

LAN 06

MEMORANDUM

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

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

DATE: October 18, 2001

SUBJECT: Right of Entry by City of Miramar in favor of District in connection with Floridan Aquifer Project

RECOMMENDATION:

Approve entering into a Right of Entry by and between City of Miramar and the District, Floridan Aquifer Project, Broward 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.

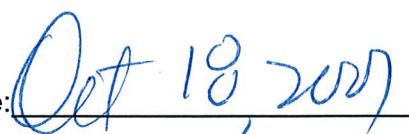
The Right of Entry will allow the District to install monitoring equipment and collect data, at the District's sole cost and expense, at the City of Miramar's public utilities facility located at 13900 Pembroke Road. Unless otherwise terminated, the initial term will run for five (5) years, with up to 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:  _____

RIGHT OF ENTRY

Project: FLORIDAN AQUIFER MONITORING WELL ACCESS AGREEMENT

CITY OF MIRAMAR, FLORIDA, a municipality of the State of Florida (“Property Owner”), whose mailing address is City of Miramar, Department of Public Works/Utilities, 13900 Pembroke Road, Miramar, Florida 33027-3489, and SOUTH FLORIDA WATER MANAGEMENT DISTRICT, a public corporation of the State of Florida (“District”), whose principal office is located at 3301 Gun Club Road, West Palm Beach, Florida, hereby agrees that District, its agents, contractors, employees and assigns, are hereby granted the right to enter upon that certain real property (the “Property”) owned by Property Owner, located at 13900 Pembroke Road, Miramar, Florida, in Broward County, Florida, as depicted on Exhibit “A” attached hereto (site map) and incorporated herein by reference, for the purposes described below:

Project Description (to be completed by Project Manager)

I. Purpose

The District desires to 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 (LEC) and Lower West Coast (LWC) 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.

II. Activities

District activities conducted on the Property will focus exclusively on obtaining water-level and water-quality data. All monitoring will be passive in nature and will be conducted in a manner so as to minimize disruption to normal facility operations.

The major activities proposed at each monitoring site consist of: (a) equipment installation, and (b) data collection. It is agreed that the District shall incur all costs associated with installation, including without limitation well-head modifications and any associated minor permit modification fees, and collection activities as described herein.

II. Activities – continued

The District shall also be responsible for the maintenance of any and all equipment installed on the Property pursuant to this Right of Entry.

a. *Equipment installation.* Staff from the District's Electronic Support and Data Acquisition (ESDA) Division, or an approved contractor will install data-logger housings, and automated electronic water-level recording equipment on selected wells. All monitor well pads will be surveyed to National Geodetic Vertical Datum (NGVD) by District staff.

b. *Data collection.* Water-level data from the monitor wells will be collected digitally in real-time or downloaded periodically by District staff or an approved contractor for archiving. Typically, one to two field technicians using a portable computer will download the electronic data-loggers monthly as well as perform routine maintenance on the equipment. During the first few months following installation, data-loggers may be downloaded twice per month to troubleshoot equipment problems and ensure that all installations are performing as intended. Separate site visits may be scheduled during the course of the year to maintain, repair or upgrade equipment as deemed necessary. Access to the Property during these trips will be coordinated with the Facility/Utility Director.

On a quarterly basis, District staff or an approved contractor will collect a groundwater sample for chemical analysis from selected 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. As a result (and to minimize any inconvenience), the District/contractor will notify the Facility/Utility Director before sampling to assure proper facility protocols are met. The District-operated laboratory will analyze the Floridan aquifer samples for chloride and total dissolved solid concentrations.

The Property Owner and the District hereby agree as follows:

1. The Property Owner hereby acknowledges that (i) any equipment or physical structure (i.e. water well) placed on the Property by the District shall remain the property of the District, and (ii) all such equipment shall be removed from the Property, and any wells installed by the District pursuant to this Right of Entry shall be capped or filled in, by the District on or before the termination of this Right of Entry.
2. The District agrees that upon completion of any activity proposed in this Right of Entry and prior to leaving the Property, the Property shall be left in substantially the same condition that it was when the District entered the Property that day.
3. The District agrees that upon completion of the activities proposed in this Right of Entry, any portion of the Property which is damaged as result of activities conducted by the District pursuant to this Right of Entry will be

returned to substantially the same condition that it was in on the date hereof.

4. The Property Owner shall allow all authorized representatives of the District, their vehicles and equipment access to the Property on reasonable notice in order to implement and carryout the activities described herein.
5. The Property Owner shall not be liable for any damage to the District's personal property or equipment placed upon the Property in connection with this Right of Entry, or the theft thereof, unless such damage or theft is due to the acts or omissions of the Property Owner or the Property Owner's agents and then only to the extent such damage or theft is directly, indirectly or proximately caused by such acts or omissions. However, nothing contained herein shall constitute a waiver of sovereign immunity beyond the limits set forth in Section 768.28, Florida Statutes, nor shall the same be construed to constitute agreement by the District to indemnify the Property Owner for the Property Owner's acts or omissions.
6. The District shall give a minimum of 72 hours advance notice prior to performing any activities on the Property permitted under this Right of Entry.
7. When activities to be performed by the District as described herein are reasonably considered by the Property Owner to be in conflict with the Property Owner's operation or maintenance activities, the Property Owner shall have authority to determine which activity has the priority. The District shall waive its rights to challenge the Property Owner's decision in such cases.
8. This Right of Entry does not convey any property rights or equipment to either party nor any rights and privileges, other than those specified herein.
9. Entry into this Right of Entry does not relieve the Property Owner's need to comply with all applicable federal, state or local laws, regulations or ordinances, or the requirements of any District issued water-use permit(s).
10. This Right of Entry may be modified only upon the mutual consent of both parties, submitted in writing.
11. Prior to any sale, transfer or conveyance of the Property, the District requests notification so that alternative agreements or arrangements may be made, if necessary.
12. The initial term of this Right of Entry shall terminate five (5) years from the date hereof. Provided this Right of Entry has not otherwise been

terminated prior to the expiration of the initial term, this Right of Entry may be extended for up to five (5) successive renewal terms of five (5) years each. All terms, conditions, covenants and provisions of this Right of Entry shall apply during all renewal terms, if any.

Witness our hands and seals this 18th day of October, 2001.

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

By: _____

Chip Merriam
Naomi S. Duerr, P.G., Deputy Executive Director,
Water Resources Management

Form Approved by:

Holly Walter 10-15-01
South Florida Water Management District
Office of Counsel

PROPERTY OWNER:

CITY OF MIRAMAR, FLORIDA

Hea By: _____

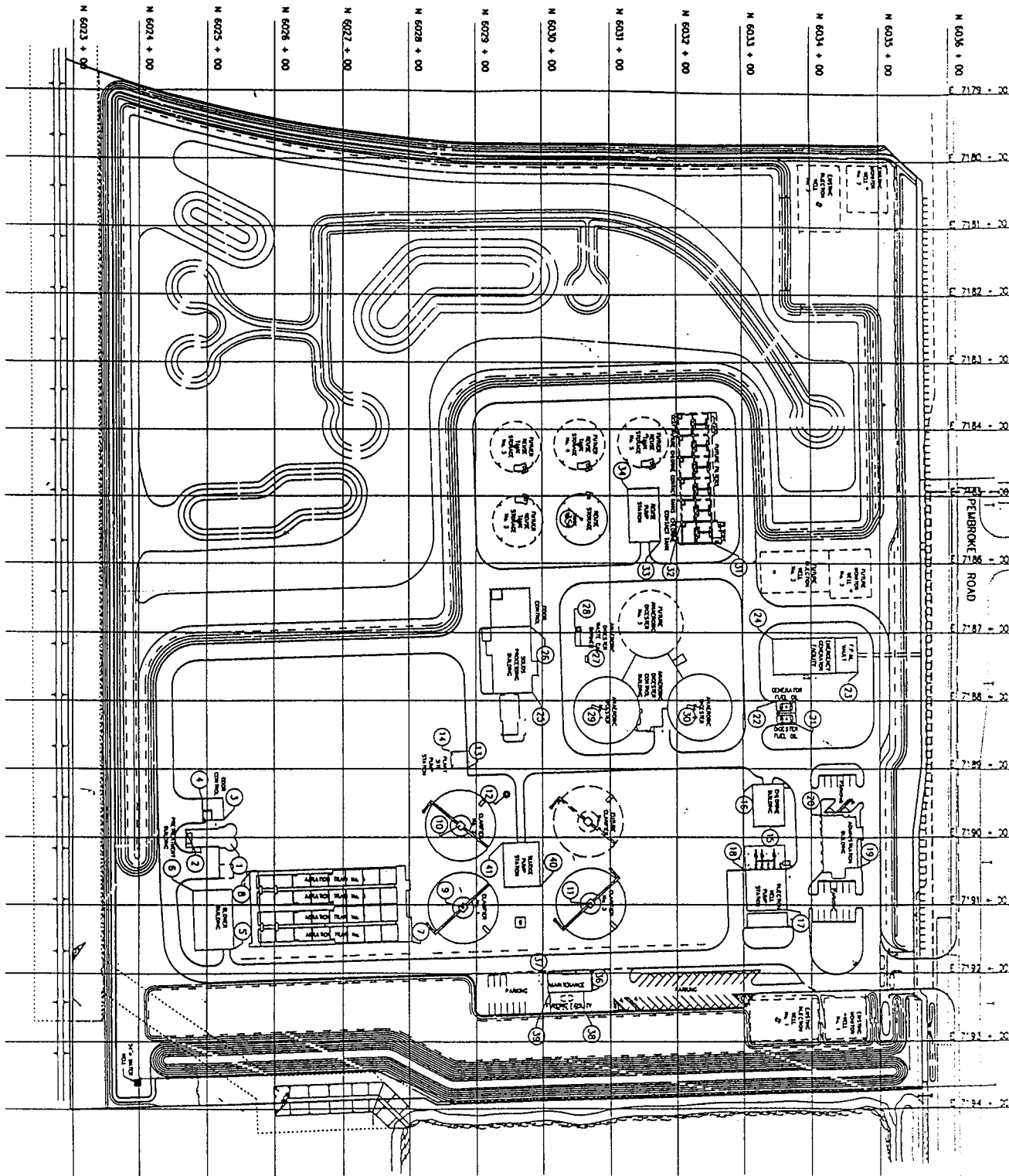
Robert A. Payton, City Manager

Attest: _____

Debra A Walker
Debra A. Walker, City Clerk

Approved as to Legal Sufficiency:

Weiss Serota Helfman Pastoriza & Guedes, P.A.
City Attorney *pos*



RECORD DRAWING	H.J.V.
DESIGNED	H.J.V.
DRAWN	S.L.M.
CHECKED	H.J.V.

H. J. VAN

Hazen and Sawyer
Environmental Services & Solutions

Scale
1" = 100'-0"

CONTRACT: 8118
CLIENTS PROJECT:
ENGINEERS PROJECT: 8118



EXHIBIT
"A"