



Gulf Power®

This Legal Document
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Gulf Power Company
One Energy Place
Pensacola, Florida 32520-0323

**STATE OF FLORIDA
COUNTY OF SANTA ROSA
MILTON - NAVARRE 44KVTL, PARCEL 27
HOLLEY-NAVARRE PARCEL 12
TAX ID# 09-2S-27-0000-00101-0000**

ENCROACHMENT AGREEMENT

THIS ENCROACHMENT AGREEMENT (the "Agreement"), dated this ____ day of _____, _____, by and between **GULF POWER COMPANY, A FLORIDA CORPORATION**, whose address is **ONE ENERGY PLACE, PENSACOLA, FLORIDA 32520-0323** ("Gulf") and School Board of Santa Rosa County, Florida, whose address is **5086 Canal Street Milton Florida 32570** ("Permittee", which includes and may be referred to by the singular, plural, masculine, feminine, or neuter pronoun).

RECITALS

WHEREAS, Gulf is the owner of those easements between **Gulf and Henrietta Farnham, et. al. dated September 21, 1949 and recorded in Deed 78, Page 487 and Petros Petrelis et. al. dated February 13, 1969 and recorded in Official Records Book _____ at Page _____ all in in the Public Records of Santa Rosa County, Florida** (the "Easement"), and

WHEREAS, the real property subject to the Easement (the "Easement Property" or the "Work Zone") has significant value to Gulf in providing Gulf the ability and capacity to satisfy the needs of its customers and Gulf's obligations under Chapter 366, Florida Statutes, and

WHEREAS, the improvements which Permittee has constructed or will construct on the Easement Property are inconsistent with the rights and privileges of Gulf which are necessary or convenient for Gulf's full enjoyment and use of the Easement and the Easement Property, including without limitation, the construction, operation and maintenance of Gulf's towers, poles, guys, stays, electrical lines and other structures and equipment (the "Facilities") and the maintenance and future development of the Easement Property; and,

WHEREAS, Gulf and Permittee desire to set forth their mutual understanding regarding said improvements on or about the Easement Property and Permittee's use of the improvements;

NOW, THEREFORE, Gulf and Permittee, for and in consideration of the sum of **Ten And 00/100 Dollars (\$10.00)** and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and the mutual promises herein contained, do hereby covenant and agree as follows:

1. **Construction or Continued Use, Repair, Maintenance of Improvements by Permittee** - Gulf hereby agrees that Permittee, at Permittee's sole cost and expense, may construct, continue to use, or maintain and repair certain improvements on or about the Easement Property. Said improvements consisting of the following: **Drive crossing, four inch force main crossing R/W and paralleling R/W. While paralleling R/W the force main will be located within 10 feet of the northern and southern right of way line of the 150 foot corridor**, are to be used solely by Permittee, provided that the improvements and the location of the improvements are substantially in accordance with the plans on the attached **Exhibit "A"** (the "Improvements"). Gulf does not represent or warrant that the Improvements are built and/or maintained in accordance with applicable law, statutes, codes, or regulations. Permittee agrees and acknowledges that the Improvements may be constructed or continued to be used on the Easement Property for so long as Gulf permits, in Gulf's sole and complete discretion. Permittee agrees and acknowledges that Permittee may be required by Gulf to remove the Improvements, at Permittee's sole cost and expense, pursuant to paragraph 4 herein. Permittee further agrees and acknowledges that this Agreement between Gulf and Permittee is limited to the Improvements as described on Exhibit "A" and, therefore, Permittee shall not, in any event, submit additional requests for construction of improvements on the Easement Property, nor shall Permittee

install or construct any additional improvements which are not a part of the Improvements as described on Exhibit "A" at any time or for any reason whatsoever.

Permittee, at Gulf's sole option and discretion, may be required to obtain the services of a Gulf employee and/or approved contractor and/or representative to monitor the construction, use, repair, or maintenance of the Improvements, or the modification and relocation of the Improvements pursuant to paragraph 4 below, so that Gulf's Facilities and the Easement Property are protected to the fullest extent possible for use by Gulf. At Gulf's option, payment of the estimated costs for the monitoring shall be paid by Permittee in advance and with any difference or balance to be paid after the work has been completed. The presence of any such employee, approved contractor, or representative shall not in any way release Permittee from any of Permittee's liabilities and responsibilities provided for in this Agreement.

2. **Approval of Plans and Specifications** - No excavation or additional construction of any kind shall be permitted within twenty-five (25) feet of an existing or future pole, structure, guy wire, anchor or other facility as now located or which may be hereafter located by Gulf without the express prior written approval of Gulf. Gulf reserves the right to review and approve, prior to commencement of construction or repair any and all plans and specifications, including landscaping, that relates to the construction or repair of the Improvements, which approval may be withheld in Gulf's sole and complete discretion. Permittee acknowledges that Gulf does not represent or warrant that the Improvements are built and/or maintained in accordance with applicable law, statutes, codes, or regulations. Permittee shall provide Gulf five (5) days' prior written notice of Permittee's intent to commence construction or repair of the Improvements on the Easement Property.

3. **Restrictions on Improvements** - Except as expressly permitted hereunder on the attached Exhibit "A," Permittee hereby agrees that: (a) no permanent structures, facilities, or buildings, including but not limited to, houses, home additions, mobile homes, garages or sheds, shall be placed or permitted in or on any portion of the Easement Property; (b) no trees, bushes, shrubs, or other landscaping, that exceeds ten feet {10.0'} at mature height, shall be placed or permitted in or on any portion of the Easement Property; (c) no garbage or waste disposal pits, billboards, signs, flag poles, wells, swimming pools, wrecked and disabled vehicles, septic tanks and drain lines, or roads or driveways running parallel with the Easement shall be placed or permitted in or on any portion of the Easement Property; (d) holding ponds, lakes and ponds are disallowed; (e) the present surface elevation of the Easement Property shall not be altered by either fill or excavation and shall never be used so as to come in conflict with minimum electric clearance requirements; (f) the height of any vehicle, trailer, or attachments on any vehicle, including radio antennae, crossing the Easement Property shall not exceed thirteen feet six inches (13' 6") in height; and (g) no vehicle, trailer, or other obstruction will be allowed to remain permanently parked on the Easement Property or parked on the Easement Property continuously for more than a total of forty-eight (48) continuous hours.

4. **Modification, Relocation, or Removal of Improvements** - Permittee shall, no later than sixty (60) days after transmittal of written notice by Gulf, modify, remove, or relocate as appropriate, in Gulf's sole discretion, the Improvements, including trees or other landscaping, so as to allow Gulf's full use and enjoyment of the Easement, the Easement Property and the Facilities. Permittee agrees and acknowledges that Gulf may require Permittee's modification, removal or relocation of the Improvements to allow for Gulf's present and/or future use and enjoyment of the Easement, the Easement Property and/or the Facilities, even though Gulf's construction, maintenance and repair of the Easement Property and/or the Facilities will not take place for months, if not years. Permittee acknowledges and understands that Gulf may require Permittee's modification, removal or relocation of the Improvements well in advance of Gulf's contemplated activities upon and use of the Easement Property. Furthermore, Permittee acknowledges and understands that Permittee is expressly prohibited from rebuilding, replacing, or reconstructing, in any way, the Improvements in the event the Improvements are removed, in part or in whole, by Permittee, its successors and/or assigns. Any and all costs and expenses arising from any such modifications, removal, or relocations shall be paid by Permittee. If and to the extent Permittee fails to modify, remove or relocate the Improvements in a timely manner, Gulf reserves the right to modify, remove or relocate the Improvements. Permittee hereby grants Gulf permission to modify, remove and/or relocate the Improvements, including trees and other landscaping, upon Permittee's failure to timely complete such modification, removal or relocation of the Improvements. Permittee will pay to Gulf any and all costs or expenses incurred by Gulf in modifying, removing and/or relocating the Improvements, including trees or other landscaping. If and to the extent Gulf modifies, removes and/or relocates the Improvements due to Permittee's failure to timely do so, Permittee waives Permittee's right to assert any and all claims, demands, actions, or suits for damage to and/or loss of the Improvements, including trees or other landscaping.

5. **Repairs** - Permittee shall repair and pay for any property damage caused by Permittee to any part of the Easement Property. This obligation for repair includes, but is not limited to, vegetation reestablishment, and any damage to the soil, or sub-soil caused by Permittee, or its employees, agents, contractors, subcontractors, or invitees. Permittee shall be responsible for maintaining the repaired damage for the first twelve (12) months after completion of repairs and after vegetation is fully established.

6. **Safety** - Permittee shall take all necessary precautions for the safety of its contractors, invitees, agents, and all other persons who may at any time and for any reason come upon the Easement Property. Permittee shall comply with and shall cause each of its contractors, invitees and agents to comply with all applicable provisions of Federal, State and Local occupational safety and health laws, building and safety codes, and environmental

regulations to prevent accidents, injuries to persons or damage to property. Gulf does not represent, warrant, or in any way opine as to the safety of Gulf's Facilities in, on and around the Easement Property, whether existing at the time of execution of this Agreement or in the future. Permittee expressly agrees and acknowledges that Permittee and Permittee's contractors, invitees, agents, and other persons in or about the Easement Property, whether known or unknown, are on the Easement Property at their own risk.

7. **Notice and Notice Requirement** – Permittee recognizes that Gulf's Facilities in, on and around the Easement Property carry electricity at high voltage and that the possibility always exists of damage and /or injury to persons and/or property from such electricity. Permittee shall specifically and adequately warn each and every contractor, invitee and/or agent of Permittee of the dangers inherent in making contact with Gulf's Facilities before such contractors, invitees, and/or agents are permitted to perform any work and/or carry on activities of any nature on land adjacent to Gulf's Facilities and/or the Easement Property.

8. **Warnings** - Permittee agrees and covenants to warn all persons of whom the Permittee knows or should reasonably anticipate that for any reason may resort to the vicinity of Gulf's Facilities of the fact that such conductors are (a) electrical conductors, (b) energized, (c) uninsulated, and (d) dangerous.

9. **Indemnification and Hold Harmless** -

a. **Personal Injuries, Wrongful Death and Property Damage:** To the fullest extent permitted by applicable law, Permittee will indemnify, defend (if requested by Gulf) and hold harmless Gulf, its officers, directors, agents, employees, affiliates and parent company ("Persons Indemnified") from and against any and all loss, damages, expenses, costs (including, but not limited to, attorneys' fees, expert fees and expenses, and court costs), judgments, or liability resulting from any and all demands, claims, suits, fines, penalties, proceedings or actions of any kind or character for personal injuries (including wrongful death) and/or property damage ("Claim") presented or brought against the Persons Indemnified caused by, arising out of, or related to any act or omission of Permittee and/or Permittee's contractors, invitees, or agents in or about the Easement Property, whether or not such personal injury, wrongful death and/or property damage is caused by or results from the joint, concurrent, comparative, and/or contributory negligence of Gulf. Notwithstanding the foregoing, Permittee shall not be obligated to indemnify the Persons Indemnified for any claim of, or damages resulting from, the gross negligence or willful, wanton or intentional misconduct of the Persons Indemnified. Permittee is not a contractor, subcontractor, materialman, architect, engineer, design professional, joint venturer, or agent of Gulf. To the extent any action might be brought against Gulf for personal injuries and/or death allegedly caused, in whole or in part by Permittee, that would be covered under Chapter 768, Florida statutes, then Permittee, as a political subdivision of the State of Florida expressly does not waive the limits of sovereign immunity as set forth in the laws or Constitution of the State of Florida.

b. **Marketability or Conveyance of Permittee's Real Property:** Permittee acknowledges and understands that, by virtue of the presence of Permittee's Improvements on the Easement Property, Permittee may find it difficult or impossible for Permittee to sell, convey or mortgage Permittee's real property. Permittee acknowledges and understands that Permittee may encounter marketability or conveyance issues or problems as a result of Permittee's placement of the Improvements on the Easement Property. To the fullest extent permitted by applicable law, Permittee will indemnify, defend (if requested by Gulf) and hold harmless the Persons Indemnified from and against any and all claims Permittee or Permittee's successors and/or assigns may make as a result of Permittee's inability (or potential inability) to sell, transfer, convey, or encumber Permittee's real property and/or the Improvements. .

10. **Environmental** - To the fullest extent permitted by applicable law, Permittee will indemnify, defend (if requested by Gulf), and hold Persons Indemnified harmless from:

a. All claims, demands, suits, judgments, actions and liabilities related to or arising from environmental contamination on the Easement Property caused by Permittee, its contractors, invitees and/or agents; and

b. All loss, costs, expenses, fines, and penalties incurred by or assessed against Persons Indemnified to clean, remove, dispose of and/or decontaminate any part of the Easement Property, including the soil, subsoil, and groundwater resulting from contamination by any hazardous substance brought or allowed onto the Easement Property by Permittee, its contractors, invitees and/or agents.

11. **Insurance** - Throughout the term of this Agreement, Permittee will procure and maintain in effect policies of insurance providing, at a minimum, the coverages and limits specified and complying with the other requirements stated below:

a. If Permittee is a corporation, partnership, LLC or other business entity **or** the Easement is not appurtenant to Permittee's homestead:

- **Commercial General Liability** insurance on an occurrence (not claims made) basis, in an amount not less than \$1 million for any one occurrence, including broad form coverage for contractual liability, property damage (including underground property damage), products liability, explosions, and collapses.
- **Business Auto Liability** insurance covering any owned, non-owned, and hired vehicles in an amount not less than \$1 million combined single limit for bodily injury and property damage for any one occurrence.

b. If the Easement is located on real property appurtenant to Permittee's homestead:

- **Standard homeowners insurance** containing general liability coverage in an amount not less than [\$_____].

Applicable to both 11.a. and 11.b.:

Permittee hereby waives and relinquishes any right of subrogation against Gulf for any policy of insurance required under this Agreement.

Permittee must notify Gulf in writing at least thirty (30) days before the effective date of any cancellation of or material change in any of the required policies. Upon request of Gulf, Permittee will provide to Gulf certificates of insurance evidencing the coverage prescribed by this Agreement and certifying the amount and nature of such coverage, the expiration date(s) of each applicable policy, and that such policies have been endorsed as required by this Agreement. Permittee will furnish to Gulf additional information concerning its insurance coverage as Gulf may reasonably request. In no event, however, will Gulf's collection and retention of such certificates (or decision not to collect and review such certificates) create any responsibility on the part of Gulf to verify the appropriateness and validity of Permittee's insurance, to notify Permittee with regard to any matter related to its insurance, or to ensure that the insurance requirements above have been satisfied; nor does such collection and retention create a waiver by Gulf of any of its rights in connection with such insurance.

The obligations for Permittee to procure and maintain insurance will not be construed to waive or restrict other obligations of Permittee or to limit the liability of Permittee whether or not same is covered by insurance.

12. **Release** - Permittee, for itself and on behalf of its contractors, agents, invitees, and other persons who participate or assist in any work or other activities on the Easement Property ("Releasors"), who shall be made aware of this provision by Permittee, does hereby release, acquit and forever discharge Gulf, its affiliates and parent company, and each of Gulf's employees, agents, officers, and directors ("Releasees") of and from any and all known and unknown causes of action, damages, liabilities, costs, expenses and claims and demands of whatsoever kind or nature (including legal expenses) which Releasors now have or may ever have against Releasees on account of any and all known and unknown present or future injuries, losses and damages sustained or received or which may be sustained by Releasors or the property of Releasors occurring on, at or about the Easement Property, resulting from any events concerning work on or around the Easement Property, whether in law or in equity and where brought against the Releasees now or in the future. Releasors' use of the Improvements shall be at the sole risk and expense of Permittee, and Gulf is hereby specifically relieved of any responsibility for damage to the facilities and/or property of the Permittee resulting or occurring from Gulf's normal, customary and anticipated use of the Easement, the Easement Property and the Facilities.. Permittee covenants not to sue Gulf in such instance.

13. **No Warranty of Title** - Gulf expressly disclaims any warranty of title or right of possession with respect to the Easement Property. Permittee agrees to obtain all necessary rights from other fee owners of the lands crossed by and/or adjacent to the Easement Property and/or right-of-way, if any, thereby putting them on notice that the activity described in paragraph 1 is not being performed by Gulf. Permittee acknowledges and understands that Gulf makes no representation whatsoever as to Permittee's ability to sell, transfer, convey or encumber Permittee's real property and Improvements.

14. **Maintenance of the Easement** - Permittee acknowledges that from time to time it may become necessary for Gulf to bring upon the Easement Property certain vehicles and other equipment to perform necessary repairs and maintenance relating to the Easement, the Easement Property or the Facilities. Permittee agrees to keep Permittee's real property and the Improvements in a condition suitable for access by such vehicles and equipment. Permittee further agrees that it will make no claim for damage to the Improvements arising from Gulf's repair and maintenance of the Easement Property and/or the Facilities.

15. **Injunctive Relief** - In the event of any violation or threat of violation by Permittee of any of the terms and conditions of this Agreement, Gulf shall have the right to enjoin such violation or threatened violation in a Court of competent jurisdiction without the necessity of posting a bond. Permittee agrees and acknowledges that this right of injunctive relief shall be in addition to any and all other remedies available under statute, law, or equity, including, but not limited to, the right to terminate this Agreement.

16. **Time is of the Essence** - Time is of the Essence in the parties' respective performance of their obligations in this Agreement.

17. **Choice of Law** - This Agreement shall be governed by the laws of the State of Florida.

18. **Successor and Assigns** - The covenants, conditions and restrictions set forth in this Agreement shall run with the land, and shall inure to the benefit of and bind the respective successors and assigns of the parties hereto.

19. **Severability** - If any section, provision, clause, paragraph, sentence hereof is deemed to be invalid or unenforceable under applicable law, statutes, codes, or regulations, this Agreement shall be considered divisible as to such provision and the same shall thereafter be in operative, provided however, the remaining provisions of this Agreement shall be valid and binding.

20. **Counterparts** - This Agreement may be executed in any number of counterparts, each of which is an original, but all of which shall constitute one instrument.

21. **Notices** - All notices, requests, consents and other communications hereunder, which may be sent by Gulf to Permittee, shall be in writing and sent to the address provided hereinabove. All notices, requests, consents, and other communications shall be personally delivered, sent by Federal Express or other overnight or same day courier service providing a return receipt, mailed by first class registered or certified mail (postage prepaid), or by telecopy or electronic transmission (with proof of transmission and receipt). Such notice, request, consent and/or other communication shall be effective upon Permittee when sent.

22. **No Waiver** - No waiver of any condition, term, representation, requirement, or covenant of this Agreement shall be deemed to imply or constitute a further waiver of the same or any other condition or covenant, and nothing contained in this Agreement shall be construed to be a waiver on the part of Gulf of any right or remedy in law or otherwise. No condition, term, representation, requirement, or covenant of this Agreement shall be deemed to have been waived by Gulf unless such waiver is in writing and executed by Gulf.

23. **Entire Agreement** - This Agreement, together with the Exhibits incorporated herein (if any), contains the entire and only agreement between the parties, and no oral statements or representations, or prior written matter not contained or referred to in this instrument shall have any force or effect. This Agreement shall not be modified in any way except by a writing subscribed by both Gulf and Permittee.

GULF POWER COMPANY

ATTEST:

Name: _____
Title: _____ **Secretary**

By: _____

Name: _____
Title: **Vice President**

(CORPORATE SEAL)

STATE OF FLORIDA
COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this ____ day of _____, 20__ by _____, as **Vice President** and _____ as _____ **Secretary**, on behalf of **GULF POWER COMPANY, A FLORIDA CORPORATION**, who are personally known to me and who did not take an oath.

NOTARY PUBLIC

STAMP

Witness

(Print or type full name)

Witness

(Print or type full name)

By: _____

Carol Boston
(Print or type full name)

Title: School Board Chairperon

Attest By: _____

Tim Wyrosdick
(Print or type full name)

Title: Superintendent of Schools

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by _____, of **SCHOOL BOARD OF SANTA ROSA COUNTY , FLORIDA**, a _____ on behalf of the company, who is personally known to me or who has produced _____ as identification, and who did/did not take an oath.

NOTARY PUBLIC

STAMP

Permittee Initials

EXHIBIT "A"

