

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

Project No.: 22-168  
Tract No.: FLMEB-BREV-095

### **ENCROACHMENT AGREEMENT**

**THIS ENCROACHMENT AGREEMENT** ("Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between **FLORIDA GAS TRANSMISSION COMPANY, LLC**, a Delaware limited liability company, ("FGT"), with principal offices a 1300 Main Street, Houston, Texas 77002, and, **BOARD OF COUNTY COMMISSIONERS BREVARD COUNTY, FLORIDA** ("Owner"), whose address is 2725 Judge Fran Jamieson Way, Building A, Room 204, Melbourne, Florida 32940.

#### **WITNESSETH THAT:**

**WHEREAS**, FGT is the owner and holder of an easement under the provisions of that certain Easement Grant dated December 20, 1967, and recorded in Book 999, Page 871; and that certain Amendment of Easement Grant dated March 28, 1996, and recorded in Book 3559, Page 4353, all in Official Records, Brevard County, Florida; ("Easement Agreement"), covering lands located in Section 33, Township 25 South, Range 36 East, Brevard County, Florida, as described in the Easement Agreement ("Lands"); and

**WHEREAS**, pursuant to the authority contained in the Easement Agreement, FGT has constructed and currently operates and maintains an twenty-six inch (26") natural gas pipeline and related surface and subsurface appurtenances, (collectively, the "Pipeline Facilities"), across and through the Lands; and

**WHEREAS**, Owner is the present owner of 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**, OWNER seeks consent to install a sixteen inch (16") reclaimed water main (RWM) under the pipeline via jack and bore crossing FGT's thirty foot (30') wide 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**, Owner 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**, OWNER 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 Owner agree as follows:

1. To the extent that FGT has the right to do so, FGT hereby grants consent to Owner to maintain, operate and use 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. Owner 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.

B. The consent granted herein is limited exclusively to the proposed Encroachment upon the Owned Premises within the Easement Area. Owner shall not alter the grade or permit such alteration anywhere on the Easement Area without the prior express written consent of FGT.

C. Owner shall at all times conduct all activities on the Easement Area in such a manner as not to 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, Owner shall not construct, plant or create additional improvements of any kind, including but not limited to, fences, sheds, irrigation or drainage systems, utilities, 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. Owner understands and agrees that FGT may not have the authority to grant Owner permission to construct the Encroachment in the Easement Area. This Agreement merely defines the terms by which FGT will not object. 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. Owner 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 Owner.

3. Except as limited by law, Owner 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, 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, or from the operation, maintenance, use or presence of FGT's Pipeline Facilities upon or in the vicinity of the Easement Area except where such loss, cost, liability, or expense was proximately caused solely by the gross negligence of FGT or its employees.

In addition, except as limited by law, Owner 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, arising from: (a) 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 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 that 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.

4. Owner shall take reasonable steps to protect the Pipeline Facilities at all times during the 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. Should FGT need to remove any of the Encroachment within the Easement Area in order to construct, maintain, operate, repair, remove, replace or resize the Pipeline Facilities, Owner 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, and in this regard, Owner hereby releases FGT and the FGT Entities from any and all liability for any such loss or damage.

6. Owner acknowledges that future FGT operations on the Pipeline Facilities or the construction of homes or buildings in the vicinity of the Pipeline Facilities may necessitate that FGT have temporary construction easements to conduct the operations within the Easement Area or to upgrade the existing Pipeline Facilities in accordance with federal regulations. OWNER agrees to provide FGT with temporary construction easements for additional workspace necessary to complete the operation or to upgrade the Pipeline Facilities and at no cost to FGT.

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 Owner that if Owner is in violation of any terms or conditions set forth in this Encroachment Agreement, FGT, at its option, may terminate FGT's consent to the Encroachment upon ten (10) days' notice to the Owner; provided however, that any such termination shall not become effective if, within thirty (30) days from the receipt of such notice of termination, Owner cures such violation. Owner expressly agrees that if FGT terminates its consent to the Encroachment based upon Owner's failure to cure a violation of the Easement Agreement, the Encroachment Agreement, or both, Owner will continue to be bound by the terms of the Easement Agreement and the Encroachment Agreement, and Owner shall immediately remove any and all of the Encroachment which may be situated on the Easement Area, or if Owner fails to remove any and all of the Encroachment, FGT may, at its option, remove the Encroachment at the expense of Owner and without any liability whatsoever. If such violation by Owner 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 to remove the Encroachment or otherwise 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. Owner agrees to pay FGT's costs, including attorneys' fees and costs, arising out of the enforcement of the terms of the Easement Agreement, the Encroachment Agreement, or both. The remedies outlined herein are not exclusive and FGT does 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. Owner 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 Owner and the heirs, executors, personal representatives, successors and assigns of Owner 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.

Project No.: 22-168  
Tract No.: FLMEB-BREV-095

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

**WITNESSES:**

**“FGT”  
FLORIDA GAS TRANSMISSION  
COMPANY, LLC**

\_\_\_\_\_  
Name: \_\_\_\_\_

By \_\_\_\_\_  
**DAVID SHELLHOUSE  
VICE PRESIDENT**

**ATTEST:**

**“OWNER”  
BREVARD COUNTY, FLORIDA**

\_\_\_\_\_  
Name: \_\_\_\_\_, **Clerk**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: **Chairman**

**ACKNOWLEDGEMENTS**

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2023, 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.

\_\_\_\_\_  
Notary Public  
Name (Printed): \_\_\_\_\_  
My Commission Expires \_\_\_\_\_

TATE OF \_\_\_\_\_  
COUNTY \_\_\_\_\_

The foregoing instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, on behalf of the company. He/She is personally known to me or has produced \_\_\_\_\_ (type of identification) as identification.

\_\_\_\_\_  
Notary Public  
Name (Printed): \_\_\_\_\_  
My Commission Expires \_\_\_\_\_

**EXHIBIT "A"**

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

**Dated \_\_\_\_\_, 2023**

**By and between**

**FLORIDA GAS TRANSMISSION COMPANY, LLC**

**And BOARD OF COUNTY COMMISSIONERS BREVARD COUNTY, 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 the parties.
2. Owner 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, Owner must call appropriate ONE CALL for a locate at 1-800-432-4770. 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 the Owner if the Owner's activities are judged to be unsafe by the FGT representative. The FGT representative will be invited to participate in Owner's safety meetings. This provision applies each time FGT's pipeline facilities are crossed.
3. Existing ground elevation (a minimum of three feet [3'] of pipeline cover) is to be maintained over the subsurface pipeline facilities within the easement area. Three feet (3') of minimum cover will also be required over the pipeline facilities at all equipment crossings for standard FDOT maximum axle load vehicles (20,000 lbs. per axle; 80,000 lbs. maximum weight).
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. When crossing an FGT pipeline (via drill or open lay) Owner must visually verify the elevation of the pipeline both vertically and horizontally, by means of various methods such as SUE (subsurface utility excavation) etc., with an FGT field representative on-site at all times during this operation. When using direction drill method, a minimum vertical clearance of ten feet (10') from the pipeline is required across the entire easement.
7. 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.
8. Where consent for utility lines has been granted, electric lines must be encased in pvc or steel throughout the entire easement area. All fiber optic, telephone and cable television crossing encasements to be determined by the on-site FGT field representative. 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.
9. Where consent for fencing has been granted, the Owner 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 an FGT field representative. Any such fence shall be constructed and maintained by Owner 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 Owner. If the gate is locked with Owner's lock, Owner shall provide FGT with keys or allow a FGT lock to enable access.

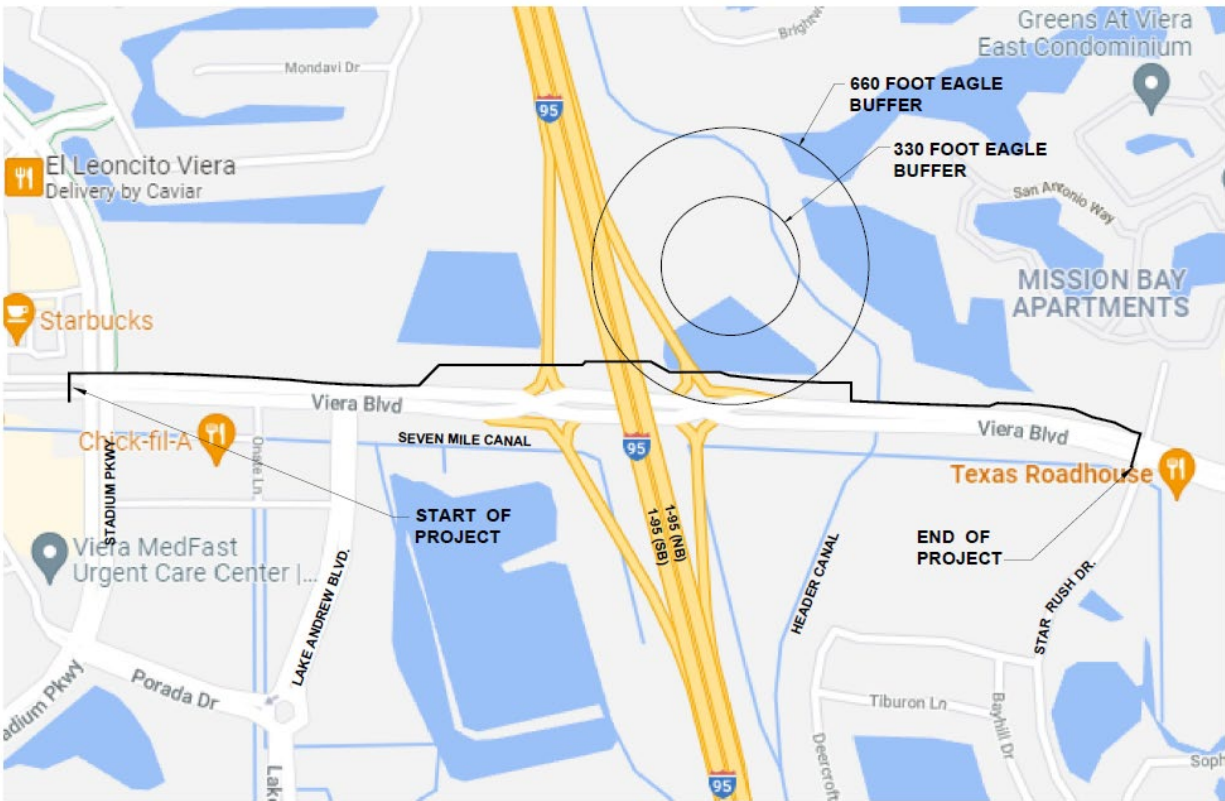
10. No above or below ground utility appurtenances, junction boxes or retention ponds shall be allowed within the easement area.
11. No roto-mixing or vibrating machinery is allowed within the easement area.
12. When conducting pile driving operations, Owner shall adhere to a minimum separation of twenty-five feet (25') from the outside edge of the FGT pipeline.
13. Ditches shall be sloped or shoring will be used to allow entry into the excavation. Time will be allowed for a FGT representative to inspect and make coating repairs as the subsurface pipeline facilities are exposed.
14. Twelve inches (12") of backfill around the subsurface pipeline facilities shall be sand or clean fill; free of rocks and debris. Rock Shield will be installed around pipeline facilities.
15. 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 operations prior to allowing any more than the twenty feet (20') of exposed pipe.
16. 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).
17. 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.
18. Barriers adequate to prevent vehicular damage to any exposed pipeline facilities shall be installed and maintained at all times.
19. All FGT pipeline facilities, cathodic protection equipment, and test lead wires shall be protected from damage by construction activity at all times.
20. No installation, construction, excavation, or demolition work shall be performed within the easement area on weekends or holidays unless Owner agrees to reimburse FGT for its cost, including overtime costs, associated with inspection during those periods.
21. The Owner 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. Access across FGT's easement will be granted at specific locations for vehicle and equipment traffic once a wheel load calculation has been completed. Additional cover or matting may be required. Any changes to this requirement must be approved in writing by FGT prior to start of work.
22. Where consent for landscaping has been granted, Owner 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.
23. These Engineering and Construction Specifications may address activities on the easement area for which FGT has not granted consent to Owner 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 \_\_\_\_\_, 2023**  
**By and between**  
**FLORIDA GAS TRANSMISSION COMPANY, LLC**  
**And BOARD OF COUNTY COMMISSIONERS BREVARD COUNTY, FLORIDA**

**DESCRIPTION OF THE OWNED PREMISES**

Viera Blvd and I95

Section 33, Township 25 South, Range 36 East – Brevard County



Project No.: 22-168  
Tract No.: FLMEB-BREV-095

**EXHIBIT “C”**

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

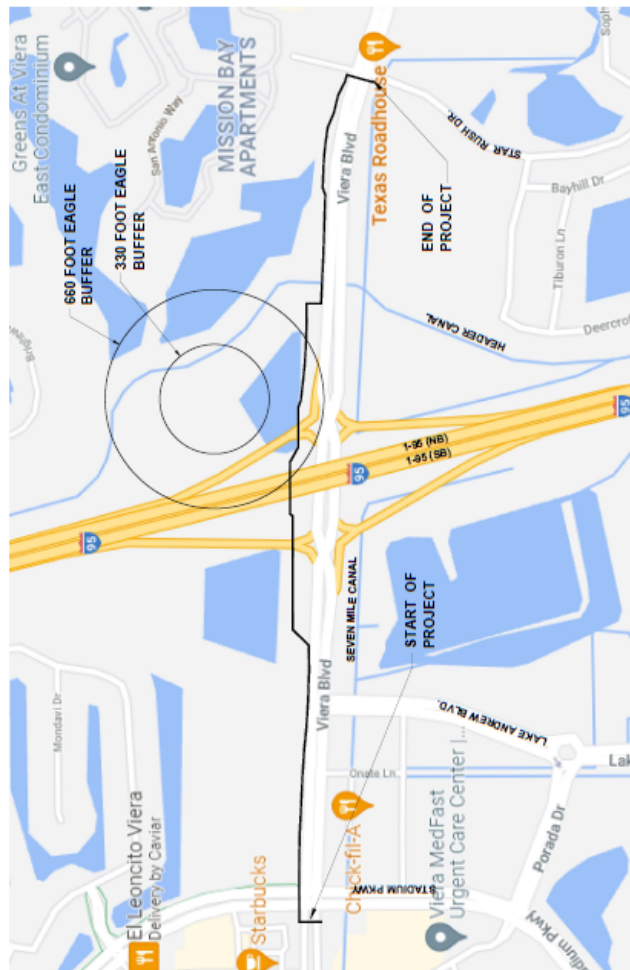
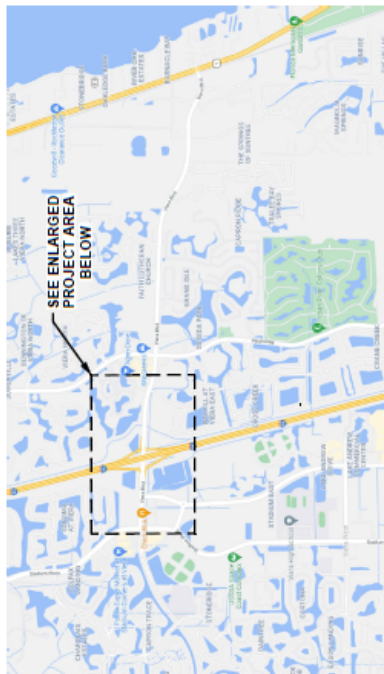
**ENCROACHMENT AGREEMENT**  
Dated \_\_\_\_\_, 2023

## By and between

**FLORIDA GAS TRANSMISSION COMPANY, LLC**

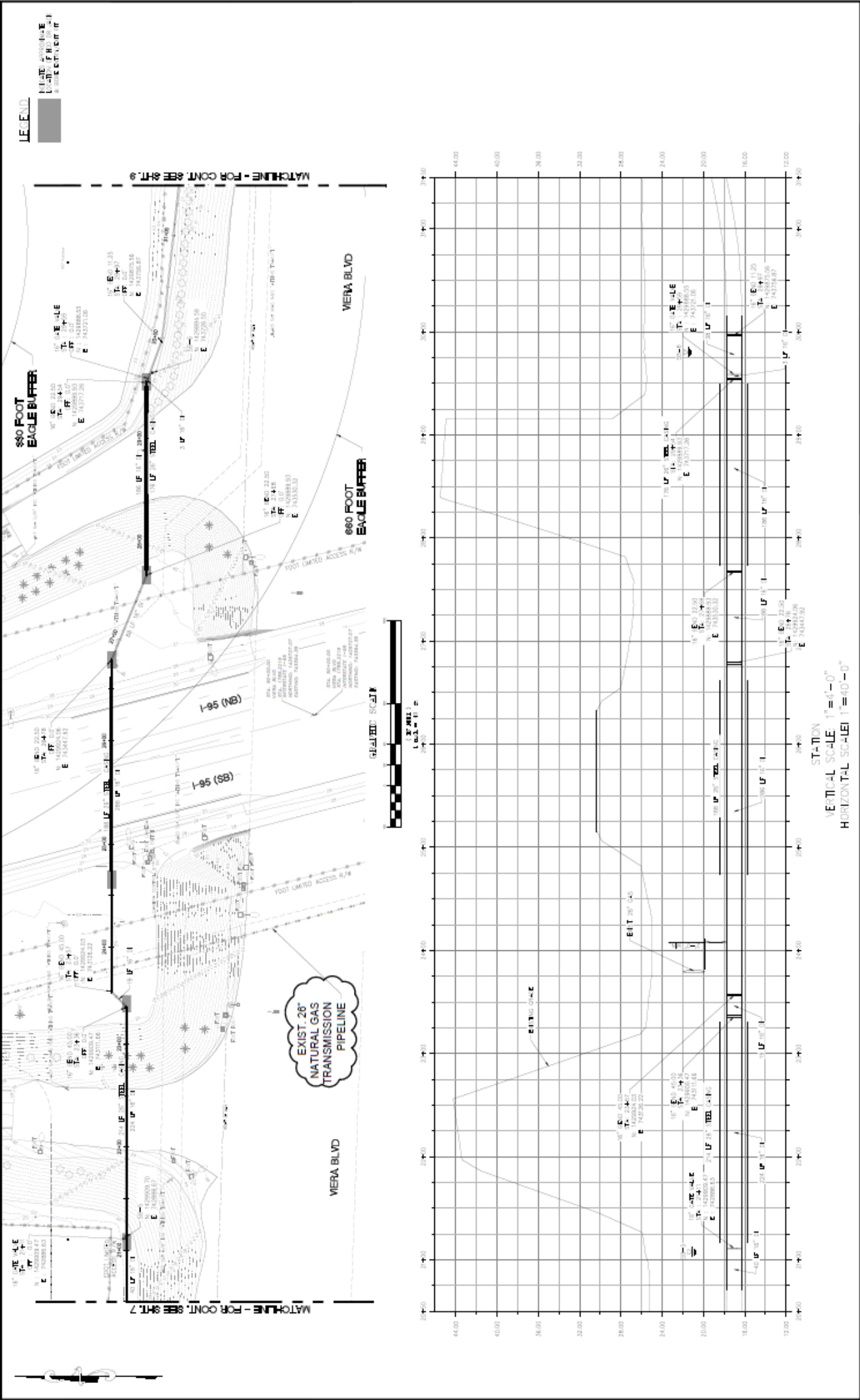
**And BOARD OF COUNTY COMMISSIONERS BREVARD COUNTY, FLORIDA**

## DESCRIPTION AND DRAWINGS OF THE ENCROACHMENT



<b>ATKINS</b> <small>INCORPORATED</small> 401 South Keller Road Orlando, FL 32810 Tel. (407) 647-7275 Fax. (407) 886-4500 <a href="http://www.atkinsglobal.com">www.atkinsglobal.com</a>	<b>PROJECT</b> BREWARD COUNTY, FLORIDA 18 <sup>TH</sup> RWM ALONG WEBB BLVD UTILITY SERVICES DEPARTMENT	<b>PROJECT</b> PROJECT LOCATION MAPS	(DATE) DATE (BY) BY (CHECKED) CHECKED (APPROVED) APPROVED (SCALE) SCALE (SHEET) SHEET	(JOB NO.) JOB NO. (DRAWN) DRAWN (ELECTRIC) ELECTRIC (MECHANICAL) MECHANICAL (PLUMBING) PLUMBING (SHEET) SHEET





<b>ATKINS</b> 482 South Keller Road Orlando, FL 32819 Tel. (407) 647-7275 Fax. (407) 806-4500 www.atkinsglobal.com	DATE: 07/20/2022 PROJECT: 22-168 SHEET: 8
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