

This Instrument Prepared By and Return To:  
Right-of-Way Department/Julie Franklin  
Florida Gas Transmission Company  
Post Office Box 945100  
Maitland, Florida 32794-5100

Project No.: 12-188  
Tract No.: FLMEA-LAKE-055

### ENCROACHMENT AGREEMENT

**THIS ENCROACHMENT AGREEMENT** ("Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by and between **FLORIDA GAS TRANSMISSION COMPANY, LLC**, a Delaware limited liability company, ("FGT"), with principal offices at 5051 Westheimer Road, Houston, Texas 77056, and, **THE CITY OF LEESBURG, FLORIDA**, a Florida municipality ("City"), whose address is 318 S. 2<sup>nd</sup> Street, Leesburg, Florida 34748.

#### **WITNESSETH THAT:**

**WHEREAS**, FGT is the owner and holder of an easement under the provisions of that certain Easement Grant dated January 20, 1959, and recorded in Book 75, at Page 271, Official Records, Lake County ("Easement Agreement"), covering lands located in Section 19, Township 19 South, Range 28 East, Official Records, Lake 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 a twenty-four inch (24") natural gas pipeline and a twenty-six inch (26") natural gas pipeline and related surface and subsurface appurtenances, (collectively, the "Pipeline Facilities"), across and through the Lands; and

**WHEREAS**, City has a utility easement over the Lands described in Exhibit "B" attached hereto and made a part hereof for all purposes ("Owned Premises"), with Pipeline Facilities situated thereon;

**WHEREAS**, City desires to construct a fiber optic cable 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**, City 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**, City has requested written consent from FGT to maintain, use, 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 City agree as follows:

1. To the extent that FGT has the right to do so, FGT hereby grants consent to City 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. City 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. City shall not alter the grade or permit such alteration anywhere on the Easement Area without the prior express written consent of FGT.

C. City 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, City 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. City understands and agrees that FGT may not have the authority to grant City permission to construct the Encroachment in the Easement Area. This Agreement merely defines the terms by which FGT will not object, and that City 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. City 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 City.

3. City 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, City 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. City 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, City 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, City hereby releases FGT and the FGT Entities from any and all liability for any such loss or damage.

6. FGT warrants that the information it provided to the City regarding the depth, location and construction of the Pipeline Facilities was true and accurate and City shall not be liable for loss or damage arising out of FGT errors in the information it provided to the City to design its improvements across the Easement Area as shown on Exhibit "C" attached hereto and made a part hereof.

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 City that if City 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 City; provided however, that any such termination shall not become effective if, within thirty (30) days from the receipt of such notice of termination, City cures such violation. City expressly agrees that if FGT terminates its consent to the Encroachment based upon City's failure to cure a violation of the Easement Agreement, the Encroachment Agreement, or both, City will continue to be bound by the terms of the Easement Agreement and the Encroachment Agreement, and City shall immediately remove any and all of the Encroachment which may be situated on the Easement Area, or if City fails to remove any and all of the Encroachment, FGT may, at its option, remove the Encroachment at the expense of City and without any liability whatsoever. If such violation by City 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. City 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. City 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 City and the heirs, executors, personal representatives, successors and assigns of City 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.

The undersigned hereby represent and warrant that the undersigned have full authority to execute, deliver and perform this Agreement in accordance with its terms upon behalf of the named party to this Agreement, without the joinder or consent of any additional parties.

**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 \_\_\_\_\_  
**ERIK BREITINGER  
AGENT AND ATTORNEY IN FACT**

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

**"CITY"  
THE CITY OF LEESBURG, FLORIDA**

By: \_\_\_\_\_  
**David Knowles, Mayor**

**ATTEST:**

\_\_\_\_\_  
**Betty Richardson, City Clerk**

**APPROVED AS TO FORM  
AND CONTENT:**

\_\_\_\_\_  
**CITY ATTORNEY**

**ACKNOWLEDGEMENTS**

STATE OF TEXAS  
COUNTY OF HARRIS

The foregoing instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2012, by **ERIK BREITINGER, AGENT AND ATTORNEY IN FACT 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.

(S E A L)

My Commission Expires \_\_\_\_\_

\_\_\_\_\_  
Notary Public  
Name (Printed): \_\_\_\_\_

**EXHIBIT "A"**  
**Attached to and made a part of that certain**  
**ENCROACHMENT AGREEMENT**  
**Dated \_\_\_\_\_, 2012**  
**By and between**  
**FLORIDA GAS TRANSMISSION COMPANY, LLC**  
**And THE CITY OF LEEBURG**

**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. City 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, City 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 contractor if the contractor's activities are judged to be unsafe by the FGT representative. The FGT representative will be invited to participate in contractor'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 exceeding the standard FDOT wheel axle load limits and 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) Contractor must visually verify the elevation of 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.
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 right-of-way width, and have external, spiral wound, neutrals grounded on each side of the right-of-way. The cable crossing should be clearly and permanently marked on each side of the right-of-way where permissible.
9. Where consent for fencing has been granted, the City 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 City 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

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within the easement area. FGT's access to its pipeline facilities shall be maintained by City. If the gate is locked with City's lock, City 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, City 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 City agrees to reimburse FGT for its cost, including overtime costs, associated with inspection during those periods.
21. The Developer or Contractor 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, City shall not plant any trees and shrubs on the easement area which are classified as "deep rooted" or are projected to exceed an eventual growth height of four (4) feet. Trees and shrubs shall be planted so that no part, at its ultimate growth, shall be closer than ten feet (10') to the pipeline facilities.
23. These Engineering and Construction Specifications may address activities on the easement area for which FGT has not granted consent to City 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.

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**EXHIBIT "B"**  
**Attached to and made a part of that certain**  
**ENCROACHMENT AGREEMENT**  
 Dated \_\_\_\_\_, 2012  
 By and between  
**FLORIDA GAS TRANSMISSION COMPANY, LLC**  
 And **THE CITY OF LEESBURG**

**DESCRIPTION OF THE OWNED PREMISES**

Parcel ID Number: 19-19-28-000400002700

**Property Details**

General Information	Land Data	Misc. Improvements	Sales History	Value	Map of Property	Tax
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**General Information**

<b>Alternate Key:</b>	2793511	<b>Parcel:</b>	19-19-28-000400002700
<b>Owner Name:</b>	LAKE COUNTY BCC	<b>Millage:</b>	0006 (Unincorporated) : 15.2077
<b>Owner Address:</b>	ATTN COUNTY ATTORNEY 315 W MAIN ST TAVARES, FL 32778	<b>Property Location:</b>	24550 OLMAC RD SORRENTO FL 32776

**Legal Description:**  
 S 1/2 OF N 1/2 OF SW 1/4 OF SE 1/4--LESS N 15 FT & LESS R/W |  
 OF SR 437 & LESS THAT PART OF LAND LYING WITHIN FOLLOWING |  
 DESCRIBED PROPERTY: FROM S 1/4 COR OF SEC RUN N 89-25-30 E |  
 116.02 FT TO A POINT ON A LINE 66 FT E OF & PARALLEL WITH E |  
 R/W LINE OF CR 437, N 01-02-06 E 44.93 FT FOR POB, CONT N |  
 01-02-06 E 356.31 FT, N 0-03-45 E 563.22 FT TO A POINT ON A |  
 LINE 40 FT S & PARALLEL WITH N LINE OF S 1/2 OF N 1/2 OF SW |  
 1/4 OF SE 1/4, N 89-05-50 E 626.27 FT, S 0-0-0 E 626.99 FT, |  
 N 90-0-0 E 393.15 FT, S 0-34-11 E 270.43 FT, S 89-25-49 W |  
 268.30 FT, S 79-40-55 W 126.33 FT, S 89-24-08 W 636.55 FT TO |  
 POB & LESS FROM S 1/4 COR OF SEC RUN N 89-25-30 E 49.94 FT |  
 TO E R/W LINE OF CR 437, N 01-02-06 E ALONG SAID E R/W LINE |  
 402.54 FT, CONT N 0-03-46 E 586.55 FT FOR POB, SAID POINT |  
 BEING ON A LINE 15 FT S & PARALLEL WITH WHEN MEASURED AT |  
 RIGHT ANGLES THERETO, THE N LINE OF S 1/2 OF N 1/2 OF SW 1/4 |  
 OF SE 1/4, N 89-05-50 E 40 FT, S 0-42-52 E 25 FT, W 40 FT TO |  
 E R/W LINE OF CR 437, N ALONG SAID E R/W LINE 25 FT TO POB-- |  
 ORB 3308 PG 26 |

**Land Data**

Line	Land Use	Frontage	Depth	Notes	No. Units	Type	Class Value	Just Value
1	COUNTY (8600)	0	0		1	AC	\$0.00	\$38,250.00
2	COUNTY (8600)	0	0		3.51	AC	\$0.00	\$134,258.00

**Miscellaneous Improvements**

There is no improvement information to display.

**Sales History**

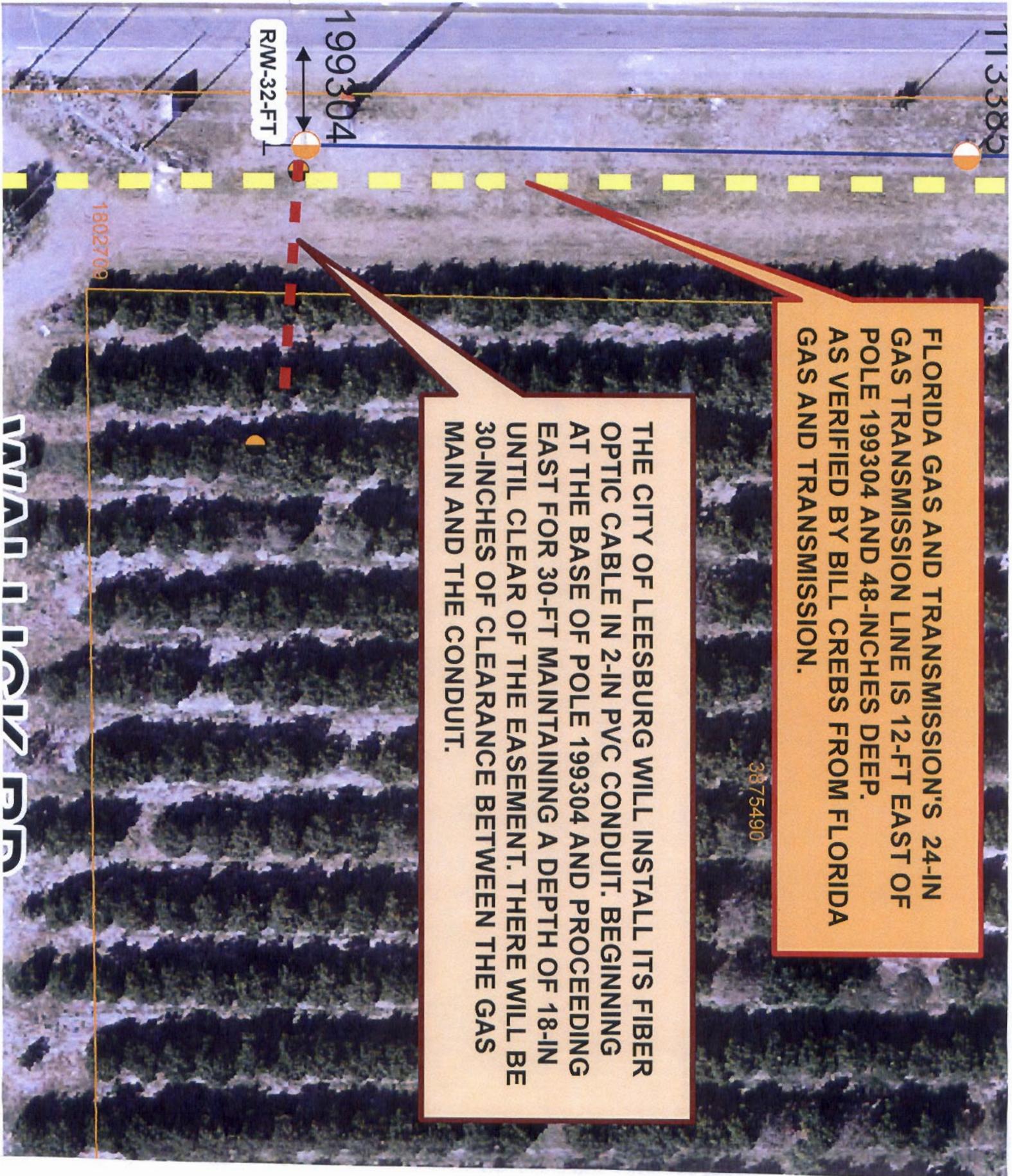
O.R. Book / Page	Sale Date	Instrument	Q/U	Vac./Imp.	Sale Price
<u>0854 / 0430</u>	10/1/1985	WD	Q	V	\$22,500.00
<u>3308 / 0026</u>	11/15/2006	WD	U	I	\$441,400.00

**EXHIBIT "C"**

Attached to and made a part of that certain  
**ENCROACHMENT AGREEMENT**  
Dated \_\_\_\_\_, 2012

By and between  
**FLORIDA GAS TRANSMISSION COMPANY, LLC**  
And **THE CITY OF LEESBURG**

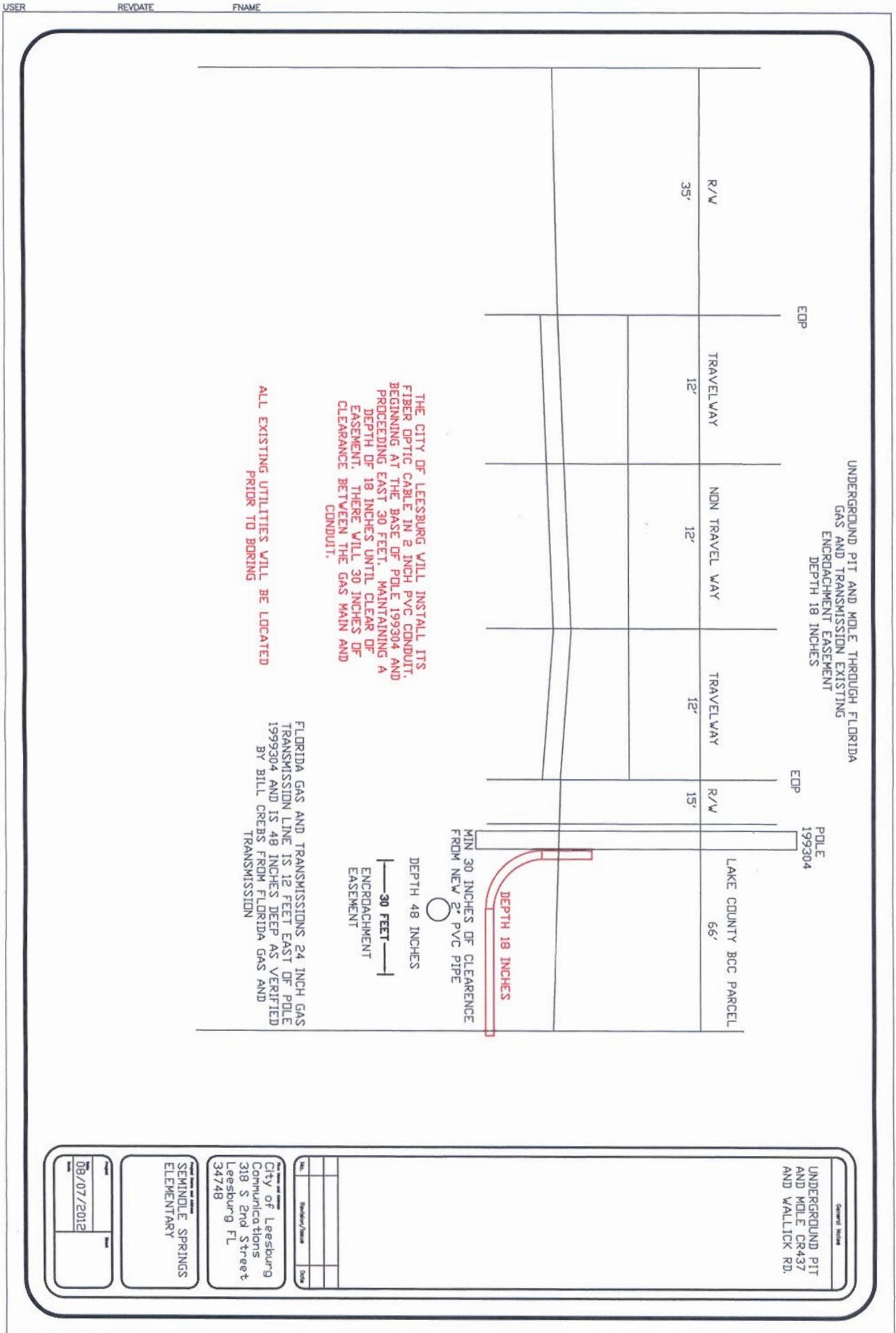
**DESCRIPTION AND DRAWINGS OF THE ENCROACHMENT**



FLORIDA GAS AND TRANSMISSION'S 24-IN GAS TRANSMISSION LINE IS 12-FT EAST OF POLE 199304 AND 48-INCHES DEEP. AS VERIFIED BY BILL CREBS FROM FLORIDA GAS AND TRANSMISSION.

THE CITY OF LEESBURG WILL INSTALL ITS FIBER OPTIC CABLE IN 2-IN PVC CONDUIT. BEGINNING AT THE BASE OF POLE 199304 AND PROCEEDING EAST FOR 30-FT MAINTAINING A DEPTH OF 18-IN UNTIL CLEAR OF THE EASEMENT. THERE WILL BE 30-INCHES OF CLEARANCE BETWEEN THE GAS MAIN AND THE CONDUIT.

MANITOWOC



General Notes UNDERGROUND PIT AND MOLE CR437 AND WALLICK RD.	
City of Leesburg Communications 318 S 2nd Street Leesburg FL 34748	Date 08/07/2012
Seminole Springs Elementary	Date