

**ORLANDO MANUFACTURED GAS PLANT SITE
ALLOCATION AGREEMENT (City and CHI)**

This Orlando Manufactured Gas Plant Site Allocation Agreement (“Allocation Agreement”) is entered into by and among:

Atlanta Gas Light Company (“AGLC”), a Georgia corporation with its principal offices located at 10 Peachtree Place, Atlanta, Georgia 30309;

Duke Energy Florida, Inc., formerly known as Florida Power Corporation (“Duke”), a Florida corporation with its principal offices located at 299 First Avenue North, St. Petersburg, Florida, 33701;

Continental Holdings, Inc. (“CHI”), a Wyoming corporation with its principal offices located at 1025 Eldorado Blvd., Broomfield, Colorado 80021;

The **City of Orlando, Florida** (“City”), a Florida municipal corporation, with its principal offices located at 400 S. Orange Avenue, Orlando, Florida 32801; and

Blaine Pierce (“Pierce”), an individual, with his residence at 515 Highland Ave., Orlando, Florida 32801,

(collectively, the “Parties”; each individually a “Party”).

RECITALS

WHEREAS, for purposes of this Allocation Agreement, each Party has been identified by one another as a potentially responsible party (“PRP”) with respect to the investigation and remediation of soil and groundwater contamination identified in connection with the Orlando Manufactured Gas Plant Site located in or about the 500 and 600 blocks of West Robinson Street, Orlando, Orange County, Florida (“Site”);

WHEREAS, AGLC, FPC, Peoples Gas System, a division of Tampa Electric Company (“PGS”), and the City each entered into an Administrative Order by Consent (“AOC”) with the United States Environmental Protection Agency (“EPA”), pursuant to which AGLC, FPC, PGS, and the City undertook the following actions in connection with the Site: (i) perform a remedial investigation (“RI”) to determine fully the nature and extent of the threat to the public health or welfare or the environment caused by the release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site into the environment; (ii) perform a feasibility study (“FS”) to develop and evaluate alternatives for remedial action to prevent, mitigate or otherwise respond to the migration or the release or threatened release of hazardous substances, pollutants, or contaminants from the Site; and (iii) pay response and oversight costs incurred by EPA with respect to the RI and FS tasks (collectively, the “RI/FS task”) (the September 30, 2003, and March 11, 2004, AOCs, collectively, the “RI/FS AOC”);

WHEREAS, with EPA’s approval, AGLC, Duke, PGS, CHI, the City, and Pierce (the “Site PRPs”) have agreed the Site contains two Operable Units: (a) Operable Unit 1, which is comprised of the Site’s surface soil (0 to 2 feet below land surface), subsurface soil (2 to

approximately 50 feet below land surface, to the top of the Hawthorne Group), and the surficial groundwater (the groundwater present that immediately overlies the Hawthorne Group) (collectively, “OU1”); and (b) Operable Unit 2, which is comprised of all portions of the upper Ocala Limestone formation, consisting of both media and groundwater that have been impacted by the operation of an MGP at the Site (“OU2”);

WHEREAS, certain of the Site PRPs have completed, and EPA has approved, the RI/FS task for OU1, which resulted in the issuance by EPA of a record of decision (“OU1 ROD”) that describes in general terms the remedy selected and the remedial objectives for OU1. Some or all of the Parties will negotiate and enter into a consent decree with EPA for remedial design/remedial action (“OU1 RD/RA Consent Decree”), which will require the Parties to the OU1 RD/RA Consent Decree to prepare the technical specifications for the design of the selected remedy and to construct and implement the selected remedy. The OU1 RD/RA Consent Decree obligations are hereinafter referred to as the “OU1 RD/RA task”;

WHEREAS, upon the completion of the RI/FS task for OU2, EPA will issue a Record of Decision for OU2 (“OU2 ROD”) that will describe in general terms the remedy selected and the remedial objectives for OU2. Some or all of the Site PRPs will negotiate and enter into a consent decree or other order with EPA to perform remedial design and remedial action (“OU2 RD/RA Consent Decree”), which will require the Parties to the OU2 RD/RA Consent Decree to prepare the technical specifications for the design of the selected remedy and to construct and implement the selected remedy. The OU2 RD/RA Consent Decree obligations are hereinafter referred to as the “OU2 RD/RA task”;

WHEREAS, without admitting any fact, responsibility, fault or liability in connection with the Site or any matter related thereto, AGLC, the City, Duke, PGS and CHI entered into the Partial Allocation Agreement effective August 15, 2012 (“Partial Allocation Agreement”) that allocated CHI’s percentage share of financial responsibility for the RI/FS task and OU1 RD/RA task, and to establish a mechanism for setting CHI’s percentage share of financial responsibility for the OU2 RD/RA task;

WHEREAS, AGLC, the City, Duke, PGS, and CHI executed a Fourth Participation Agreement (“Fourth PA”) and Orlando Gasification Plant Site Fourth Escrow Agreement (“Fourth EA”) on September 19, 2013, because additional funds were required to complete the RI/FS;

WHEREAS, without admitting any fact, responsibility, fault or liability in connection with the Site or any matter related thereto, the Parties agree to incorporate and restate the essential terms and conditions of the Partial Allocation Agreement herein and to set CHI’s percentage share of financial responsibility for the OU2 RD/RA task, which was not included in the Partial Allocation Agreement; and

WHEREAS, without admitting any fact, responsibility, fault or liability in connection with the Site, the Parties agree to set the City’s percentage share of financial responsibility for the RI/FS task, OU1 RD/RA task and OU2 RD/RA task.

AGREEMENT:

NOW THEREFORE, in consideration of the covenants and agreements contained herein, as well as other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby mutually agree as follows:

1. **Relationship to Partial Agreement.** This Allocation Agreement incorporates and restates the essential terms and conditions of the Partial Allocation Agreement. The Allocation Agreement otherwise supersedes the Partial Allocation Agreement as of the Effective Date.

2. **Allocation of the City's Share:**

2.1 The City's share shall remain at 3.091% for all work that is the subject of and is funded by the Fourth PA up to the amount of the "Maximum Funding" (*i.e.*, \$2.5 million) as provided in the Fourth PA, for the remaining RI/FS task.

2.2 **Allocation of Costs Associated with the RI/FS task at the Site:**

(a) **OU1:** The Parties do not anticipate that any additional work in the nature of RI/FS tasks will be required for OU1 beyond that already funded by the Parties pursuant to the Fourth PA. To the extent that further work in the nature of RI/FS tasks will be required, for which the costs exceed that specified "Maximum Funding" in the Fourth PA (*i.e.*, \$2.5 million), the City's share of the costs of such work shall be 2%, as a final, fixed allocation of the City's share of financial responsibility for the OU1 RI/FS task.

(b) **OU2:** To the extent further work in the nature of RI/FS tasks for OU2 is required, for which the costs exceed that specified as the "Maximum Funding" in the Fourth PA (*i.e.*, \$2.5 million), the City's share of such work shall be 10%, as a final, fixed allocation of the City's share of financial responsibility for the OU2 RI/FS task.

2.3 **Allocation of Costs Associated with the RD/RA task at the Site:**

(a) **OU1:** The City shall pay 2% of all costs associated with the OU1 RD/RA task at the Site, as a final, fixed allocation of the City's share of financial responsibility for the OU1 RD/RA task.

(b) **OU2:** The City shall pay 10% of all costs associated with the OU2 RD/RA task at the Site, as a final, fixed allocation of the City's share of financial responsibility for the OU2 RD/RA task.

(c) The City shall no longer be required to participate in or be obligated to fund the ENE proceedings as of the Effective Date.

3. **Allocation of CHI's Share:**

- 3.1 Allocation of Costs Associated with the RI/FS task at the Site: CHI shall pay 14.175% of all costs associated with the RI/FS task at the Site, as a final, fixed allocation of CHI's share of financial responsibility for the RI/FS task.
- 3.2 Allocation of Costs Associated with the RD/RA task at the Site:
- (a) OU1: CHI shall pay 10% of all costs associated with the OU1 RD/RA task at the Site, as a final, fixed allocation of CHI's share of financial responsibility for the OU1 RD/RA task.
 - (b) OU2: CHI shall pay 7.5% of all costs associated with the OU2 RD/RA task at the Site, as a final, fixed allocation of CHI's share of financial responsibility for the OU2 RD/RA task.
 - (c) CHI shall no longer be required to participate in or be obligated to fund the ENE proceedings as of the Effective Date.

4. **Waiver and Release of Liability and Covenant Not to Sue.**

- 4.1 In consideration of each of the City's and CHI's (the "Settling Parties") complete payment of its allocated share under Section 2 or 3, respectively, of this Allocation Agreement, each Party waives, releases, and covenants not to sue that Settling Party for any claim related to the cost of completing the "matters addressed" in the RI/FS AOC, OU1 RD/RA Consent Decree, and the OU2 RD/RA Consent Decree ("Governing Orders"). With respect to the RI/FS task, "matters addressed" has the same meaning as in the RI/FS AOC. With respect to the OU1 or OU2 RD/RA task, prior to entry of the respective Governing Order, "matters addressed" are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with OU1 or OU2, as applicable, by the United States or any other person, except for the State, and except for costs associated with the United States' exercise of its reserved rights. With respect to the OU1 or OU2 RD/RA task, after entry of the respective Governing Order, "matters addressed" has the same meaning as in the applicable Governing Order. If, however, the Settling Party defaults in making any payment required under this Allocation Agreement and fails to cure the default within ten (10) days of being notified of such default, the other Parties do not waive, release or covenant not to sue for any claim related to said breach.
- 4.2 In consideration of the promises and other good consideration of the Parties, each Settling Party waives, releases, and covenants not to sue any of the other Parties (either jointly or severally) for any claim related to the cost of completing the "matters addressed" in the Governing Orders, except to the extent that (1) the other Parties fail to perform the "matters addressed" and are determined by EPA to be in violation of a Governing Order, in which event this Waiver and Release of Liability and Covenant Not to Sue shall not apply to any claim of the Settling Parties against any non-performing Party for such Party's non-performance; or (2)

any Party breaches this Allocation Agreement, in which event this Waiver and Release of Liability and Covenant Not to Sue shall not apply to any claim to enforce the terms of this Allocation Agreement.

4.3 **Survival.** This Section shall survive the termination of this Allocation Agreement.

5. **Denial of Liability.**

This Allocation Agreement represents a settlement and compromise of disputed claims, and is not an admission as to any Party's liability or the amount of any Party's liability for anything. This Allocation Agreement shall not be used by any Party, person or entity as evidence of any admission of liability, law or fact, a waiver of any right or defense, or an estoppel against any Party.

Nothing in this Section, however, is intended or should be construed to limit, bar, or otherwise impede the enforcement of any term or condition of this Allocation Agreement against any Party to this Allocation Agreement.

6. **Final Allocation.**

This Allocation Agreement represents a final, fixed allocation of CHI's and the City's liability for the RI/FS task, OU1 RD/RA task and OU2 RD/RA task. Any subsequent litigation between any of the non-Settling Parties, including AGLC, Duke and PGS, shall not alter this allocation, and any allocation or apportionment of liability by a court, judge or arbitrator that involves a determination of CHI's or the City's share of liability for the RI/FS task, OU1 RD/RA task and OU2 RD/RA task shall not be binding on any of the Parties as to CHI's or the City's share for those tasks. In the event a court, judge or arbitrator issues an order containing a determination of CHI's or the City's share of liability for the RI/FS task, OU1 RD/RA task or OU2 RD/RA task that is different from the allocation set forth in this Allocation Agreement, the Parties agree that the difference shall be distributed among the other Parties to that order according to each of their respective shares so that the City will pay no more or less than its fixed allocated share of financial responsibility pursuant to Section 2 and CHI will pay no more or less than its fixed allocated share of financial responsibility pursuant to Section 3.

7. **Indemnification**

7.1 In consideration of each of the Settling Parties' complete payment of its allocated share under Section 2 or 3, respectively, of this Allocation Agreement, AGLC and Duke ("Indemnifying Parties") agree to defend, indemnify, and hold harmless that Settling Party from and against any and all claims by any non-Party Site PRP related to the cost of completing the "matters addressed" in the Governing Orders. If, however, the Settling Party defaults on any of its obligations required under this Settlement Agreement and fails to cure the default within ten (10) days of being notified of such default, Indemnifying Parties do not defend, indemnify, and hold harmless that Settling Party for any claim related to said breach.

- 7.2 Settling Parties hereby assign to Indemnifying Parties any and all claims Settling Parties may have against any non-Party Site PRP related to the cost of completing the “matters addressed” in the Governing Orders. Settling Parties agree to cooperate in Indemnifying Parties’ efforts to resolve said claims against non-Party Site PRPs, including, but not limited to, by participating in discovery efforts, cooperating in the production of documents, making employee witnesses reasonably available for interviews and testimony, engaging in alternative dispute resolution processes, and executing any documents necessary to accomplish the settlement of said claims. Settling Parties do not assign to Indemnifying Parties their liabilities related to the cost of completing the “matters addressed” in the Governing Orders, which liabilities will be addressed as set forth in paragraph 7.1.
- 7.3 Indemnifying Parties shall assume and take over the defense of any indemnified claim against Settling Parties and engage attorneys to represent both Parties in connection therewith, at Indemnifying Parties’ sole cost and expense. Settling Parties shall notify Indemnifying Parties of any claims required to be indemnified hereunder within five (5) days after Settling Parties receive notice of any such claims, and Settling Parties shall cooperate with Indemnifying Parties in connection with the defense of any such claims; provided, however, if Settling Parties fails to notify Indemnifying Parties within a reasonable time period, at Indemnifying Parties’ election, such failure to notify Indemnifying Parties shall release Indemnifying Parties’ obligation to indemnify Settling Parties hereunder as to such claim.

8. **Successors and Assigns.**

This Allocation Agreement shall be binding upon the successors and assigns of the Parties. No assignment or delegation of the obligation to make any payment or reimbursement hereunder will release the assigning Party without the prior written consent of all other Parties.

9. **Advice of Counsel.**

Each Party hereto is represented by that Party’s own counsel, and in no event shall counsel for one Party be deemed to be acting for or on behalf of, or to have established an attorney-client relationship with, any other Party. No Party shall assert that, as a result of information provided pursuant to this Allocation Agreement, counsel for the other Party has any conflict of interest in handling matters adverse to that Party, and each Party agrees to execute appropriate documentation as necessary waiving any such potential conflict of interest.

10. **Effective Date.**

The Effective Date of this Allocation Agreement shall be the latest date that any Party has affixed its signature hereto.

11. **Severability.**

If any part of this Allocation Agreement is found invalid or unenforceable in any court, such invalidity or unenforceability shall not affect the other parts of this Allocation Agreement, if the rights and obligations of the Parties contained herein are not materially prejudiced and if the intentions of the Parties can be effected. To that end, this Allocation Agreement is declared severable.

12. **Prevailing Party Attorneys' Fees.**

If any legal action or other proceeding is brought for the enforcement of this Allocation Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any provision of this Allocation Agreement, the successful or prevailing Party shall be entitled to recover reasonable attorneys' fees, court costs, and all expenses, including nontaxable court costs (including, without limitation, all such fees, costs, and expenses incident to arbitration, appellate, bankruptcy, and post-judgment proceedings), incurred in that action or proceedings or any appeal, in addition to any other relief to which the Party may be entitled. Attorneys' fees include legal assistant fees, expert witness fees, investigative fees, administrative costs, and all other charges billed by the attorney of a prevailing Party, and shall further include all such fees expended by a prevailing Party in any effort to establish the entitlement to, and/or the proper amount of, such fees and costs due pursuant to this provision.

13. **Applicable Law.**

For purposes of enforcement or interpretation of the provisions of this Allocation Agreement, the Parties agree that the laws of the State of Florida shall be applicable, and further agree not to contest personal jurisdiction in the United States District Court for the Middle District of Florida with respect to litigation brought for such purposes. The Parties consent and agree that any litigation arising out of this Allocation Agreement must be initiated in the exclusive venue of the Orlando Division of the Middle District of Florida, which shall have exclusive jurisdiction over any such litigation. The Parties further consent and agree that all proceedings and mediations relating to any such action will be conducted exclusively in the venue of the Orlando Division of the Middle District of Florida. In the event that there is no federal jurisdiction applicable to the underlying dispute, the Parties consent and agree that all proceedings and mediations relation to any such action will be conducted exclusively in the venue of the Circuit Court for Orange County, Florida.

14. **Separate Documents.**

This Allocation Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

15. **Electronic Signatures.**

Electronic signatures, including signature pages transmitted via facsimile and/or email, shall be binding upon all Parties and deemed as originals.

16. **Nature of Agreement.**

Nothing herein shall be deemed to create a partnership or joint venture and/or principal and agent relationship between or among the Parties. There are no intended or unintended third party beneficiaries to this Allocation Agreement.

17. **Entire Agreement.**

This Allocation Agreement constitutes the entire understanding of the Parties with respect to its subject matter.

IN WITNESS WHEREOF, the Parties hereto enter into this Allocation Agreement. Each person signing this Allocation Agreement represents and warrants that he or she has been duly authorized to enter into this Allocation Agreement by the Party on whose behalf it is indicated that the person is signing.

[SIGNATURES ON FOLLOWING PAGES]

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.

_____, 2014

City Attorney, Orlando, Florida

Designated Representatives for Receipt of Notice:

Name: David J. Bass, Esq.
Address: Executive Offices - City Attorney's Office
Orlando City Hall
400 South Orange Avenue
Orlando, FL 32801
Telephone: (407) 246-4373
Facsimile: (407) 246-2854

Name: Thomas K. Maurer, Esq.
Address: Foley & Lardner, LLP
111 North Orange Ave, Suite 1800
Orlando, FL 32802-2193
Telephone: (407) 244-3242

Atlanta Gas Light Company

Address:

Signed in the presence of:

By:_____

Witness Signature

Its:_____

Print Name:_____

Print Name

Date:_____

Designated Representative for Receipt of Notice:

Name: E. A. Skip Kazmarek, Esq.
Address: Kazmarek Mowrey Cloud Laseter LLP
1230 Peachtree Street NE, Suite 3600
Atlanta, GA 30309
Telephone: (404) 812-0840
Facsimile: (404) 812-0845

**Duke Energy Florida, Inc., formerly
known as Florida Power Corporation**

Address:

Signed in the presence of:

By: _____

Witness Signature

Its: _____

Print Name: _____

Print Name

Date: _____

Designated Representative for Receipt of Notice:

Name: George F. Gramling III, Esq.
Gramling Environmental Law
Address: 118 South Newport Avenue
Tampa, FL 33606
Telephone: (813) 259-1060

And copies to:

Scott R. Alexander, Esq.
Taft Stettinius & Hollister LLP
One Indiana Square, Suite 3500
Indianapolis, IN 46204-2023
(317) 713.3500

Julie L. Ezell, Esq.
Associate General Counsel
Duke Energy
1000 East Main Street
Plainfield, IN 46168
(317) 838-1100

**Continental Holdings, Inc.,
a Wyoming corporation**

Address:

Signed in the presence of:

By: _____

Witness Signature

Its: _____

Print Name: _____

Print Name

Date: _____

Designated Representative for Receipt of Notice:

Name: David L. Isabel, Esq.
Address: Golub, Isabel & Cervino, P.C..
160 Littleton Road
Suite 300
Parsippany, NJ 07054
Telephone: (973) 968-3374
Facsimile: (973) 968-3044

Blaine Pierce

Address: 515 Highland Ave.,
Orlando, Florida 32801

Signed in the presence of:

By: _____

Witness Signature

Its: _____

Print Name: _____

Print Name

Date: _____

Designated Representative for Receipt of Notice:

Name: Blaine Pierce

Address: 515 Highland Ave.,
Orlando, Florida 32801

Telephone: (973) 968-3044

E-mail: BZPRoofing@hotmail.com

Taxpayer Identification Number: _____

With a copy to: Robyn D. Neely, Esq.
Akerman LLP
420 South Orange Avenue, Suite 1200
Orlando, FL 32801
(407) 419-8549
robyn.neely@akerman.com