not addressed by this Consent Decree based on the operation of the Site by Settling Defendants when such operation commences after signature of this Consent Decree by Settling Defendants and does not arise solely from Settling Defendants' performance of the Work;
- e. liability based on Settling Defendants' transportation, treatment, storage, or disposal, or arrangement for transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site, other than as provided in the ROD for OU1, the Work, or otherwise ordered by EPA, after signature of this Consent Decree by Settling Defendants;
- f. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- g. criminal liability;
- h. liability for violations of federal or state law that occur during or after implementation of the Work; and
- i. liability for additional response actions that EPA determines are necessary to achieve and maintain Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the ROD

for OU1, but that cannot be required pursuant to Paragraph 14
(Modification of SOW or Related Work Plans);

- j. liability for additional operable units at the Site or the final response action;
- k. liability for costs that the United States will incur regarding the Site but that are not within the definition of Future Response Costs;
- l. previously incurred costs of response above the amounts paid pursuant to Paragraph 52.a (Payment of Past Response Costs);

88. Work Takeover.

a. In the event EPA determines that Settling Defendants have (1) ceased implementation of any portion of the Work, or (2) are seriously or repeatedly deficient or late in their performance of the Work, or (3) are implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice (“Work Takeover Notice”) to Settling Defendants. Any Work Takeover Notice issued by EPA will specify the grounds upon which such notice was issued and will provide Settling Defendants a period of ten (10) days within which to remedy the circumstances giving rise to EPA’s issuance of such notice.

b. If, after expiration of the ten-day notice period specified in Paragraph 88.a, Settling Defendants have not remedied to EPA’s satisfaction the circumstances giving rise to EPA’s issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary (“Work Takeover”). EPA will notify Settling Defendants in

writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph 88.b. Funding of Work Takeover costs is addressed under Paragraph 47.

c. Settling Defendants may invoke the procedures set forth in Paragraph 68 (Record Review), to dispute EPA's implementation of a Work Takeover under Paragraph 88. However, notwithstanding Settling Defendants' invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under Paragraph 88 until the earlier of (1) the date that Settling Defendants remedy, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, or (2) the date that a final decision is rendered in accordance with Paragraph 68 (Record Review) requiring EPA to terminate such Work Takeover.

89. Notwithstanding any other provision of this Consent Decree, the United States retains all authority and reserves all rights to take any and all response actions authorized by law.

XXII. COVENANTS BY SETTLING DEFENDANTS

90. Covenants by Settling Defendants. Subject to the reservations in Paragraph 92, and except as provided in Sections XIX (Dispute Resolution) and XXVII (Retention of Jurisdiction), Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States with respect to the Work, past response actions regarding the Site, Past Response Costs, Future Response Costs, and this Consent Decree, including, but not limited to:

- a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund through CERCLA Sections 106(b)(2), 107, 111, 112 or 113, or any other provision of law;
- b. any claims under CERCLA Sections 107 or 113, RCRA Section 7002(a), 42 U.S.C. § 6972(a), or state law regarding the Work, past response actions regarding the Site, Past Response Costs, Future Response Costs, State Past Response Costs, State Future Response Costs, Settling Defendants' Past Response Costs, Settling Defendants' Future Response Costs, and this Consent Decree; or
- c. any claims arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Florida Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law.

91. Except as provided in Paragraph 94 (Claims Against *De Micromis* Parties), Paragraph 96 (Claims Against *De Minimis* and Ability to Pay Parties), and Paragraph 101 (Res Judicata and Other Defenses), the covenants in this Section shall not apply if the United States brings a cause of action or issues an order pursuant to any of the reservations in Section XXI (Covenants by Plaintiff), other than in Paragraphs 87.a (claims for failure to meet a requirement of the Consent Decree), 87.g (criminal liability), and 87.h (violations of federal/state law during or after implementation of the Work), but only to the extent that Settling Defendants' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

92. Settling Defendants reserve, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of Settling Defendants' plans, reports, other deliverables or activities.

93. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

94. Claims Against De Micromis Parties. Settling Defendants agree not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that they may have for all matters relating to the Site against any person where the person's liability to Settling Defendants with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous

substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials.

95. The waiver in Paragraph 94 (Claims Against De Micromis Parties) shall not apply with respect to any defense, claim, or cause of action that a Settling Defendant may have against any person meeting the criteria in Paragraph 94 if such person asserts a claim or cause of action relating to the Site against such Settling Defendant. This waiver also shall not apply to any claim or cause of action against any person meeting the criteria in Paragraph 94 if EPA determines:

a. that such person has failed to comply with any EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. § 9604(e) or 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site, or has been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise; or

b. that the materials containing hazardous substances contributed to the Site by such person have contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of response action or natural resource restoration at the Site.

96. Claims Against *De Minimis* and Ability to Pay Parties. Settling Defendants agree not to assert any claims or causes of action and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that they may have for response costs relating to the Site against any person that has entered or in the future enters into a final CERCLA Section 122(g) *de minimis* settlement, or a final settlement based on limited ability to pay, with EPA with respect to the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that a Settling Defendant may have against any person if such person asserts a claim or cause of action relating to the Site against such Settling Defendant.

97. Settling Defendants agree not to seek judicial review of the final rule listing the Site on the NPL based on a claim that changed Site conditions that resulted from the performance of the Work in any way affected the basis for listing the Site.

XXIII. EFFECT OF SETTLEMENT; CONTRIBUTION

98. Except as provided in Paragraph 94 (Claims Against *De Micromis* Parties), and Paragraph 96 (Claims Against *De Minimis* and Ability to Pay Parties), nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as provided in Paragraph 94 (Claims Against *De Micromis* Parties), and Paragraph 96 (Claims Against *De Minimis* and Ability to Pay Parties), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that each Party may have with

respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Consent Decree diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

99. The Parties agree, and by entering this Consent Decree this Court finds, that this Consent Decree constitutes a judicially approved settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that each Settling Defendant is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for “matters addressed” in this Consent Decree. The “matters addressed” in this Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with Operating Unit One (OU1), by the United States or any other person, except for the State; provided, however, that if the United States exercises rights under the reservations in Section XXI (Covenants by Plaintiff), other than in Paragraphs 87.a (claims for failure to meet a requirement of the Consent Decree), 87.g (criminal liability), or 87.h (violations of federal/state law during or after implementation of the Work), the “matters addressed” in this Consent Decree will no longer include those response costs or response actions. Each Settling Defendant shall, with respect to any suit or claim brought by it for matters related to this Consent Decree,

notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

100. Each Settling Defendant shall, with respect to any suit or claim brought against it for matters related to this Consent Decree, notify in writing the United States within ten days after service of the complaint on such Settling Defendant. In addition, each Settling Defendant shall notify the United States within ten days after service or receipt of any Motion for Summary Judgment and within ten days after receipt of any order from a court setting a case for trial.

101. Res Judicata and Other Defenses. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XXI (Covenants by Plaintiff).

XXIV. ACCESS TO INFORMATION

102. Settling Defendants shall provide to EPA, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as “Records”) within their possession or control or that of their contractors or agents relating

to activities at the Site or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Work. Settling Defendants shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

103. Business Confidential and Privileged Documents.

a. Settling Defendants may assert business confidentiality claims covering part or all of the Records submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Records determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified Settling Defendants that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Settling Defendants.

b. Settling Defendants may assert that certain Records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege in lieu of providing Records, they shall provide Plaintiff with the following: (1) the title of the Record; (2) the date of the Record; (3) the name, title, affiliation (e.g., company or firm), and address of the author

of the Record; (4) the name and title of each addressee and recipient; (5) a description of the contents of the Record; and (6) the privilege asserted by Settling Defendants. If a claim of privilege applies only to a portion of a Record, the Record shall be provided to the United States in redacted form to mask the privileged portion only. Settling Defendants shall retain all Records that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Defendants' favor.

c. No Records created or generated pursuant to the requirements of this Consent Decree shall be withheld from the United States on the grounds that they are privileged or confidential.

104. No claim of confidentiality or privilege shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XXV. RETENTION OF RECORDS

105. Until ten (10) years after Settling Defendants' receipt of EPA's notification pursuant to Paragraph 49 (Completion of the Work), each Settling Defendant shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to its liability under CERCLA with respect to the Site, provided, however, that Settling Defendants who are potentially liable as owners or operators of the Site must retain, in addition, all Records that relate to the liability of any

other person under CERCLA with respect to the Site. Each Settling Defendant must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to the performance of the Work, provided, however, that each Settling Defendant (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

106. At the conclusion of this document retention period, Settling Defendants shall notify the United States at least 90 days prior to the destruction of any such Records, and, upon request by the United States, Settling Defendants shall deliver any such Records to EPA. Settling Defendants may assert that certain Records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege, they shall provide Plaintiff with the following: (a) the title of the Record; (b) the date of the Record; (c) the name, title, affiliation (e.g., company or firm), and address of the author of the Record; (d) the name and title of each addressee and recipient; (e) a description of the subject of the Record; and (f) the privilege asserted by Settling Defendants. If a claim of privilege applies only to a portion of a Record, the Record shall be provided to the United States in redacted form to mask the privileged portion only. Settling Defendants shall retain all Records

that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Defendants' favor. However, no Records created or generated pursuant to the requirements of this Consent Decree shall be withheld on the grounds that they are privileged or confidential.

107. Each Settling Defendant certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since the earlier of notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA and State requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XXVI. NOTICES AND SUBMISSIONS

108. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties 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 requirement of the Consent Decree with respect to the United States, EPA, and Settling Defendants, respectively. Notices required to be sent to

EPA, and not to the United States, under the terms of this Consent Decree should not be sent to the U.S. Department of Justice.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DOJ # _____

As to EPA:

Superfund Division
United States Environmental Protection Agency
Region 4
61 Forsyth St., SW
Atlanta, GA, 30303

Paula Painter
Superfund Enforcement & Information
Management Branch
US Environmental Protection Agency
Region 4
61 Forsyth Street, SW
Atlanta, GA 30303-8960

and:

Robenson Joseph
EPA Project Coordinator
United States Environmental Protection Agency
Region 4
61 Forsyth St., SW
Atlanta, GA, 30303

As to the State:

George Houston
State Project Coordinator
Florida Department of Environmental Protection
3319 Maguire Boulevard, Suite 232
Orlando, Florida 32803-3767

As to Settling Defendants:

Greg Corbett, P.E.
Settling Defendants' Project Coordinator
AGL Resources
Ten Peachtree Place, Suite 1000
Atlanta, GA 30309

XXVII. RETENTION OF JURISDICTION

109. This Court retains jurisdiction over both the subject matter of this Consent Decree and Settling Defendants for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XIX (Dispute Resolution) hereof.

XXVIII. APPENDICES

110. The following appendices are attached to and incorporated into this Consent Decree:

- “Appendix A” is the ROD for OU1.
- “Appendix B” is the map of the Site.
- “Appendix C” is the SOW.
- “Appendix D” is a form of Declaration of Restrictive Covenant.

XXIX. COMMUNITY INVOLVEMENT

111. If requested by EPA, Settling Defendants shall participate in community involvement activities pursuant to the community involvement plan to be developed by EPA. EPA will determine the appropriate role for Settling Defendants under the Plan. Settling Defendants shall also cooperate with EPA in providing information regarding the

Work to the public. As requested by EPA, Settling Defendants shall participate in the preparation of such information for dissemination to the public and in public meetings that may be held or sponsored by EPA to explain activities at or relating to the Site.

Within 30 days after a request by EPA, Settling Defendants also shall provide EPA with a Technical Assistance Plan (“TAP”) for arranging (at Settling Defendants’ own expense, up to \$50,000) for a qualified community group: (a) to receive services from (an) independent technical advisor(s) who can help group members understand Site cleanup issues; and (b) to share this information with others in the community during the Work conducted pursuant to this Consent Decree. The TAP shall state that Settling Defendants will provide and arrange for any additional assistance needed if the selected community group demonstrates such a need as provided in the SOW. Upon its approval by EPA, the TAP shall be incorporated into and enforceable under this Consent Decree.

Costs incurred by the United States under this Section, including the costs of any technical assistance grant under Section 117(e) of CERCLA, 42 U.S.C. § 9617(e), shall be considered Future Response Costs that Settling Defendants shall pay pursuant to Section XVI (Payments for Response Costs).

XXX. MODIFICATION

112. Except as provided in Paragraph 14 (Modification of SOW or Related Work Plans), material modifications to this Consent Decree, including the SOW, shall be in writing, signed by the United States and Settling Defendants, and shall be effective upon approval by the Court. Except as provided in Paragraph 14, non-material modifications to this Consent Decree, including the SOW, shall be in writing and shall be

effective when signed by duly authorized representatives of the United States and Settling Defendants. A modification to the SOW shall be considered material if it fundamentally alters the basic features of the selected remedy within the meaning of 40 C.F.R.

§ 300.435(c)(2)(B)(ii). Before providing its approval to any modification to the SOW, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification.

113. Nothing in this Consent Decree shall be deemed to alter the Court's power to enforce, supervise, or approve modifications to this Consent Decree.

XXXI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

114. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations that indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

115. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXXII. SIGNATORIES/SERVICE

116. Each undersigned representative of a Settling Defendant to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

117. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified Settling Defendants in writing that it no longer supports entry of the Consent Decree.

118. Each Settling Defendant shall identify, on the attached signature page, the name, address, and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons. The Parties agree that Settling Defendants need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XXXIII. FINAL JUDGMENT

119. This Consent Decree and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties regarding the settlement

embodied in the Consent Decree. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree.

120. Upon entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States and Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS _____ DAY OF _____, 20__.

United States District Judge

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States vs. Atlanta Gas Light Company, et al., relating to the Orlando, Florida Superfund Site.

For THE UNITED STATES OF AMERICA:

Date

[Name]
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

[Name]
Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States vs. Atlanta Gas Light Company, et al., relating to the Orlando, Florida Superfund Site.

Date

Director, Superfund Division
U.S. Environmental Protection Agency
Region 4
61 Forsyth St., SW
Atlanta, GA, 30303

Kevin Beswick
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 4
61 Forsyth St., SW
Atlanta, GA, 30303

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States vs. Atlanta Gas Light Company, et al., relating to the Orlando, Florida Superfund Site.

**For ATLANTA GAS LIGHT
COMPANY**

Date_____

Signature:_____

Name (print):_____

Title:_____

Address:_____

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Date_____

Signature:_____

Name (print):_____

Title:_____

Address:_____

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States vs. Atlanta Gas Light Company, et al., relating to the Orlando, Florida Superfund Site.

For CONTINENTAL HOLDINGS, INC.

Date_____

Signature:_____

Name (print):_____

Title:_____

Address:_____

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Date_____

Signature:_____

Name (print):_____

Title:_____

Address:_____

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States vs. Atlanta Gas Light Company, et al., relating to the Orlando, Florida Superfund Site.

**For DUKE ENERGY FLORIDA, INC.,
formerly known as Florida Power
Corporation**

Date_____

Signature:_____

Name (print):_____

Title:_____

Address:_____

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Date_____

Signature:_____

Name (print):_____

Title:_____

Address:_____

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States vs. Atlanta Gas Light Company, et al., relating to the Orlando, Florida Superfund Site.

OrlaGroup, LLC

Date_____

Signature:_____

Name (print):_____

Title:_____

Address:_____

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Signature:_____

Name: John C. Connery Jr., Esq.

Counsel for OrlaGroup, LLC

Hill Ward Henderson

101 East Kennedy Blvd.

Suite 3700

Tampa, FL 33602

Telephone: (813) 227-8841

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States vs. Atlanta Gas Light Company, et al., relating to the Orlando, Florida Superfund Site.

For Blaine Pierce

Date_____

Signature:_____

Name (print):_____

Title:_____

Address:_____

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Signature:_____

Name (print):_____

Title:_____

Address:_____

Phone Number:_____

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States vs. Atlanta Gas Light Company, et al., relating to the Orlando, Florida Superfund Site.

For CITY OF ORLANDO, FLORIDA

(SEAL)

By: _____
Mayor

Date:

ATTEST:

City Clerk

Approved as to form and legality for the use
and reliance of City of Orlando, Florida, only.

_____, 20__

City Attorney, Orlando, Florida

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Signature:_____

Name (print):_____

Title:_____

Address:_____

Phone Number:_____

Appendix A
(ROD for OU1)

Appendix B
(Map of the Site)

Appendix C
(Statement of Work)

Appendix D

(form of Declaration of Restrictive Covenant)