

RESOLUTION NO. 2016- 123

**A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AUTHORIZING THE COUNTY ADMINISTRATOR, OR DESIGNEE, TO EXECUTE AN EASEMENT TO PEOPLES GAS SYSTEM TO INSTALL THE DELIVERY SYSTEM FOR THE COMPRESSED NATURAL GAS FUELING FACILITIES LOCATED OFF STATE ROAD 16 AND TO EXECUTE A SUBORDINATION AND JOINDER AGREEMENT.**

**RECITALS**

**WHEREAS**, Peoples Gas System, a division of Tampa Electric Company (hereinafter "PGS") has requested an Easement, attached hereto as Exhibit "A," incorporated by reference and made a part hereof, in order to install the natural gas and compressed gas delivery system for the fueling facility locate off State Road 16; and

**WHEREAS**, PGS requires a customer desiring service provide PGS with access and rights-of-way which in the opinion of PGS are necessary for the rendering of service to the customer. The County has authority to grant such rights, easements, permits and privileges and has found it necessary for protection of the County and the public, for the County to grant PGS an easement to efficiently provide utility services to the compressed natural gas fueling facilities; and

**WHEREAS**, on March 11, 2015, St. Johns County and Nopetro-St. Johns County, LLC entered into a Lease and Development Agreement encumbering the land leased by Nopetro; and

**WHEREAS**, PGS requests that St. Johns County and Nopetro enter into a Subordination and Joinder Agreement, attached to the Easement Agreement as Exhibit "B," incorporated by reference and made a part hereof, subordinating their interest in the land to the Easement and the rights of PGS thereunder; and

**WHEREAS**, the County has determined that entering into said Agreements will serve the interest and welfare of the residents of St. Johns County.

**NOW THEREFORE, BE IT RESOLVED**, that the Board of County Commissioners of St. Johns County, Florida, that St. Johns County, hereby grants to PGS an Easement for the purposes mentioned above and subordinates to PGS interest in the land leased by Nopetro.

Section 1. The above recitals are incorporated by reference into the body of this Resolution and such recitals are adopted as findings of fact.

Section 2. The above described Easement Agreement and Subordination and Joinder Agreement are hereby accepted by the Board of County Commissioners and the Chair, or designee, is hereby authorized to execute said Agreements.

Section 3. To the extent that there are typographical errors that do not change the tone, tenor, or concept of this Resolution, then this Resolution may be revised without subsequent approval by the Board of County Commissioners.

Section 4. The Clerk of the Circuit Court is instructed to record the original Easement Agreement and Subordination and Joinder Agreement in the Public Records of St. Johns County, Florida.

**PASSED AND ADOPTED** this 3<sup>rd</sup> day of May, 2016 by the Board of County Commissioners of St. Johns County, Florida.

**BOARD OF COUNTY COMMISSIONERS  
OF ST. JOHNS COUNTY, FLORIDA**

By: Jeb S. Smith  
Jeb S. Smith, Chair

ATTEST: Hunter S. Conrad, Clerk

By: Pam Halterman  
Deputy Clerk

RENDITION DATE 5/5/16



Exhibit "A" to Resolution

**EASEMENT AGREEMENT**

THIS EASEMENT AGREEMENT is executed and given this \_\_\_\_\_ day of \_\_\_\_\_, 2016, between **ST. JOHNS COUNTY**, a political subdivision of the State of Florida (the County), whose address is 500 San Sebastian View, St. Augustine, Florida 32084, and **PEOPLES GAS SYSTEM, A DIVISION OF TAMPA ELECTRIC COMPANY**, a Florida corporation (PGS), whose address is P.O. Box 2562, Tampa, Florida 33601.

**WITNESSETH:**

That in consideration of the sum of ten dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. The County grants to PGS a non-exclusive permanent easement and right-of-way to install, construct, operate, maintain, repair, replace and remove pipes and mains constituting the natural gas and compressed natural gas delivery system, and all other equipment and appurtenances as may be necessary or convenient for the operation of the natural gas and compressed natural gas service, including such infrastructure required for the compression and dispensing of compressed natural gas as identified in the CNG Infrastructure Agreement (CNG Agreement) to be executed between Nopetro-St. Johns County, LLC, (Nopetro) and PGS, (Utility Lines and Associated Equipment) over and upon the real property described in Exhibit A (the Easement Area); together with rights of ingress and egress on and over the Easement Area as necessary for the use and enjoyment of the easement herein granted. This easement is for natural gas and compressed natural gas utility services only and does not convey any right to install other utilities such as cable television service lines.

2. The County reserves the right and privilege to use and occupy and to grant to others the right to use and occupy (i) the surface and air space over the Easement Area for any purpose which is consistent with the rights herein granted to PGS; and (ii) the subsurface of the Easement Area for other utility services or other purposes which do not unreasonably interfere with the rights herein granted to PGS, including, without limitation, the right to install, construct, operate, maintain, repair, replace and remove telecommunications, telephone, telegraph, electric, gas and drainage facilities and foundations, footing or anchors for surface improvements. Such use and occupation of the Easement Area shall be subject to the written consent of PGS, which consent may not be unreasonably withheld. The County acknowledges that under the "Underground Facility Damage Prevention and Safety Act" (the Act), as codified in Chapter 556, Florida Statutes, the County may be obligated to notify "Sunshine State One-Call of Florida, Inc." of its intent to engage in excavation or demolition prior to commencing any work and that this notification system shall provide member operations an opportunity to identify and locate if applicable, their underground facilities prior to said excavation or demolition. In the event the County fails to notify as set forth above, the County may be held responsible for costs and expenses incurred due to damage of Utility Lines and Associated Equipment. Notwithstanding the above, Nopetro (as defined below) shall be responsible for all obligations of County under this Section 2 during the term of the Lease (as defined below), and until termination of said Lease. Upon termination of the Lease, County shall assume any and all obligations under this Section 2 relating to the applicable remaining portion of Utility Lines and Associated Equipment. Nothing in this Section 2 shall impose any obligation on the County that would not otherwise be required pursuant to the Act. This Section 2 shall not be construed as acceptance of any liability on the part of the County that the County would not

otherwise be subject to under applicable law. Nothing in this Section 2 shall operate as a waiver of the County's sovereign immunity or as a modification of the limitations of liability set forth in Section 768.28, Florida Statutes.

3. All Utility Lines and Associated Equipment will be installed, operated and maintained at all times beneath the surface of the Easement Area provided that the same may be temporarily exposed or removed to the surface when necessary or desirable for the purpose of repairing or replacing the same. Associated Equipment that is customarily installed above ground may be installed above ground subject to the right of the County, consistent with good engineering practices, to approve the location of such above ground installation in its reasonable discretion.

4. The easement granted by this instrument may be relocated to a location acceptable to the PGS at any time upon the County's request provided that the County bears the cost of relocating the underground natural gas and compressed natural gas utility lines and facilities located within the Easement Area. At the County's request, and upon relocation of such lines at the County's expense, PGS and the County shall execute an instrument in recordable form relocating the easement hereby granted to the new Easement Area designated by and in the title of the County.

5. PGS shall exercise the easement rights conveyed herein in a manner which will not unreasonably interfere with use and occupancy of any improvements constructed upon the adjacent property owned by the County.

6. PGS shall maintain all elements of the natural gas and compressed natural gas distribution system.

7. After any installation, construction, repair, replacement or removal of any utility lines or equipment as to which easement rights are granted, PGS shall refill any holes or trenches in a proper and workmanlike manner to the condition existing prior to such installation, construction, repair, replacement or removal, but PGS shall not be responsible for restoration of sod, landscaping, planting, pavement or other surface improvement or structures. The County or the County's successors and assigns shall be solely responsible for replacement of any such sod, landscaping, planting, pavement or other surface improvements which are required to be removed in connection with installation, construction, repair, replacement or removal of utility lines or equipment. Nothing in this section shall, however, relieve PGS of liability for damage caused to improvements by PGS's negligence.

8. PGS acknowledges the existence of the Lease and Development Agreement dated March 11, 2015 between the County and Nopetro, encumbering the Easement Area (the Lease). The County agrees that Nopetro shall join in this Easement Agreement. PGS agrees that upon termination of the Lease or the CNG Agreement, and within 30 days of a written request of the County or Nopetro, PGS shall execute any instrument necessary to vacate, release, terminate, and extinguish that applicable portion of this easement relating to those PGS facilities that are acquired by Nopetro pursuant to the terms of the CNG Agreement.

9. PGS shall comply with all applicable federal, state, and local laws and regulations with respect to this Easement Agreement, including obtaining and maintaining all required governmental permits and approvals with respect to the Utility Lines and Associated Equipment.

10. Except for those matters set forth in the Lease and CNG Agreement, PGS shall not provide any third party the use or enjoyment of any of the rights conveyed under this Easement Agreement without first obtaining the County's written consent, which consent shall not unreasonably be denied. PGS shall provide such use or enjoyment to a third party only to the extent necessary to assist PGS in fulfilling the rights and obligations conveyed under this Easement Agreement.

11. Except to the extent that the indemnification provisions in Section 9 of the Lease apply, PGS shall indemnify, defend, and hold the County harmless from all liabilities, damages, losses, and costs arising in connection with this Easement Agreement, including attorney's fees and costs associated with litigation or any alternative dispute resolution proceeding, whether or not such costs are taxable as attorney's fees.

12. The County agrees that the Utility Lines and Associated Equipment are and shall remain personal property of PGS to the extent allowed by applicable law regardless of the manner or mode of attachment of any item of the Utility Lines and Associated Equipment to the Easement Area and shall not be deemed fixtures. In addition, the County agrees that all Utility Lines and Associated Equipment are and shall remain owned by PGS. Furthermore, County waives any interest in the Utility Lines and Associated Equipment it may have pursuant to any agreement or any applicable law except any and all rights of County under Section 3.2 of the Lease.

13. The County represents that, to the best of its knowledge, the Easement Area is not currently encumbered by any mortgage, lien or other monetary encumbrance which would be superior to this Easement Agreement other than the Lease. However, the tenant under said lease joins in this Easement Agreement and subordinates tenant's interest in the land to the superior interest of PGS as set forth in this Easement Agreement. The joinder and subordination is attached hereto Exhibit B and by reference made apart hereof.

14. Both parties acknowledge that this Easement Agreement has been entered into in anticipation of the execution of the CNG Infrastructure Agreement between PGS and Nopetro. This Easement Agreement shall not be recorded into the public records of St. Johns County until PGS provides the County with an executed copy of the CNG Infrastructure Agreement.

15. The access to, disclosure, non-disclosure, or exemption of records, data, documents, or materials associated with this Easement Agreement shall be subject to the applicable provisions of the Florida Public Records Law (Chapter 119, Florida Statutes), and other applicable State or Federal law. Access to such public records, may not be blocked, thwarted, or hindered by placing the public records in the possession of a third party or an unaffiliated party.

16. If any part of this Easement Agreement is declared void, invalid, or otherwise unenforceable by a court of competent jurisdiction, such part shall be severable and shall not affect the remainder of this Easement Agreement not having been declared void, invalid, or otherwise unenforceable.

17. This Easement Agreement shall be governed by Florida law. Venue for any legal or administrative action arising under this Easement Agreement shall lie exclusively in St. Johns County, Florida.

18. This Easement Agreement shall inure to the benefit of and be binding upon both parties and their respective successors and assigns and shall run with the land.

19. This Easement Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute the same agreement.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed by their duly authorized officers as of the day and year first above written.

**ST. JOHNS COUNTY**  
A political subdivision of the State of Florida

**Signed, Sealed and  
Delivered in the  
Presence of:**

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

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

**BY:** \_\_\_\_\_  
Michael D. Wanchick  
County Administrator

**STATE OF FLORIDA  
COUNTY OF ST. JOHNS**

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by Michael D. Wanchick, as County Administrator of St. Johns County, who is personally known to me.

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

PEOPLES GAS SYSTEM, A DIVISION OF TAMPA ELECTRIC COMPANY

Signed, Sealed and  
Delivered in the  
Presence of:

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

BY: \_\_\_\_\_

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

STATE OF FLORIDA  
COUNTY OF ST. JOHNS

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
2016, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_, who is  
personally known to me or who has produced  
\_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

**EXHIBIT A**  
**EASEMENT AREA**

A TRACT OF LAND IN GOVERNMENT LOT 3, SECTION 9, TOWNSHIP 7 SOUTH, RANGE 29 EAST, ST. JOHNS COUNTY, FLORIDA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FOR THE POINT OF BEGINNING, START AT THE INTERSECTION OF THE SOUTH RIGHT OF WAY LINE OF STATE ROAD 16 (A 200 FOOT RIGHT OF WAY AS NOW ESTABLISHED) WITH THE EAST RIGHT OF WAY LINE OF INDUSTRIAL CENTER ROAD (A 60 FOOT RIGHT OF WAY AS NOW ESTABLISHED); THENCE SOUTH 89°55'47" EAST, ALONG THE SAID SOUTH RIGHT OF WAY OF STATE ROAD 16, A DISTANCE OF 240.00 FEET; THENCE SOUTH 00°04'13" WEST, ALONG THE WEST LINE OF LANDS DESCRIBED IN OFFICIAL RECORDS 2467, PAGE 1170, OF THE PUBLIC RECORDS OF ST. JOHNS COUNTY, AND ALONG ITS SOUTHERLY PROLONGATION, A DISTANCE OF 280.49 FEET; THENCE NORTH 90°00'00 WEST A DISTANCE OF 54.80 FEET; THENCE NORTH 00°00'00" EAST A DISTANCE OF 40.23 FEET; THENCE NORTH 90°00'00 WEST A DISTANCE OF 64.26 FEET; THENCE SOUTH 00°00'00" EAST A DISTANCE OF 25.39 FEET; THENCE NORTH 90°00'00 WEST A DISTANCE OF 92.12 FEET; THENCE NORTH 00°00'00" EAST A DISTANCE OF 36.97 FEET; THENCE NORTH 90°00'00 WEST A DISTANCE 28.75 FEET; THENCE NORTH 00°04'13" EAST, ALONG THE AFOREMENTIONED EAST RIGHT OF WAY LINE OF INDUSTRIAL CENTER ROAD, A DISTANCE OF 228.97 FEET TO THE POINT OF BEGINNING.

CONTAINING 1.42 ACRES MORE OR LESS.

**EXHIBIT "B"**

**SUBORDINATION AND JOINDER AGREEMENT**

This **SUBORDINATION AND JOINDER AGREEMENT** ("Agreement") dated this \_\_\_ day of \_\_\_\_\_, 2016, is made by and among **ST. JOHN'S COUNTY, FLORIDA**, a political subdivision of the State of Florida ("Landlord"), **NOPETRO-ST. JOHNS COUNTY, LLC**, a limited liability company ("Tenant") and **PEOPLES GAS SYSTEMS, A DIVISION OF TAMPA ELECTRIC COMPANY**, a Florida corporation ("PGS").

WHEREAS, Landlord and Tenant entered into that certain Lease and Development Agreement dated March 11, 2015, encumbering the Land ("Lease"), covering the Land;

WHEREAS, PGS and Tenant entered into those certain agreements between PGS and Tenant, all dated as of the date hereof ("PGS Agreements"), pursuant to which PGS will cause to be placed over, under and upon the Land certain equipment that will compress Tenant's natural gas to compressed natural gas suitable for Tenant to fuel Landlord vehicles; and

WHEREAS, as a condition to PGS entering into the PGS Agreements, PGS requires that Tenant's interests in the Land be subordinated to the Easement and the rights of PGS thereunder.

NOW, THEREFORE, in consideration of the mutual agreements herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Subordination. Tenant agrees and covenants that the Lease and the rights of Tenant thereunder and all of Tenant's right and interest in and to the property covered by the Lease are and shall be subject, subordinate and inferior in all respects to the Easement and the rights of PGS thereunder.

2. Acknowledgment and Joinder by Landlord. Landlord acknowledges, joins and agrees for itself and its heirs, representatives, successors and assigns, that the Lease and the rights of Tenant thereunder and all of Tenant's right and interest in and to the property covered by the Lease are and shall be subject, subordinate and inferior in all respects to the Easement and the rights of PGS thereunder.

3. Non-Disturbance. PGS agrees that Tenant's possession and all right and interest of Tenant in the Land shall not be disturbed or interfered with by PGS so long as the Lease is in full force and effect and Tenant is not in material default, after notice and the expiration of any applicable cure periods or grace periods provided for such material default, under any of the PGS Agreements.

4. Miscellaneous.

(a) Unless otherwise defined in this Agreement, capitalized terms contained herein shall have the meanings as set forth in the Easement between Landlord and PGS dated as of the date hereof.

(b) This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof. This Agreement may not be changed, altered or modified except by an instrument in writing signed by the party against whom enforcement of such change would be sought. This Agreement shall be binding upon the parties hereto and their respective successors and assigns.

(c) If any provision of the Agreement shall be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not apply to or affect any other provision hereof, but this Agreement shall be construed as if such invalidity, illegality, or unenforceability did not exist.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and sealed as of the date first above written.

Signed, Sealed and Delivered in the presence of: **LANDLORD:**

**ST. JOHNS COUNTY, FLORIDA,**  
a political subdivision of the State of Florida

WITNESS: \_\_\_\_\_

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

WITNESS: \_\_\_\_\_

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

\_\_\_\_\_  
Michael D. Wanchick  
County Administrator

STATE OF FLORIDA  
COUNTY OF ST. JOHNS

The forgoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 2016 by Michael D. Wanchick, as County Administrator for St. Johns County, a political subdivision of the State of Florida who appeared before me and is personally known to me.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Commission Expires:

**TENANT:**

**NOPETRO-ST. JOHNS COUNTY, LLC,**  
a limited liability company

WITNESS: \_\_\_\_\_

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

WITNESS: \_\_\_\_\_

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

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The forgoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_ by \_\_\_\_\_, on behalf of NOPETRO-ST. JOHNS COUNTY, LLC. He/She personally appeared before me, is personally known to me or has produced \_\_\_\_\_ as identification and who did (did not) take an oath.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Commission Expires:

**PGS:**

**PEOPLES GAS SYSTEM, A DIVISION  
OF TAMPA ELECTRIC COMPANY, a  
Florida corporation**

WITNESS: \_\_\_\_\_

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

WITNESS: \_\_\_\_\_

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

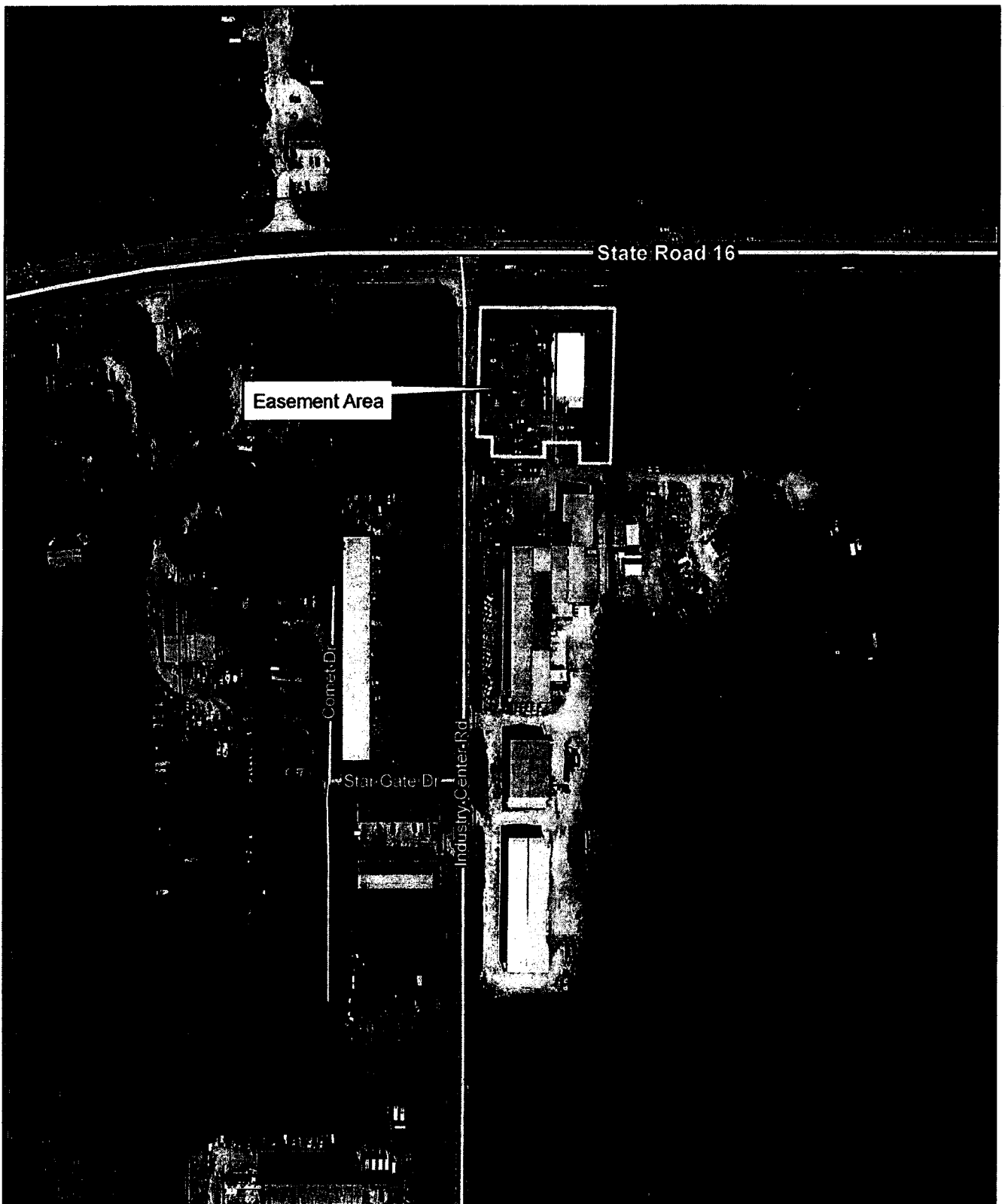
STATE OF FLORIDA  
COUNTY OF HILSBOROUGH

The forgoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_ by J.A. Kickliter, Director of Real Estate, for PEOPLES GAS SYSTEM, A DIVISION OF TAMPA ELECTRIC COMPANY on behalf of the company. He personally appeared before me, is personally known to me.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Print Name

Commission Expires:



State Road 16

Easement Area

Comet Dr

Star-Gate Dr

Industry Center Rd



2013 Aerial Imagery  
0 100 200  
Feet  
April 19, 2016

Nopetro-St. Johns, LLC

*TECO / PGS Easement*

Land Management  
Systems  
Real Estate  
Division  
(904) 209-0764

Disclaimer:  
This map is for reference use only.  
Data provided are derived from multiple  
sources with varying levels of accuracy.  
The St. Johns County Real Estate  
Division disclaims all responsibility  
for the accuracy or completeness  
of the data shown hereon.

