

LAN 06

MEMORANDUM

TO: Chip Merriam, Deputy Executive Director, Water Resources Management

FROM: Holly Walter, Esq., Attorney, Office of Counsel *HW*

DATE: February 19, 2002

SUBJECT: Right of Entry by North Fort Myers Utility, Inc. favor of District in connection with Floridan Aquifer Project

RECOMMENDATION:

Approve entering into a Right of Entry by and between North Fort Myers Utility, Inc. and the District, Floridan Aquifer Project, Lee County, Florida.

BACKGROUND:

Staff recommends that the District enter into this agreement to enhance its Floridan Aquifer System (FAS) monitor well network throughout the South Florida region. This monitoring effort is intended as a long term initiative, so that sufficient information can be obtained to reduce data gaps in the development and calibration of a regional aquifer model. The model will be used to evaluate competing uses of the FAS as a water supply source, and identify appropriate Consumptive Use Permitting (CUP) rulemaking criteria.

Enhancing the present FAS monitoring network is a direct result of the District's Water Supply Plan Initiatives. Both the Lower East Coast and Lower West Coast Regional Water Supply Plans recommend the Floridan Aquifer as an "alternative water supply source" through implementation of Aquifer Storage and Recovery (ASR) techniques and reverse osmosis technology. The Water Supply Plans also recommend developing a regional FAS ground water flow model using aquifer data collected from District sponsored projects, as well as individual facilities/utilities currently utilizing and monitoring the Floridan aquifer. The Water Supply Planning and Development Department is currently pursuing similar agreements with other South Florida utilities.

The Right of Entry will allow the District to install monitoring equipment and collect data, at the District's sole cost and expense, at the North Fort Myers Utilities, Inc. facility located at 4000 Del Prado Boulevard, North Fort Myers. Unless otherwise terminated, the initial term will run for five (5) years, with up to five (5) successive renewal terms of five (5) years each.

Pursuant to Resolution No. 01-34, which resolution was adopted by the Governing Board on April 12, 2001, the authority to accept rights of entry on to non-District property was delegated to the Executive Director, Deputy Executive Directors or equivalent and the General Counsel.

APPROVED & ACCEPTED:

South Florida Water Management District

By: 
Chip Merriam, Deputy Executive Director
Water Resources Management

Date:  19, 2002



SOUTH FLORIDA WATER MANAGEMENT DISTRICT

3301 Gun Club Road, West Palm Beach, Florida 33406 • (561) 686-8800 • FL WATS 1-800-432-2045 • TDD (561) 697-2574
Mailing Address: P.O. Box 24680, West Palm Beach, FL 33416-4680 • www.sfvmd.gov

February 19, 2002

William E. Sundstrom, Esq.
Rose, Sundstrom & Bentley, LLP
Post Office Box 1567
Tallahassee, Florida 32302-1567

Dear Mr. Sundstrom:

Subject: Floridan Aquifer Monitoring Well Access Agreement by North Fort Myers Utility, Inc. ("NFMU") in favor of South Florida Water Management District (the "District")

Pursuant to your request, enclosed please find two (2) duplicate originals of the above referenced License Agreement executed by A. A. Reeves on behalf of NFMU and Chip Merriam on behalf of the District. The other two (2) originals will be retained by the District.

Once again, thank you for your assistance with this project. If you have any questions concerning the enclosed documents, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Holly Y. Walter".

Holly Y. Walter, Esq.
Attorney
Office of Counsel

HYW/vc

Enclosures

c: Ed Rectenwald (w/attachments) ✓

GOVERNING BOARD

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**LICENSE AGREEMENT BETWEEN NORTH FORT MYERS UTILITY, INC. AND THE
SOUTH FLORIDA WATER MANAGEMENT DISTRICT**

1. The South Florida Water Management District ("District"), a Public Corporation of the State of Florida, whose office is located at 3301 Gun Club Road, West Palm Beach, Florida 33416 desires to utilize the Floridan Aquifer Monitor Well located at 4000 Del Prado Boulevard North, North Fort Myers, Florida, in Section 14 of Township 43 South, Range 24 East, North Fort Myers, Lee County, Florida owned and operated by North Fort Myers Utility, Inc. ("NFMU"), whose address is 5660 Bayshore Road, Suite 51, North Fort Myers, Florida 33917 for purposes of modeling the Floridan aquifer and otherwise understanding its characteristics in Southeast Florida. NFMU is willing to allow the District access to its property for such purposes, as provided herein below.

2. In consideration of the premises herein contained, and in cooperation between NFMU and the District, NFMU hereby grants to the District a license to utilize its Floridan Aquifer Monitor Well in order to enhance the District's Floridan Aquifer System ("FAS") Monitor Well Network throughout the South Florida Region. Said monitoring effort is intended as a long-term initiative, so that sufficient information can be obtained to reduce data gaps in the development and calibration of a regional aquifer model. The model will be used to evaluate competing uses of the FAS as a water supply source, and identify appropriate Consumptive Use Permitting ("CUP") rule making criteria.

3. District agrees that its activities as are conducted on NFMU's property will be exclusively limited to obtaining water level and water quality data. All monitoring will be passive in nature and will be conducted in a manner so as to not, in any material way, disrupt the normal day-to-day operations of NFMU. NFMU will allow the District to (i) install equipment and (ii) collect data at the NFMU Florida Aquifer Monitoring Well site. All costs and expenses associated with the installation and data collection, and the eventual removal of such equipment and site restoration shall be borne by District.

4. No equipment installation shall take place but upon reasonable advance notice to NFMU and with NFMU's employees and/or operations contractor present in order to observe the activity of the District, its staff, or contractors. District hereby grants to NFMU the absolute right to "stop work" by the District if, in NFMU's sole and

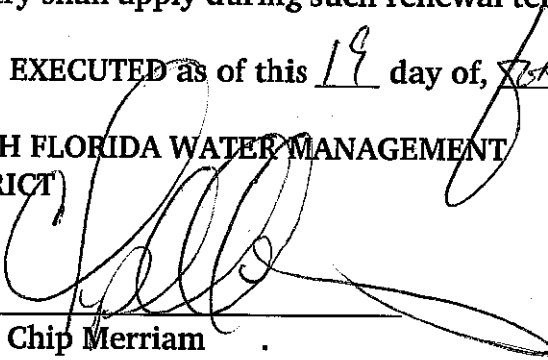
11. In the event of any sale, transfer, or conveyance by NFMU of its system, or any of the facilities described herein above, notice shall be provided to the District thereof. This License is terminable at will by NFMU at any time, for any reason, or no reason. In the event of notice of termination, District shall have thirty (30) days to remove its equipment from NFMU's property, and to restore such property to the condition that it was in as of the date hereof.

12. The initial term of this Right of Entry shall expire five (5) years from the date hereof. Provided this Right of Entry has not otherwise been terminated prior to such expiration date, this Right of Entry shall be automatically renewed for an additional five (5) years. All terms, conditions, covenants and provisions of this Right of Entry shall apply during such renewal term, if any.

EXECUTED as of this 19 day of, Feb 2002.

SOUTH FLORIDA WATER MANAGEMENT
DISTRICT

By: _____


Chip Merriam
Deputy Executive Director
Water Resources Management

NORTH FORT MYERS
UTILITY, INC.

By: _____


A. A. Reeves
Utility Director

NFMU\License Agreement - 2final

January 31, 2002

Legal Form Approved
SFWMD Office of Counsel

By H. Wells Date 2-19-02

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SOUTH FLORIDA WATER MANAGEMENT DISTRICT**

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absolute discretion, District is involved in any activity which is or could be in any way harmful to NFMU, its property or facilities.

5. After equipment installation by the District, including data-logger housings, automatic electronic water-level recording equipment and related information, the District or its contractor will be allowed to collect water-level data digitally in real-time or downloaded periodically and perform routine maintenance on the equipment. Field technicians using portable computers will be allowed on NFMU's site by NFMU during normal business hours. All access to NFMU's facility shall be coordinated with NFMU's Utility Director, A. A. Reeves, at 941\543-4000.

6. On a quarterly basis, District staff or an approved contractor will be allowed to collect groundwater samples from NFMU's wells. To ensure a representative sample from the monitor zone of interest, it will be necessary to purge the well before obtaining the water sample. In order to minimize any inconvenience to NFMU, the District or its contractor will notify NFMU's Utility Director before commencing sampling to assure proper facility protocols are met. All such samplings shall be done at a time and in a manner so as to in no way interfere with NFMU's day-to-day wastewater treatment and disposal activities. If, in the opinion of NFMU, the District desires to sample at a time inconvenient to NFMU, District agrees to reschedule such sampling at a time convenient to NFMU.

7. NFMU agrees that any equipment or physical structure placed on its property by the District shall remain the property of the District, and that all such equipment shall be removed from NFMU's property by the District upon termination of this license granted by NFMU to the District.

8. The District agrees that upon completion of the activities outlined in this Agreement, any portion of the property of NFMU that is damaged as a result of the activities conducted by the District will be returned, at District's expense, to substantially the same condition that it was on the date hereof subject to the limitations of liability set forth herein below.

9. NFMU hereby agrees to allow authorized representatives of the District, their vehicles and equipment, access to its property on reasonable notice in order to implement and carry out the activities described herein. The District acknowledges its liability for torts to the extent provided and allowed under Section 768.28, Florida Statutes. Nothing contained herein shall constitute a waiver of sovereign immunity beyond the limits set forth in Section 768.28, Florida Statutes.

10. Any modifications to this Agreement, other than as provided herein above, shall be accomplished in writing signed by each of the parties hereto.

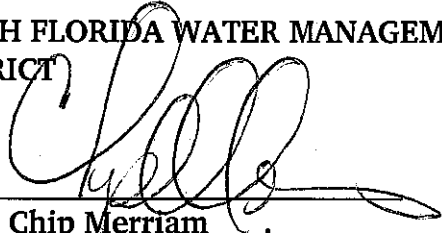
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EXECUTED as of this 29 day of Feb 2002.

SOUTH FLORIDA WATER MANAGEMENT
DISTRICT

By: _____


Chip Merriam
Deputy Executive Director
Water Resources Management

NORTH FORT MYERS
UTILITY, INC.

By: _____


A. A. Reeves
Utility Director

NFMU\License Agreement - 2final

January 31, 2002

Legal Form Approved
SFWMD Office of Counsel

By H. W. [Signature] Date 2-19-02