

AMENDMENT TO
THE WATER WELL CONSTRUCTION PERMIT PROGRAM
DELEGATION AGREEMENT
BETWEEN
SOUTH FLORIDA WATER MANAGEMENT DISTRICT
AND
THE CITY OF CAPE CORAL

PR NO. PR050266

The South Florida Water Management District ("DISTRICT") and the City of Cape Coral ("CITY" or "CAPE CORAL") enter into this Amendment to the Delegation Agreement dated October 10, 1986, which has been incorporated by reference into Rule 40E-3.035, F.A.C., to accomplish the goals and purposes stated below.

Witnesseth:

I. PARTIES

1. The DISTRICT is a public corporation of the State of Florida existing by virtue of Laws of Florida, 1949, and operating pursuant to Chapter 373, Florida Statutes, and Title 40E, Florida Administrative Code (F.A.C.), as a multipurpose water management district with its principal office at P.O. Box 24680, 3301 Gun Club Road, West Palm Beach, FL 33416-4680.
2. CAPE CORAL is a political subdivision of the State of Florida located at Public Works, SW 20th Ave, Cape Coral, P.O. Box 150027, FL 33915. CAPE CORAL is a person within the meaning of Section 373.019(12), Florida Statutes.
3. CAPE CORAL is located within the boundaries of the DISTRICT, and is subject to the rules, regulations, authority and orders of the DISTRICT, pursuant to Chapter 373, Florida Statutes.

II. AUTHORITY AND PURPOSE OF AGREEMENT

1. The DISTRICT, pursuant Chapter 373, Florida Statutes and the Rules duly adopted thereunder, has authority within its jurisdiction for the administration and enforcement of rules governing water wells.
2. The DISTRICT desires implementation of the water well regulation program contemplated in Part III of Chapter 373, Florida Statutes, and the Rules and Regulations duly adopted thereunder.

3. The DISTRICT has authority pursuant to Sections 373.308 and 373.309, Florida Statutes, to delegate to any political subdivision any of its authority under Part III of Chapter 373, Florida Statutes, by interagency agreement adopted pursuant to Section 373.046, Florida Statutes.
4. The DISTRICT recognizes that CAPE CORAL has desire and the regulatory experience necessary to implement such water well regulatory program and has delegated implementation of the water well regulation program to CAPE CORAL since 1986.
5. The purpose of this Agreement is to reaffirm and update the permitting, compliance and enforcement responsibility of CAPE CORAL associated with the delegation of the water well construction program for all water wells in CAPE CORAL; to establish the responsibilities of CAPE CORAL regarding maintaining adequate levels of administrative, technical and financial capabilities to implement and enforce the program; and to establish responsibilities of CAPE CORAL for reporting to and maintaining communication with the DISTRICT.

In consideration of the benefits to each of the parties, the DISTRICT and CAPE CORAL agree as follows:

III. SCOPE OF DELEGATION

1. The DISTRICT hereby delegates to CAPE CORAL its authority to implement and administer the program for regulation of water well construction standards for all water wells in CAPE CORAL.
2. CAPE CORAL shall review, evaluate and make final inspections and disposition of permit applications for the construction, repair and abandonment of all water wells in CAPE CORAL, pursuant to:
 - a. Chapter 40E-3, F.A.C., which is attached as EXHIBIT 1;
 - b. The rules incorporated in Section 40E-3.3036, F.A.C., which are attached as EXHIBITS 2-6, and
 - c. The August 27, 2004, Interagency Agreement between The Department of Environmental Regulation and the South Florida Water Management District, and the Department of Health regarding delegation of water wells in delineated areas which is attached as EXHIBIT 7. Official maps of areas delineated pursuant to Section 62-524.430, F.A.C., are available from the Department of Environmental Regulation.
3. CAPE CORAL shall use application and permit forms including completion report forms approved for use by the DISTRICT. An application form and a completion report form approved for use by the DISTRICT are attached as EXHIBIT 8.

4. The DISTRICT will continue to review, evaluate and make final disposition as to the rules, regulations, authority and orders of DISTRICT pertaining to the consumptive use of water pursuant to Part II of Chapter 373, Florida Statutes.
5. CAPE CORAL will withhold issuance of any Well Construction Permit, if the withdrawal from the proposed well will require a Consumptive Use Permit until the Consumptive Use permit application has been approved by the DISTRICT, unless the project is exempt from permitting requirements pursuant to 40E-2.051, F.A.C., or the DISTRICT has otherwise concurred in the issuance of the Well Construction Permit.
6. CAPE CORAL will perform the appropriate monitoring and enforcement activities to ensure compliance with the provisions of its well construction permits. This provision does not preclude the DISTRICT from conducting enforcement activities concerning well construction in CAPE CORAL. However, to the extent practical, the DISTRICT will not initiate enforcement action within CAPE CORAL without prior communication or coordination with the local program.
7. The DISTRICT will forego implementation of the water well construction permitting program for wells within CAPE CORAL.
8. Upon the effective date of this Agreement, CAPE CORAL shall adopt or amend any ordinance, as necessary to implement the provisions of this Agreement. The DISTRICT may adopt a rule amendment implementing the provisions of this Agreement.

IV. REPORTING RESPONSIBILITIES

1. CAPE CORAL will provide to the DISTRICT, on a quarterly basis, a list (hard copy and computer disk) summarizing each well construction permit issued and all well completion reports received during the three previous months. The summary shall include, at a minimum, well construction permit number, date issued, permit type (construct/repair/abandon), permittee name and address section/township/range, contractor name and license number, Water Use Permit number, type of use, total depth, and casing diameter and depth. The DISTRICT will work with CAPE CORAL to develop a mutually acceptable reporting format.
2. The Project Manager for the DISTRICT is Bill Raspberger and all correspondence and communications from CAPE CORAL shall be directed to him. The Project Manager shall be responsible for overall coordination and oversight relating to the performance of this Agreement.
3. All reports and correspondence required under this agreement shall be sent to:

South Florida Water Management District
Water Use Division
Attn: Bill Raspberger, Specialist Scientific Associate
P.O. Box 24680

V. PROGRAM MANAGEMENT

1. CAPE CORAL shall hire and maintain a staff capable of performing the duties specified in this Agreement. CAPE CORAL shall maintain adequate program funding, staffing and equipment to comply with all statutes, rules and policies pertaining to the delegated water well construction program. Permits shall be required for all wells unless expressly exempt by statute or rule.
2. CAPE CORAL shall assess and retain permit fees for the delegated water well program. Nothing in this Agreement shall preclude CAPE CORAL from assessing administrative fees if it deems it necessary to support review and compliance functions under this Agreement.

VI. PROGRAM OVERSIGHT

1. In order to promote consistency, the DISTRICT may review, upon reasonable notice to CAPE CORAL, any pending water well application or issued permits which CAPE CORAL is reviewing or has processed pursuant to this Agreement. The DISTRICT may also randomly inspect project sites for which an application is being processed by CAPE CORAL or which CAPE CORAL has issued a permit, in cooperation with CAPE CORAL and the applicant.
2. The primary purpose of this program review is to determine if permit applications, monitoring programs, compliance efforts, and enforcement actions are being managed in accordance with applicable rules and statutes, and that appropriate files are being maintained for all delegated responsibilities assumed by CAPE CORAL..

VII. GENERAL PROVISIONS

1. CAPE CORAL is an independent contractor and is not an employee or agent of the DISTRICT. Nothing in this Agreement shall be interpreted to establish any relationship other than that of an independent contractor, between the DISTRICT and CAPE CORAL, its employees, agents, subcontractors, or assigns, during or after the performance of this Agreement.
2. The DISTRICT assumes any and all risks of personal injury, bodily injury and property damage attributable to the negligent acts or omissions of the DISTRICT and the officers, employees, servants and agents thereof. The DISTRICT warrants and represents that it is self-funded for liability insurance, with such protection being applicable to the officers, employees, servants, and agents while acting within the scope of their employment with the DISTRICT. CAPE CORAL and the DISTRICT further agree that nothing contained herein shall be construed or interpreted as (1) denying to either party any remedy or defense available to such party under the laws of the State of Florida; (2) the consent of the State of Florida or its agents or agencies to be sued; (3) a waiver of

sovereign immunity of the State of Florida beyond the waiver provided in Section 768.28, Florida Statutes.

3. If either party initiates legal action including appeals, to enforce this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees, based upon the fair market value of the services provided.

4. CAPE CORAL shall allow public access to all project documents and materials in accordance with the provisions of Chapter 119, Florida Statutes.

5. Either party may terminate this Agreement at any time upon one hundred twenty (120) days prior written notice to the other party. Within thirty (30) days of a notice of intent to terminate this Agreement, both parties shall make good faith efforts to resolve any basis for the termination. If after 60 days, one or both of the parties to this Agreement still wish to terminate the Agreement, CAPE CORAL shall not accept any further applications under this Agreement. Except as otherwise agreed by the parties, CAPE CORAL shall complete processing any pending application submitted to CAPE CORAL in accordance with this Agreement.

6. The terms of this Agreement may be extended, renewed, amended or modified only by mutual consent of both parties and until reduced to writing.

7. If any part of this Agreement is judicially, administratively or otherwise determined to be invalid or unenforceable, the other provisions of this Agreement shall remain in full force and effect, provided that both parties agree that the material purposes of this Agreement can be determined and effectuated.

8. Failures or waivers to enforce any condition or provision of this Agreement by the parties, their successors and assigns shall not operate as a discharge of, or invalidate, such condition or provision, or impair the enforcement rights of the parties, their successors and assigns.

9. This agreement states the entire understanding between the parties and supercedes any written or oral representations, statements, negotiations, agreements, rules, memorandums, letters or ordinances to the contrary. CAPE CORAL recognizes that any representations, statements or negotiations made by the DISTRICT do not suffice to legally bind the DISTRICT in a contractual relationship unless they have been reduced to writing, authorized and signed by an authorized DISTRICT representative. This Agreement shall bind the parties, their assigns and successors in interest.

10. This Agreement shall become effective when it is fully executed by both parties.

The parties or their duly authorized representatives hereby execute this Agreement.

SOUTH FLORIDA WATER MANAGEMENT
DISTRICT, BY ITS GOVERNING BOARD

BY: *Della Bagrie*
Chairman

DATE: 8-10-05

CITY OF CAPE CORAL

BY: *Eric Raulo*
Mayor

DATE: 6-1-05

Exhibit 1--Chapter 40E-3, F.A.C.

Exhibit 2--Chapter 62-531, F.A.C., Well Contractor Licensing Requirements

Exhibit 3--The Department's Water Well Contractor Disciplinary Guidelines and Procedures Manual (October 2002) and the Department's Florida Unified Citation Dictionary for Well Construction (October 2002)

Exhibit 4--Chapter 62-532, F.A.C., Water Well Permitting and Construction Requirements

Exhibit 5-- Chapter 62-555, F.A.C., Construction of Public Supply Water Wells

Exhibit 6--Chapter 62-524, F.A.C., Construction of Water Wells in Delineated Areas

Exhibit 7--Interagency Agreement between The Department of Environmental Regulation and the South Florida Water Management District, and the Department of Health

Exhibit 8—Application form and Completion Report form