




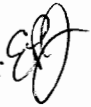
Interoffice Memorandum

REAL ESTATE MANAGEMENT ITEM 4

DATE: April 4, 2019

TO: Mayor Jerry L. Demings
and the
Board of County Commissioners

THROUGH: Paul Sladek, Manager 
Real Estate Management Division

FROM: Elizabeth Price Jackson, Senior Title Examiner 
Real Estate Management Division

CONTACT PERSON: Paul Sladek, Manager

DIVISION: Real Estate Management
Phone: (407) 836-7090

ACTION REQUESTED: Approval and execution of Encroachment Agreement by and between Florida Gas Transmission Company, LLC and Orange County and authorization to record instrument

PROJECT: Sand Lake Road Fiber Optic Conduit – Encroachment Agreement

District 6

PURPOSE: To provide for access, construction, operation, and maintenance of utility facilities.

ITEM: Encroachment Agreement
Cost: None

APPROVALS: Real Estate Management Division
Utilities Department

REMARKS:

Orange County Utilities Department (OCU) is installing a fiber optic conduit under the Florida Turnpike to serve the OCU site at 8100 Presidents Drive pursuant to a permit issued by the Florida Department of Transportation. Florida Gas Transmission Company, LLC (FGT) has a gas transmission line which runs along the Florida Turnpike corridor and which crosses the proposed conduit. Because of this construction, FGT has required that County enter into this Encroachment Agreement (Agreement) to set out the conditions, engineering, and construction specifications for the encroachment area. This Agreement will allow OCU to construct, operate, and maintain the utility infrastructure improvements within an existing FGT easement, subject to its terms and conditions.

County is executing the Agreement to show acceptance of its terms and conditions.

FGT to pay recording fees.

APR 23 2019

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

County Project: Sand Lake Road Fiber Optic Conduit – Encroachment Agreement
FGT Project No.: 17-467

ENCROACHMENT AGREEMENT

THIS ENCROACHMENT AGREEMENT ("Agreement") is made and entered into this 23rd day of April, 2019, 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, **ORANGE COUNTY**, a charter county and political subdivision of the State of Florida, ("ORANGE COUNTY"), whose address is: P. O. Box 1393, Orlando, Florida 32802.

WITNESSETH THAT:

WHEREAS, FGT is the owner and holder of an easement under the provisions of that certain **NATURAL GAS PIPELINE EASEMENT AGREEMENT** effective August 21, 2013, and recorded in Book 10880, Page 7389, Official Records, Orange County, Florida, as Amended in Book 10881, Page 3272, Official Records, Orange County, Florida ("Easement Agreement"), covering lands located in Sections 22, 23, 26, 27, 34, and 35, Township 22 South, Range 28 East, and Sections 2 and 11, Township 23 South, Range 28 East, Official Records, Orange 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 four inch (4") 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, ORANGE COUNTY seeks consent for fiber optic cable crossing the FGT easement ("Easement Area") and the Pipeline Facilities as depicted on Exhibit "B" attached hereto and made a part hereof ("Encroachment"), pursuant to the terms and provisions of this Agreement; and

WHEREAS, ORANGE COUNTY 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, ORANGE COUNTY 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 ORANGE COUNTY agree as follows:

1. To the extent that FGT has the right to do so, FGT hereby grants consent to ORANGE COUNTY to maintain, operate and use the Encroachment on the Easement Area, and in close proximity to the Pipeline Facilities, subject to compliance with the following terms and conditions:

A. ORANGE COUNTY 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 Easement Area. ORANGE COUNTY shall not alter the grade or permit such alteration anywhere on the Easement Area without the prior express written consent of FGT.

C. ORANGE COUNTY 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, ORANGE COUNTY 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. ORANGE COUNTY understands and agrees that FGT may not have the authority to grant ORANGE COUNTY permission to construct the Encroachment in the Easement Area. This Agreement merely defines the terms by which FGT will not object, and that ORANGE COUNTY will obtain permission for the Encroachment from the underlying fee owner of the Lands or third parties having an interest in the Easement Area. 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. ORANGE COUNTY 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 ORANGE.

3. ORANGE COUNTY, to the extent permitted by Florida Statutes 768.28, 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. Nothing in this Agreement is to be considered a waiver of immunity or limits of liability which may have been adopted by the Florida Legislature in Section 768.28, Florida Statutes.

In addition, and to the extent permitted by Florida Statutes 768.28, ORANGE COUNTY 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 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. ORANGE COUNTY 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, ORANGE COUNTY 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 of the Easement Area 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, ORANGE COUNTY hereby releases FGT and the FGT Entities from any and all liability for any such loss or damage.

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

County Project: Sand Lake Road Fiber Optic Conduit – Encroachment Agreement
FGT Project No.: 17-467

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

WITNESSES:

Terry Coleman
Name: Terry Coleman

Jim Johnson
Name: Jim Johnson

“FGT”
FLORIDA GAS TRANSMISSION
COMPANY, LLC

By David Shellhouse
9C DAVID SHELLHOUSE
VICE PRESIDENT

ACKNOWLEDGEMENTS

STATE OF FLORIDA
COUNTY OF ORANGE

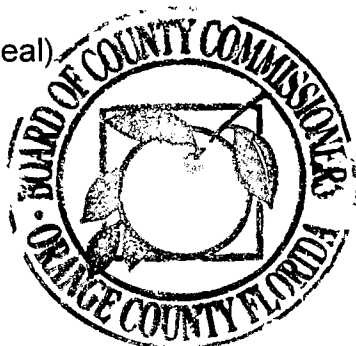
The foregoing instrument was acknowledged before me on this 7th day of May, 2019, by **DAVID SHELLHOUSE, VICE PRESIDENT OF FLORIDA GAS TRANSMISSION COMPANY, LLC**, a Delaware limited liability company, on behalf of the company. He is personally known to me or has produced (type of identification) as identification.



James W. Johnson
Notary Public

“ORANGE COUNTY”

(Official Seal)



Orange County, Florida
By: Board of County Commissioners

By: Brynn Brooks
for Jerry L. Demings,
Orange County Mayor

Attest: Phil Diamond, CPA
Orange County Comptroller
as Clerk of the Board of County Commissioners

By: Katie Smith
Deputy Clerk

Katie Smith
Printed Name

EXHIBIT “A”
Attached to and made a part of that certain
ENCROACHMENT AGREEMENT
Dated April 23, 2019
By and between
FLORIDA GAS TRANSMISSION COMPANY, LLC
and ORANGE 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 FGT and ORANGE COUNTY. 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. ORANGE COUNTY 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, ORANGE COUNTY 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 ORANGE COUNTY if ORANGE COUNTY’s activities are judged to be unsafe by the FGT representative. The FGT representative will be invited to participate in ORANGE’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) ORANGE COUNTY 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. INTENTIONALLY OMITTED
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, the ORANGE COUNTY 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 ORANGE COUNTY 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 ORANGE COUNTY. If the gate is locked with ORANGE COUNTY's lock, ORANGE COUNTY 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, ORANGE COUNTY 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. ORANGE COUNTY 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.
24. Where consent for landscaping has been granted, ORANGE COUNTY 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 ORANGE COUNTY 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 April 23, 2019
By and between
FLORIDA GAS TRANSMISSION COMPANY, LLC
and ORANGE COUNTY

DESCRIPTION AND DRAWINGS OF THE ENCROACHMENT

