



Interoffice Memorandum

REAL ESTATE MANAGEMENT ITEM 1

DATE: May 14, 2021

TO: Mayor Jerry L. Demings
-AND-
County Commissioners

THROUGH: Mindy T. Cummings, Manager *MTC*
Real Estate Management Division

FROM: Alex Feinman, Assistant Manager *AF*
Real Estate Management Division

CONTACT PERSON: **Alex Feinman, Assistant Manager**

DIVISION: **Real Estate Management**
Phone: (407) 836-7082

ACTION REQUESTED: Approval and execution of Entry Agreement among Orange County, Florida, Atlanta Gas Light Company, Duke Energy Florida, Inc., Peoples Gas System, Continental Holdings, Inc., and City of Orlando, Florida and authorization for the Real Estate Management Division to exercise renewal options and furnish notices, required or allowed by the agreement, as needed

PROJECT: Orlando Gasification Plant Site (Blue Lot)
222 Lake Avenue, Orlando, Florida 32801
Lease File #10118

District 5

PURPOSE: To sample and maintain the monitoring well on County property.

ITEM: Entry Agreement
Revenue: None
Size: 600 square feet
Term: Five years
Options: Three, five-year renewals

APPROVALS: Real Estate Management Division
County Attorney's Office
Risk Management Division

REMARKS: Atlanta Gas Light Company, Duke Energy Florida, Inc., Peoples Gas System, Continental Holdings, Inc., and City of Orlando, Florida (collectively the Orlando MGP Group (MGP)) and County entered into a 2007 Right of Entry Agreement, dated November 27, 2007, as extended (Original Agreement). The Original Agreement has since expired. Based on new regulatory orders issued by the U.S. Environmental Protection Agency, MGP and County want to enter into a new agreement for continued access to the property.

This Entry Agreement allows for MGP's access to sample from and maintain a monitoring well in the Blue Lot.

JUN 08 2021

**Permission to Enter Property
(Entry Agreement)
ORANGE COUNTY PROPERTY**

THIS ENTRY AGREEMENT FOR THE ORANGE COUNTY PROPERTY (the "Agreement"), effective as of the last date of execution below (the "Effective Date"), is made among Orange County, Florida, a charter county and political subdivision of the State of Florida ("Orange County" or "County"); **Atlanta Gas Light Company** ("AGLC"), **Duke Energy Florida, Inc.**, formerly known as Florida Power Corporation ("Duke Energy"), **Peoples Gas System**, a division of Tampa Electric Company ("PGS"); **Continental Holdings, Inc.** ("CHI"), and the **City of Orlando, Florida** ("City") (collectively the "Orlando MGP Group"). Orange County and the Orlando MGP Group are individually referred to herein as a "Party" and collectively referred to as the "Parties."

RECITALS

WHEREAS, on November 27, 2007, certain of the Parties entered into an agreement ("2007 Right of Entry Agreement") for the agents and subcontractors of the Orlando MGP Group to enter the County's property ("the Property") located at 222 Lake Avenue, Orlando, Orange County, Florida (Parcel ID# 25-22-29-2880-00-060, as per Orange County Property Appraiser) for the purpose of installing and accessing a monitoring well that formed a part of the response related to a former manufactured gas plant ("MGP Site") on West Robinson Street, Orlando, Orange County, Florida;

WHEREAS, the response is governed by two orders (the "Regulatory Orders"): a consent decree with the United States Environmental Protection Agency ("EPA") for remedial action of the OU1 portion of the MGP Site, which was entered on March 18, 2015 ("Consent Decree"), which Consent Decree provides for certain corrective measures (the "Remedy") both on the MGP Site and on nearby properties (including the Property); and an Administrative Order by Consent for Remedial Investigation/Feasibility Study with EPA for investigation of the OU2 portion of the Site, which was entered on September 30, 2003 ("AOC");

WHEREAS, the Regulatory Orders require certain corrective actions and investigations be performed on the Property, including the sampling and maintenance of a monitoring well named UF-MW-19 as shown in Exhibit A (the "Monitoring Well");

WHEREAS, to satisfy the obligations under the Regulatory Orders, the Orlando MGP Group must retain qualified personnel and contractors to sample and maintain the Monitoring Well (the "Work"); and

WHEREAS, the 2007 Right of Entry Agreement has been extended from time to time, and the Parties now wish to execute a new agreement to allow for continued access to the Property to facilitate the Work in exchange for the commitments and obligations of the Orlando MGP Group as stated herein;

NOW THEREFORE, for and in consideration of the mutual promises and obligations set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree the foregoing Recitals are true and correct and hereby incorporate them into this Agreement by reference and further agree as follows:

AGREEMENT

1. Access

a. Orange County specifically authorizes the Orlando MGP Group and its authorized agents, representatives, and contractors, as well as the EPA and the Florida Department of Environmental Protection (“FDEP”) and their authorized agents, representatives, and contractors (collectively, the “Entrants”), to enter upon the Property, as provided in this Agreement, to conduct the Work. The Entrants may not drill or install additional wells without the prior written approval of the Orange County Board of County Commissioners.

b. The Entrants may enter the Property to conduct sampling and non-drilling activities between the hours of 8:00am and 4:00pm Monday through Friday after providing at least 72 hours’ prior notice to the Manager of Orange County’s Risk Management Division by sending an e-mail to the following address: Tisha.pence@ocfl.net, unless Orange County approves other times in writing.

c. Drilling and heavy equipment use are not expected, but, if they occur, Entrants must first obtain the prior written approval of the Manager of Orange County’s Real Estate Management Department and the Manager of Orange County’s Risk Management Division, and Orange County may proscribe reasonable time and day limitations for that Work. Any drilling and heavy equipment use is restricted to the general location depicted on Exhibit A unless the Manager of Orange County’s Real Estate Management Department and the Manager of Orange County’s Risk Management Division give written authorization for Work in another location.

d. The Orlando MGP Group will provide Orange County’s Risk Management Division with a copy of any sampling results from samples taken from the Property concurrently with their submission to the EPA or other regulatory authority. The sampling results may be provided by sending an e-mail to the following address: Tisha.pence@ocfl.net.

e. This Agreement is intended and shall be construed only as a temporary license to enter and conduct the Work and does not grant an easement, or create or confirm any ownership or possessory interest in any portion of the Property.

2. Term

a. This Agreement will commence upon the Effective Date and, except as otherwise provided in this Agreement, will remain in effect until the date that is 5 years after the Effective Date (the “Original Term”). The Orlando MGP Group may request an extension of the term of this Agreement for 3 additional terms of 5 years each (each, a “Renewal Term”) by sending Orange County a written notice indicating its desire to extend the term at least 180 days, but not more than 360 days, prior to the expiration of the Original Term or Renewal Term, as applicable (each, a “Renewal Request”). The Manager of Orange County’s Real Estate Management Department is

hereby authorized to approve or reject Renewal Request(s) on behalf of Orange County by providing written notice of approval or rejection of the Renewal Request(s) to the Orlando MGP Group. If the Manager of Orange County's Real Estate Management Department provides written notice of approval of a Renewal Request to the Orlando MGP Group, said notice will extend the term of the Agreement for the applicable Renewal Term without any further action being required by the Parties. Notwithstanding the foregoing, this Agreement will automatically terminate at such time as the Work involving the Property has been completed and the Orlando MGP Group has satisfied its obligations under Section 3.

b. If the Orlando MGP Group materially breaches any term of this Agreement, County shall notify Orlando MGP Group in writing. The notice shall describe in sufficient detail the nature of the breach. If within thirty (30) days of receipt of such notification, Orlando MGP Group has not cured or, if such breach is not capable of being cured within said thirty (30) day period, commenced to cure the breach to the County's reasonable satisfaction, County may unilaterally terminate this Agreement, effective fifteen (15) days after providing written notification of intent to terminate.

3. Property Restoration

No later than the date that is 6 months after EPA has provided written notification to the Orlando MGP Group that the Work involving the Property has been completed, the Orlando MGP Group shall restore the Property to a condition as close as reasonably possible to the condition existing prior to the original installation of the Monitoring Well. The Group will permanently abandon any remaining groundwater monitoring wells and other remediation, investigation, and monitoring structures, equipment or facilities on the Property in accordance with applicable law within six months after approval by EPA to do so. This Paragraph shall survive termination of this Agreement.

4. Regulatory Compliance

The Orlando MGP Group will ensure that the Work is performed in compliance with all applicable laws, rules and regulations, and will obtain all permits necessary for the conduct of the Work. The Orlando MGP Group will locate utilities on the Property prior to any invasive work on the Property. The Orlando MGP Group will ensure that all investigative or remediation-derived materials resulting from the Work will be handled and disposed of in accordance with applicable laws, regulations and procedures. Any staging of such investigative or remediation-derived materials shall be in accordance with applicable regulations.

5. Indemnification

a. The Orlando MGP Group shall fully indemnify, defend and hold harmless Orange County from and against any and all claims, suits, damages, liabilities, judgments, fines, attorneys' fees, penalties, losses, costs or expenses ("Claim") caused by the Work, provided that the Orlando MGP Group shall have no obligation to indemnify or hold harmless Orange County against that portion of any Claim to the extent caused by or resulting from the negligence or willful misconduct of Orange County.

b. Notwithstanding the above, and 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 Agreement. The City's indemnification obligations are subject to the sovereign immunity and the limits specified in Section 768.28, Florida Statutes

c. Nothing herein shall be construed to waive sovereign immunity protections or the limitations of liability established under Florida law, including those limitations established in Section 768.28, Florida Statutes.

d. Nothing in this Paragraph 5 related to the liability of the City shall in any way diminish the liability of other members of the Orlando MGP Group under the provisions of this indemnity.

e. This Paragraph 5 shall survive any termination or cancellation of this Agreement.

6. Assumption of Defense

In connection with any indemnity by the Orlando MGP Group, the Orlando MGP Group shall have the right to assume and take over the defense of any claim against Orange County and engage attorneys approved by Orange County, which approval shall not be unreasonably delayed or withheld, to represent both parties in connection therewith, at the Orlando MGP Group's sole cost and expense.

7. Insurance

During the term of this Agreement, the Orlando MGP Group will ensure all contractors performing Work on the Property purchase insurance from and maintain such general liability and automobile insurance with limits of not less than \$1,000,000 per occurrence and workers' compensation insurance or self-insurance as required by Florida Statutes chapter 440. All such insurance or self-insurance shall be primary to, and not contribute with, any insurance or self-insurance maintained by Orange County. In the event the Orlando MGP Group subcontracts any part or all of its operations as described in this or related in any way to this Agreement, the Orlando MGP Group shall require its subcontractor(s) to acquire and maintain workers' compensation, automobile and general liability insurance coverage in such amounts as described in this Agreement. The Orlando MGP Group will ensure all contractors performing Work on the property shall include Orange County as an additional insured on the subcontractor's general liability insurance policy.

8. Orlando MGP Group Property

All equipment related to the Work remain the property of the Orlando MGP Group. Orange County agrees not to close, abandon or otherwise destroy the Monitoring Well without the Orlando MGP Group's permission, which will not be unreasonably withheld.

9. Limitation of Liability

County makes no representations about the condition of the Property. This Agreement is conditioned upon Orlando MGP Group's use of the Property "AS IS" and "WITH ALL FAULTS." The Orlando MGP Group and the Entrants will enter upon the Property at their own risk, and County shall not be held responsible or liable for injury, damage, or loss incurred by the Orlando MGP Group or any Entrants arising out of or in connection with activities under this Agreement.

10. No Admission of Liability

The Parties agree that nothing contained in this Agreement shall be construed as an admission of liability with respect to the matters set forth in this Agreement.

11. No Partnership

Nothing contained in this Agreement shall be deemed or construed by the Parties or by any third party to create the relationship of principal and agent, or of partnership, or joint venture, or of any other association between Orange County and the Orlando MGP Group.

12. Notices

Any notice, request, direction, instruction, payment or other communication required or permitted to be made or given by any party hereto shall be in writing to the addresses set forth below or to such other address as the recipient may designate in writing to all parties and shall be (i) delivered in person, (ii) sent registered or certified mail, return receipt requested, or (iii) sent Federal Express, USPS Express Mail, UPS or other overnight delivery service with delivery confirmation.

If to Orange County: Manager, Real Estate Management
400 E. South Street, 5th Floor
Orlando, FL 32802

with a copy to: Environmental Loss Prevention Coordinator, Risk
Management
109 E. Church Street, Suite 200
Orlando, FL 32802

If to Orlando MGP Group: Greg Corbett, P.E.
Atlanta Gas Light Company
Ten Peachtree Place, Suite 1000
Atlanta, GA 30309
404-584-3719
gcorbett@southernco.com

With a copy to: Jennifer Simon
Kazmarek Mowrey Cloud Laseter LLP
1230 Peachtree Street NE, Suite 900
Atlanta, GA 30309
(404) 812-0126

jsimon@kmcllaw.com

13. Applicable Law

This Agreement and its attachments will be governed by and construed under and in accordance with the laws of the State of Florida. The Parties consent and agree that Orange County, Florida, shall be the exclusive, proper and convenient venue for any legal proceeding in federal or state court relating to this agreement, and each Party hereby waives any defense, whether asserted by motion or pleading, that said County is an improper or inconvenient venue.

14. Entire Agreement

This Agreement contains the entire agreement of the Parties with respect to the Orlando MGP Group's access to the Property as provided herein. The 2007 Right of Entry Agreement and any other agreements, whether oral or written, regarding the Orlando MGP Group's access to the Property are terminated as of the Effective Date.

15. Modifications

This Agreement will not be modified or amended in any respect except by written agreement by the Parties in the same a manner as this Agreement is executed.

16. Counterparts

This Agreement may be executed in several counterparts, each of which will be deemed an original, and all such counterparts together will constitute one and the same instrument.

17. Authority

Each Party hereto warrants and represents that such Party has full and complete authority to enter into this Agreement and each person executing this Agreement on behalf of a Party warrants and represents that he/she has been fully authorized to execute this Agreement on behalf of such Party and that such Party is bound by the signature of such representative.

18. Third Party Beneficiary

There are no intended or unintended third-party beneficiaries of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed as of the day and year first written above.

**[REMAINDER OF PAGE LEFT BLANK;
SIGNATURES FOLLOW ON PAGES 7-12]**

Reviewed and Approved by Orange County:

ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

By: *Jerry L. Demings*
for Jerry L. Demings
Orange County Mayor

Date: 10 June 2021


ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

By: *Craig Stopyca*
for Deputy Clerk

Print: Craig stopyca



Reviewed and Approved by Atlanta Gas Light Company:


Signature: 

Print Name: David C Weaver

Title: Sr. Vice President - External Strategy + Environmental Affairs

Date: 4/10/21

Reviewed and Approved by Duke Energy Florida, Inc.:

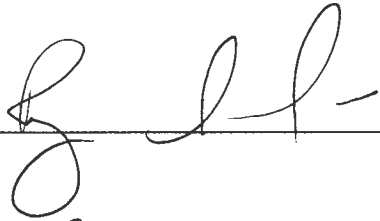
Signature: 

Print Name: James R. Wells

Title: UD - EHS

Date: 12/7/20

Reviewed and Approved by Continental Holdings, Inc.:

Signature:  _____

Print Name: Ryan McManis

Title: VP

Date: 2.19.2021

Reviewed and Approved by Peoples Gas System, a division of Tampa Electric Company:

Signature:  _____

Print Name: Richard F. Wall

Title: V.P. Engineering & Operations

Date: 03/24/2021

Signature:  _____

Print Name: TJ Szelistowski

Title: President - Peoples Gas

Date: 03/25/2021

Reviewed and Approved by the City of Orlando:


CITY OF ORLANDO, FLORIDA,
a municipal corporation



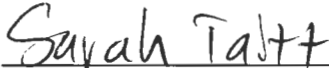
Laurie J. Botts
Real Estate Division Manager

Date

APPROVED AS TO FORM AND LEGALITY
FOR THE USE AND RELIANCE OF THE
CITY OF ORLANDO, FLORIDA:

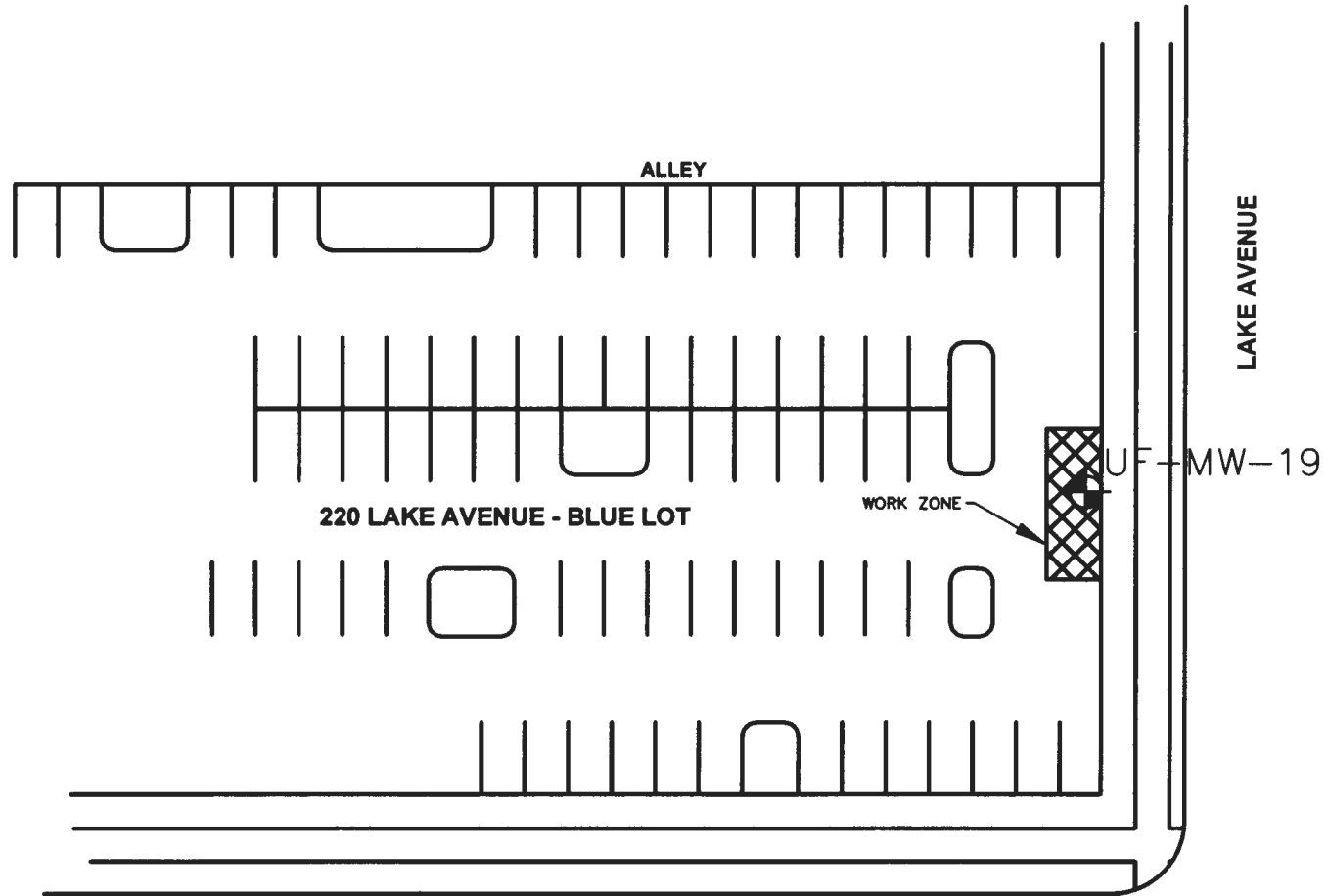


Assistant City Attorney



Print Name

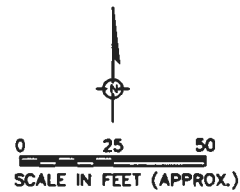
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JACKSON STREET

NOTE

THIS FIGURE IS PROVIDED AS EXHIBIT "A" TO ENTRY AGREEMENT BETWEEN ORANGE COUNTY AND THE ORLANDO GROUP (REV. JANUARY 2010).



ORLANDO GASIFICATION SITE
600 W. ROBINSON ST., ORLANDO, FLORIDA

**UF-MW-19 MONITORING WELL LOCATION
220 LAKE AVENUE, ORLANDO, FLORIDA**

 **ARCADIS**

EXHIBIT
A