

This Instrument Prepared By and Return To:
Right-of-Way Department/Amy Powell
Florida Gas Transmission Company
2301 Lucien Way, Suite 200
Maitland, Florida 32751

Project No.: 24-133
Tract No.: FL-PASC-074.1, FLMEE-PASC-036

ENCROACHMENT AGREEMENT

THIS ENCROACHMENT AGREEMENT (“Agreement”) is made and entered into this _____ day of _____, 2024, by and between **FLORIDA GAS TRANSMISSION COMPANY, LLC**, a Delaware limited liability company (“FGT”), with principal offices at 1300 Main Street, Houston, Texas 77002, and, **CITY OF CLEARWATER, FLORIDA**, a Florida municipal corporation (“CLEARWATER”), whose address is P.O. Box 4748, Clearwater, Florida 33758.

WITNESSETH THAT:

WHEREAS, FGT is the owner and holder of an easement under the provisions of that certain Easement Grant dated April 18, 1994, recorded in Book 3290, Page 129, Official Public Records of Pasco County, Florida; and that certain Stipulated Final Judgment dated November 18, 2010, (collectively, “Easement Agreement”), covering lands located in Section 8, Township 25 South, Range 18 East, Pasco County, Florida as described in the Easement Agreement (“Lands”); and

WHEREAS, CLEARWATER is the present holder of a permit across that portion of the Lands described in Exhibit “B” attached hereto and made a part hereof for all purposes (“Owned Premises”), with Pipeline Facilities situated thereon;

WHEREAS, pursuant to the authority contained in the Easement Agreement, FGT has constructed and currently operates and maintains a thirty inch (30”) natural gas pipeline and a thirty-six inch (36”) natural gas pipeline and related surface and subsurface appurtenances, (collectively, the “Pipeline Facilities”), across and through the Lands; and

WHEREAS, CLEARWATER seeks consent to install one (1), eight inch (8”) PE gas distribution main above the pipeline via open trench crossing the FGT easement (“Easement Area”) and the Pipeline Facilities as depicted on Exhibit “C” attached hereto and made a part hereof (“Encroachment”), pursuant to the terms and provisions of this Agreement; and

WHEREAS, CLEARWATER has been advised by FGT that FGT is a natural gas transmission company and that FGT operates a high pressure underground natural gas Pipeline Facilities through the Owned Premises; and

WHEREAS, CLEARWATER has requested written consent from FGT to install, construct, maintain, use, operate, repair, replace and enjoy the Encroachment upon a portion of the Easement Area and in close proximity to the Pipeline Facilities; and

WHEREAS, FGT is willing to grant such consent upon the terms and conditions hereafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth in this Encroachment Agreement, FGT and CLEARWATER agree as follows:

1. To the extent that FGT has the right to do so, FGT hereby grants consent to CLEARWATER to install, construct, maintain, use, operate, repair, replace and enjoy the Encroachment on the Owned Premises and the Easement Area, and in close proximity to the Pipeline Facilities, subject to compliance with the following terms and conditions:

A. CLEARWATER hereby assumes all risks for damages, injuries, or loss to either property or persons, caused by, or arising out of, or resulting from, or in any way associated with the installation, construction, use, maintenance, repair or replacement of the Encroachment, except to the extent such damages, injuries, or loss are caused solely by the gross negligence or willful misconduct of FGT.

B. The consent granted herein is limited exclusively to the proposed Encroachment upon the Owned Premises within the Easement Area. CLEARWATER shall not alter the grade or permit such alteration anywhere on the Easement Area without the prior express written consent of FGT, which consent shall not be unreasonably withheld, conditioned, or delayed.

C. CLEARWATER shall at all times conduct all activities on the Easement Area in such a manner as not to unreasonably interfere with or impede the operation and maintenance of the Pipeline Facilities, as conducted in the past, present or future, in any manner whatsoever.

D. Except as to the Encroachment, CLEARWATER shall not construct, plant or create additional improvements of any kind, including but not limited to, fences, sheds, irrigation or drainage systems, utilities other than the Encroachment, decking, pole barns, parking lots, roadways, pools, ponds, trees or shrubs within the confines of the Easement Area without the prior express written consent of FGT.

E. CLEARWATER understands and agrees that FGT may not have the authority to grant CLEARWATER permission to construct the Encroachment in the Easement Area. This Agreement merely defines the terms by which FGT will not object, and that CLEARWATER will obtain permission for the Encroachment from the underlying fee owner of the Lands or third parties having an interest in the Owned Premises. The consent granted by this instrument shall not constitute or be construed as a subordination, merger, assignment, conveyance or relinquishment of any of the right, title and interest of FGT under the provisions of the Easement Agreement.

2. CLEARWATER agrees that the Encroachment and any additional approved improvements constructed or installed in the Easement Area shall be constructed in accordance with the Engineering and Construction Specifications detailed in Exhibit "A" attached hereto and made a part hereof. Installation, construction, maintenance, repair

and replacement of the Encroachment shall be the sole responsibility, and performed at the sole cost and expense of CLEARWATER.

3. Subject to the limitations of Section 768.28, Florida Statutes, CLEARWATER agrees to indemnify, protect, and hold harmless FGT, its parent, affiliates, subsidiaries, and their directors, officers, employees, representatives, and agents (hereinafter "FGT Entities") from and against any and all actions or causes of action, claims, demands, liabilities, loss, damage, injury, suit, proceeding, judgment, cost or expense of whatever kind or nature, including but not limited to reasonable attorneys' fees, to the extent caused by CLEARWATER or its employees, contractors, representatives or agents, or to the extent arising out of, or resulting from, or associated with CLEARWATER's installation, construction, use, maintenance, repair or replacement of the Encroachment, except where such loss, cost, liability, or expense was solely caused by the negligence or willful misconduct of FGT or the FGT Entities, its employees, agents, or contractors.

In addition, except where such loss, cost, liability, or expense was solely caused by the negligence or willful misconduct of FGT or the FGT Entities, its employees, agents, or contractors, CLEARWATER agrees to indemnify, defend and hold harmless FGT and the FGT Entities from and against any liability, damage, claims, loss, cause of action, suit, proceeding, judgment, cost (including the cost or expense of environmental response, removal or remediation activities), fees or expense, including reasonable attorney's fees, to the extent arising from: (a) CLEARWATER's non-compliance with any laws, regulations and orders applicable to the ownership or the operation and maintenance of the Encroachment on the Owned Premises and the Easement Area described herein, and (b) any incidents, acts, releases, negligence, transactions or omissions, or conditions on or affecting the Easement Area to the extent caused by, arising out of, resulting from, or associated with CLEARWATER's installation, construction, use, maintenance, repair or replacement of the Encroachment to the extent that such installation, construction, use, maintenance, repair or replacement of the Encroachment would (i) contribute to or constitute a violation of any local, state or federal environmental rule, regulation, law or judicial order, (ii) result, in whole or in part, in any requirement to clean up or otherwise remedy or remediate a condition, (iii) give rise to any lien, liability, injunction, order, restriction, claim, expense, damage, fine or penalty, (iv) adversely affect human health or the environment at or near the Easement Area, or (v) constitute a violation of the terms of this Encroachment Agreement.

Nothing herein shall be construed as consent by CLEARWATER to be sued by third parties, or as a waiver or modification of the provisions or limits of Section 768.28, Florida Statutes or the Doctrine of Sovereign Immunity.

4. CLEARWATER shall take reasonable steps to protect the Pipeline Facilities at all times during CLEARWATER's performance of any work associated with the Encroachment including maintaining a minimum of three feet (3') of cover over the subsurface Pipeline Facilities at all times.

5. FGT agrees that the Encroachment is critical infrastructure to CLEARWATER's operations. Should FGT need CLEARWATER to temporarily remove or relocate any of

the Encroachment within the Easement Area in order for FGT to construct, maintain, operate, repair, remove, replace or resize the Pipeline Facilities, CLEARWATER shall pay the cost of removing and replacing or reinstalling the Encroachment. In addition, all repair and maintenance work performed by FGT on its existing or additional Pipeline Facilities located on the Easement Area, shall be performed in a reasonable workmanlike manner and FGT shall restore the surface and grade of Owned Premises where the work is performed, but shall not be liable for loss, damage, or replacement to the Encroachment or any equipment and facilities that exist within the Easement Area, unless such damage is caused solely by FGT or its agents' or employees' gross negligence or willful misconduct.

6. INTENTIONALLY OMITTED.

7. This Agreement in no way constitutes a waiver by FGT of its rights to enjoy the Easement Area unencumbered by the construction, operation, maintenance or use of the Encroachment within the Easement Area.

8. It is expressly agreed to by and between FGT and CLEARWATER that if CLEARWATER is in violation of any terms or conditions set forth in this Encroachment Agreement, CLEARWATER shall cure such default within sixty (60) days following receipt of written notice from FGT to CLEARWATER specifying the nature of the default. If, however, the nature of the default or violation is such that it cannot be cured within such sixty (60) day period, CLEARWATER shall have begun and be diligently pursuing the cure of such default within the sixty (60) day cure period. In the event that CLEARWATER fails to cure the default within the ninety (90) day cure period, (or in the event of a default not capable of being cured within such sixty (60) day period, begun and diligently pursue the cure within the sixty (60) day period) following written notice of default from FGT to CLEARWATER, FGT may, following expiration of the sixty (60) day cure period terminate FGT's consent to the Encroachment upon ten (10) days' prior written notice to CLEARWATER. CLEARWATER expressly agrees that if FGT terminates its consent to the Encroachment based upon CLEARWATER's failure to cure a violation of the Encroachment Agreement, CLEARWATER will continue to be bound by the terms of the Encroachment Agreement and CLEARWATER shall immediately remove any and all of the Encroachment which may be situated on the Easement Area. If such violation by CLEARWATER constitutes or results in an emergency or a dangerous condition, FGT shall only be required to provide whatever prior notice is reasonable under the circumstances before exercising its rights cure the violation. The failure of FGT to exercise the option to terminate as to any such violation shall not constitute a waiver of FGT's future right to exercise such option as to the same or any future violation. The non-prevailing party agrees to pay the prevailing party's costs, including reasonable attorneys' fees and costs, arising out of the enforcement of the terms of the Encroachment Agreement. The remedies outlined herein are not exclusive and FGT and CLEARWATER do not waive any legal or equitable remedies.

9. The provisions of the Easement Agreement, and all rights, powers, privileges, and duties, obligations, and liabilities created thereby, shall remain in full force and effect

and are not affected hereby except to the extent and in the manner specifically and particularly set forth herein.

10. CLEARWATER and FGT stipulate and agree that the statements and information contained in the introductory paragraphs and recitations of this Agreement are true and correct and are incorporated herein by this reference.

11. This instrument and the covenants and agreements herein contained shall extend to and be binding upon CLEARWATER and the heirs, executors, personal representatives, successors and assigns of CLEARWATER and upon FGT and the successors and assigns of FGT and the benefits of this Agreement shall run with the land. This Encroachment Agreement may be executed in counterparts, each of which when conformed shall be an original and all of which together shall constitute a single document.

IN WITNESS WHEREOF, the parties have executed this instrument the day and year first above written.

WITNESSES:

Name: Kristin Duke
Address: 2301 Lucien Way, Ste 200 Maitland, FL

Name: Amy Powell
Address: 2301 Lucien Way, Ste 200 Maitland, FL

“FGT”
FLORIDA GAS TRANSMISSION
COMPANY, LLC

By _____
DAVID SHELLHOUSE
VICE PRESIDENT

ACKNOWLEDGEMENT

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this _____ day of _____, 2024, by **DAVID SHELLHOUSE, VICE PRESIDENT OF FLORIDA GAS TRANSMISSION COMPANY, LLC**, a Delaware limited liability company, on behalf of the company. He is personally known to me or has produced _____ (type of identification) as identification.

(SEAL)

Notary Public
Name (Printed): _____

Countersigned:

CITY OF CLEARWATER, FLORIDA

By:

Bruce Rector
Mayor

Jennifer Poirrier
City Manager

Approved as to form:

Attest:

Michael Fuino
Assistant City Attorney

Rosemarie Call
City Clerk

EXHIBIT "A"

**Attached to and made a part of that certain
ENCROACHMENT AGREEMENT
Dated _____, 2024
By and between
FLORIDA GAS TRANSMISSION COMPANY, LLC
and CITY OF CLEARWATER, FLORIDA**

ENGINEERING AND CONSTRUCTION SPECIFICATIONS

1. No work can be done in FGT's easement property unless FGT has reviewed and approved the plans and an agreement in writing has been entered into between FGT and CLEARWATER. Any encroachment consented to by FGT shall not interfere with the operation, maintenance, and access of FGT's pipeline facilities, including but not limited to, close interval surveys; leak detection surveys; pipeline patrol, pipeline marking and similar activities.
2. CLEARWATER shall provide a minimum of forty-eight (48) hours' notice to FGT prior to any installation, construction, excavation, or demolition work on the easement area. To ensure further safety, CLEARWATER must call appropriate ONE CALL for a locate by calling 811. An FGT representative must be present when any work is done on the easement area. The onsite FGT representative will have the authority to shutdown work by CLEARWATER if CLEARWATER's activities are judged to be unsafe by the FGT representative. The FGT representative will be invited to participate in CLEARWATER's safety meetings. This provision applies each time FGT's pipeline facilities are crossed.
3. Existing ground elevation is to be maintained.
4. For vehicles and/or construction equipment requesting approval to cross FGT's facilities, each crossing location will be reviewed on a case-by-case, site-specific basis and will require the surveyed elevation of the pipeline and/or facility verified by an FGT field representative to be performed by the party requesting the crossing encroachment and submitted to FGT. The execution of a wheel load calculation must be completed and approved by FGT prior to crossing FGT's facilities for every vehicle and/or construction equipment requesting to cross. FGT may require matting or other suitable material be installed to achieve the necessary support for such crossing. This too will be site specific and case-by-case only.
5. Where consent for roadway crossings has been granted, a minimum of forty-eight inches (48") of cover, including thirty-six (36") of undisturbed or compacted soil, shall be maintained within the easement area. All roads must cross the easement at a ninety degree (90°) angle.
6. Upon completion of paragraph 1, sidewalks, trails and bike paths may cross FGT's pipelines at a ninety degree (90°) angle provided the width does not exceed forty-eight inches (48").
7. When crossing an FGT pipeline (via drill or open lay) CLEARWATER must visually verify the elevation of the pipeline both vertically and horizontally, by an FGT approved method such as vacuum excavation with an FGT field representative on-site at all times during this operation. When using directional drill method, a minimum vertical clearance of ten feet (10') from the pipeline is required across the entire easement.
8. Where the encroachment includes utilities, all such utilities crossing the easement area must have a minimum separation of twenty-four inches (24") between the utility and the FGT pipeline(s) at the point

of crossing and must cross at a ninety degree (90°) angle. No utilities shall be constructed between the surface of the easement area and the top of the subsurface pipeline facilities unless agreed to in writing by FGT. No parallel utilities, structures, and/or appurtenances are permitted within the easement area. All proposed aerial crossings will be reviewed on a case-by-case basis.

9. Where consent for fiber optic, telephone and/or cable television lines has been granted, lines must be placed in a rigid non-metallic conduit across the entire easement width with bags of concrete-mix placed directly above and below the conduit across the confines of the easement. Orange warning burial tape must be placed a minimum of 18" directly above the cable across the width of the easement. Crossings must be clearly and permanently marked on each side of the easement with permanent identification.

10. Where consent for utility lines has been granted, electric lines must be encased in pvc or steel throughout the entire easement area. Cables energized to 600 volts or more must cross a minimum of three feet (3') below the subsurface pipeline facilities, and also be encased in concrete, color coded red, across the entire easement width, and have external, spiral wound, neutrals grounded on each side of the easement. The cable crossing should be clearly and permanently marked on each side of the easement where permissible.

11. Where consent for fencing has been granted, CLEARWATER must install and maintain a vehicle access gate at least twelve feet (12') in width at each point in the fence line(s) crossing the easement area. Posthole excavations for fencing placed on the easement area shall not be greater than eighteen inches (18") below the ground surface elevation. No fence posts shall be placed over the pipeline facilities or closer than six feet (6') on either side of the pipeline facilities. Any exceptions will be determined by FGT management. Any such fence shall be constructed and maintained by CLEARWATER in such a manner that does not prevent FGT personnel from viewing the easement area from the ground level through the fence(s) (i.e. no solid fences allowed). No fencing parallel to the FGT pipeline facilities will be allowed within the easement area. FGT's access to its pipeline facilities shall be maintained by CLEARWATER. If the gate is locked with CLEARWATER's lock, CLEARWATER shall provide FGT with keys or allow a FGT lock to enable access.

12. No retention ponds, ditches or swales shall be allowed within the easement area.

13. No roto-mixing or vibrating machinery is allowed within the easement area.

14. When conducting pile driving operations, CLEARWATER shall adhere to a minimum separation of twenty-five feet (25') from the outside edge of the FGT pipeline.

15. Excavations that expose the FGT pipeline must follow OSHA standards. Time will be allowed for a FGT representative to inspect and make coating repairs as the subsurface pipeline facilities are exposed.

16. Twelve inches (12") of backfill around the subsurface pipeline facilities shall be sand or clean fill; free of rocks and debris.

17. With prior approval, no more than twenty feet (20') of pipe shall be exposed at any given time; if more than twenty feet (20') of pipe is to be exposed, all Standard Operating Procedures (SOP) must be adhered to, pressure reductions must be scheduled at least one (1) year in advance and engineering stress calculations must be performed by FGT Engineering and approved by FGT management prior to allowing any more than the twenty feet (20') of exposed pipe.

18. With prior approval and an FGT representative on site at all times, excavation equipment equipped with toothless buckets may be allowed to dig or excavate within three (3) feet of the pipeline facilities. All other construction/excavation equipment will not be allowed to perform any excavation within three feet

(3') of the pipeline facilities. All mechanical excavation performed within three feet (3') of the pipeline will be performed parallel to the pipeline (i.e. track-hoe may not reach over the pipeline to dig on the opposite side of the pipeline).

19. All excavation within twenty-four (24") from the top or thirty-six inches (36") from the side or bottom of the pipeline shall be by manual means. After top exposure, excavation up to twenty four inches (24") from the side or bottom of the exposed pipeline may proceed by mechanical means if the FGT representative is satisfied it may be done safely with the equipment and operator available.

20. Barriers adequate to prevent vehicular damage to any exposed pipeline facilities shall be installed and maintained at all times.

21. All FGT pipeline facilities, cathodic protection equipment, and test lead wires shall be protected from damage by construction activity at all times.

22. No installation, construction, excavation, or demolition work shall be performed within the easement area on weekends or holidays.

23. CLEARWATER shall provide and install temporary construction fence along the easement boundaries for the entire length of the proposed work area to preserve and protect the pipeline(s). The fence must be maintained for the duration of the development or construction activity.

24. Where consent for landscaping has been granted, CLEARWATER shall not plant shrubs on the easement area which are classified as "deep rooted" or are projected to exceed an eventual growth height of four (4) feet. Shrubs shall be planted so that no part, at its ultimate growth, shall be closer than ten feet (10') to the pipeline facilities. No trees shall be planted on the easement.

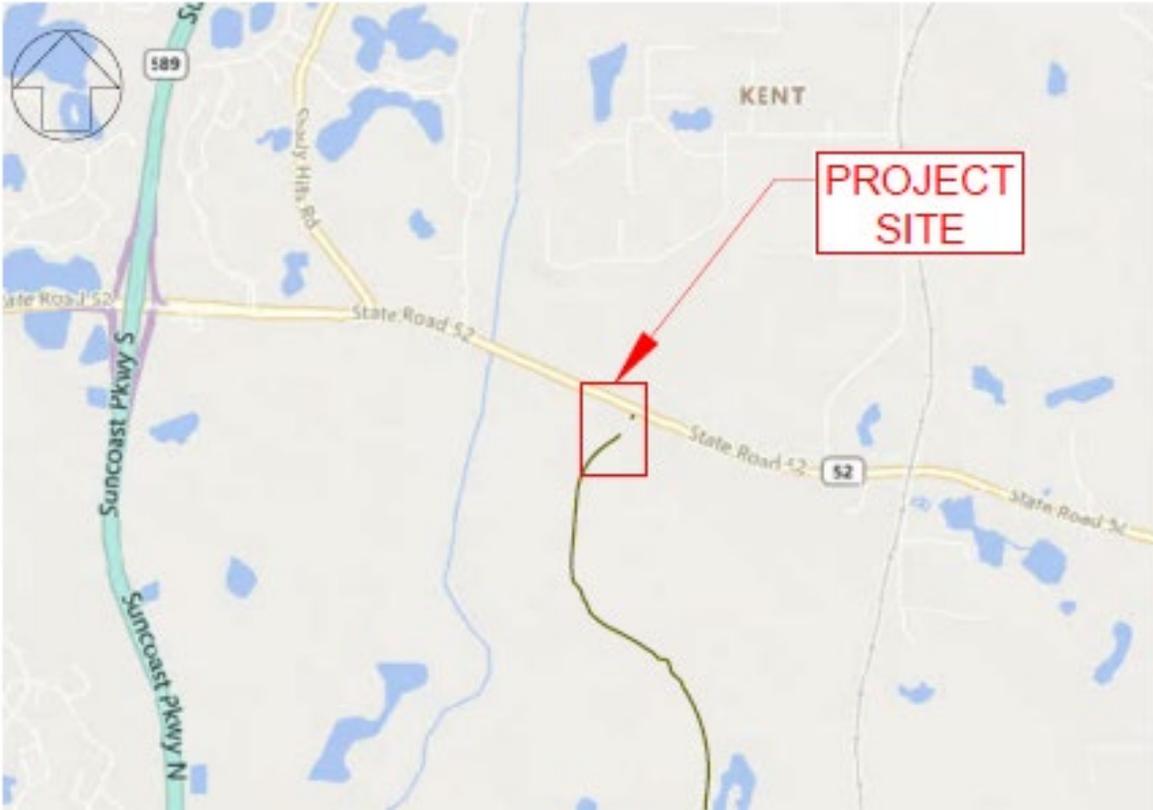
25. These Engineering and Construction Specifications may address activities on the easement area for which FGT has not granted consent to CLEARWATER to include as part of the encroachment. Notwithstanding anything to the contrary contained in these Engineering and Construction Specifications, FGT's consent is and shall be limited to the encroachment as described and limited by the Encroachment Agreement to which this Exhibit is attached.

EXHIBIT "B"

Attached to and made a part of that certain
ENCROACHMENT AGREEMENT
Dated _____, 2024
By and between
FLORIDA GAS TRANSMISSION COMPANY, LLC
and **CITY OF CLEARWATER, FLORIDA**

DESCRIPTION OF THE OWNED PREMISES

N Sunlake Blvd and State Road 52
Section 8, Township 25 South, Range 18 East



Project No. 24-133

Tract No. FL-PASC-074.1, FLMEE-PASC-036

EXHIBIT "C"

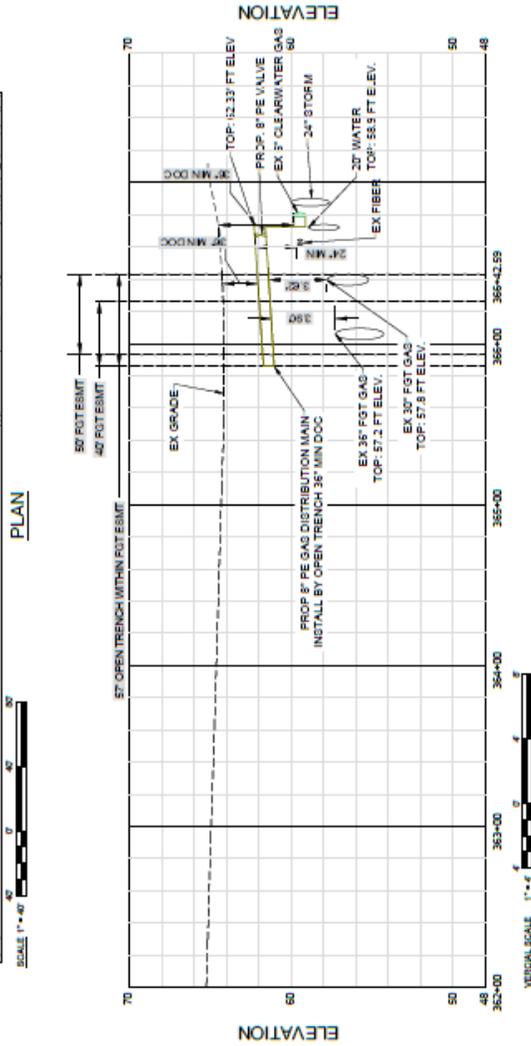
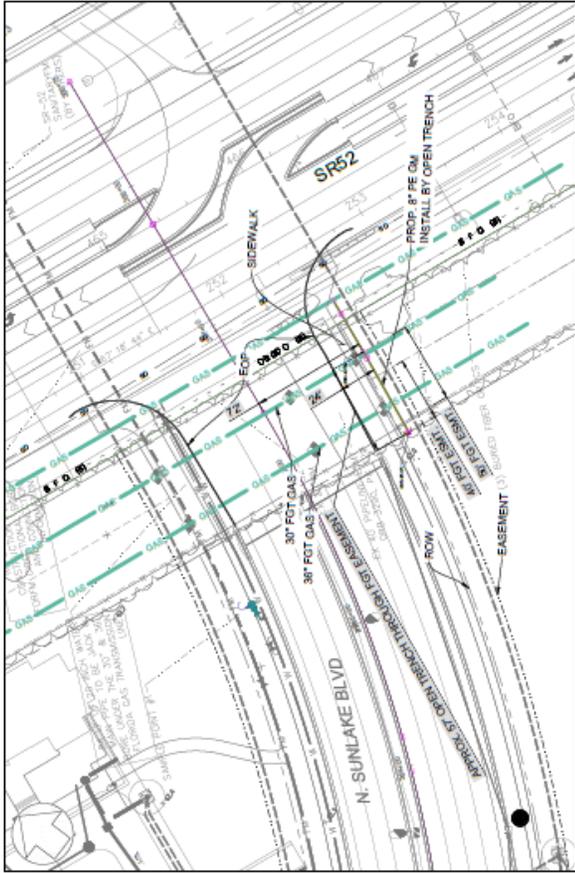
**Attached to and made a part of that certain
ENCROACHMENT AGREEMENT**

Dated _____, 2024

By and between

**FLORIDA GAS TRANSMISSION COMPANY, LLC
and CITY OF CLEARWATER, FLORIDA**

DESCRIPTION AND DRAWINGS OF THE ENCROACHMENT



 CGS CLEARWATER GAS SYSTEM 100 YEARS Division Office 7777 Maple Bl. Clearwater, FL 34622 727-465-4000 Project Contact: Justin Crossley 727-423-8668	 PATRICK ENGINEERING A MWH COMPANY 65 Red Wings Dr., Suite 1400 Orlando, FL 32803 TEL: 313-207-7000 www.patrickengineering.com	Project: N SUN LAKE BLVD AND SR52 NATURAL GAS MAIN INSTALLATION PASCO COUNTY, FLORIDA	Sheet No: C-200
Drawn By: JMS Checked By: MC Approved By: JMS	Design By: JMS	Date: 11/13/2023	Scale: C-200