

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: October 6, 2009 Consent [X] Regular []
Public Hearing []

Submitted By: Water Utilities Department
Submitted For: Water Utilities Department

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to receive and file: One (1) Agreement for Emergency Generator purchase, operation and maintenance with Villaggio at Villages of Windsor Homeowners Association Inc.

Summary: On March 14, 2006, the Board of County Commissioners delegated the authority to execute Emergency Generator Purchase, Operation and Maintenance Agreements (Agreements) to the County Administrator or his designee. The County Administrator has delegated this approval to the Palm Beach County Water Utilities Department (WUD) Director. These agreements provide property owners with the ability to fund the purchase of emergency generators for lift stations located within their community. WUD will assign the community its generator(s), locate the generator(s) on-site during hurricane season, and operate and maintain the generator(s) during emergencies. By executing such agreements, WUD is able to expedite its goal of providing a higher level of emergency response service throughout its service area. Power outages that occur during hurricanes and other emergencies require WUD to operate a system of emergency generators at wastewater pump stations to prevent wastewater from backing up into streets, swales, and residents' homes. Due to the great number of lift stations and limited staffing resources, the Department is not able to place an emergency generator at every lift station. These agreements will increase the number of generators available to the Department during emergencies. (District 3) (MJ) **Original documents can be viewed in Minutes.**

Background and Justification: On July 10, 2007, the Board of County Commissioners approved a revision to the Agreement, allowing the property owners the option to pay for the generators in full or in two installments.

Attachments:

Villaggio at Villages of Windsor Homeowners Association Emergency Generator Agreement

Recommended By: [Signature] 9/2/09
Department Director Date
Approved By: [Signature] 9/9/09
Assistant County Administrator Date

AGREEMENT FOR EMERGENCY GENERATOR PURCHASE, OPERATION, AND
MAINTENANCE BETWEEN PALM BEACH COUNTY

AND VILLAGGIO AT VILLAGES OF WINDSOR
HOMEOWNERS ASSOCIATION, INC

THIS AGREEMENT made and entered into this 9TH day of JULY,
2009, by and between PALM BEACH COUNTY, a political subdivision of the State of
Florida (hereinafter "County"), whose address is c/o Palm Beach County Water Utilities
Department, P.O. box 16097, West Palm Beach, Florida, 33416-6097, and
VILLAGGIO HOA (hereinafter "Property Owner"), whose
operating address is 6935 VIA BERKARDI LAKE WORTH, FL
33467.

WITNESSETH

WHEREAS, County is responsible for the health, safety and welfare of its
residents during hurricanes and other civil emergencies;

WHEREAS, the County Water Utilities Department (PBCWUD) provides water
and wastewater utility service to Property Owner's residents;

WHEREAS, power outages that occur during hurricanes and other emergencies
require that PBCWUD operate a system of emergency generators at wastewater lift
stations in order that wastewater not back up into streets, swales and the homes of
residents; and

WHEREAS, Property Owner has requested additional generators be placed at lift
stations within Property Owner's property, and agrees to be responsible for the total
costs of procuring such additional generators; and

WHEREAS, the County agrees that it will own and operate the generators
purchased under this Agreement at lift stations within Property Owner's property during
emergencies and in accordance with this Agreement.

NOW, THEREFORE, for and in consideration of these premises, the mutual
undertakings and agreements herein contained and assumed, County and Property
Owner hereby covenant and agree as follows:

1. The foregoing statements are true and correct.
2. This Agreement shall become effective upon approval by both parties.
The Effective Date of this agreement shall be the date the Agreement is
ratified by the Palm Beach County Board of County Commissioners or
their designee. This Agreement shall commence on the Effective Date
and run for a period of ten years. This Agreement may be terminated by
either party immediately upon written notice to the other party.
3. Property Owner hereby requests that 1 additional generator(s) be
placed at lift stations within Property Owner's property. Payment shall be
made by the Property Owner in two installments. Payment of the first
installment of \$ 13,654.16 is due prior to or on the Effective Date of this
Agreement. Following the receipt of the first installment from Property
Owner, County shall procure said emergency generator(s) for use at lift
station(s) located within Property Owner's property (said lift station(s)
hereinafter referred to as the "Facilities") under the conditions set forth in
this Agreement. A listing of the Facilities is attached hereto and
incorporated herein as Exhibit "A". Payment of the second installment of
\$ 13,654.16 shall be made to County within one (1) year of the
Effective Date of this Agreement. Failure of Property Owner to make
payment of the second installment in a timely manner shall result in the
Property Owner forfeiting any rights they have under this Agreement.

Should Property Owner fail to pay the second installment in a timely manner, County may utilize the generator(s) covered under this Agreement in any manner it chooses, including removal of the generator from Property Owner's property. In addition, should Property Owner fail to pay the second installment in a timely manner, County shall not refund Property Owner the payment made by Property Owner in the first installment.

- 3.1 The emergency generator shall be a portable emergency generator meeting the specifications for portable emergency generators incorporated in the latest revision of the Uniform Policies and Procedures Manual (UPAP).
 - 3.2 County shall locate the emergency generator at the Facilities prior to the start of hurricane season and retain it there during the hurricane season, unless it requires maintenance which cannot be reasonably performed at the site. For purposes of this Agreement, "hurricane season" shall mean June 1 until November 30 of each year.
 - 3.3 County shall operate the emergency generator(s) at the Facilities using available personnel to minimize the potential for wastewater overflows during the duration of the emergency. For purposes of this Agreement, an emergency is defined as any event causing an extended power outage in which failure to provide generator power to the Facilities will result in wastewater backup from the Facilities.
 - 3.4 County shall be responsible for maintenance of the emergency generator(s).
 - 3.5 Under extreme emergencies, the County may relocate the emergency generator upon the direction of the Director of Water Utilities Department, with prior notice to Property Owner. Such action shall only occur if the Facilities are not threatened by the emergency. This section shall not apply if Property Owner fails to provide payment of the second installment in a timely manner, in which case the rights of the Property Owner under this Agreement shall be forfeited.
 - 3.6 This agreement provides Property Owner certain rights as to the use of the generator during its useful life cycle. However, County shall retain title to the generator at all times.
4. In the event that the performance of this Agreement by either party to this Agreement is prevented or interrupted in consequence of any cause beyond the control of either party, including, but not limited to: Acts of God or of the public enemy, war, national emergency, allocation of or other governmental restrictions upon the use or availability of labor or materials, fuel shortages, rationing, civil insurrection, riot, disorder or demonstration, terrorism, strike, embargo, flood, tidal wave, fire, explosion, bomb detonation, nuclear fallout, windstorm, hurricane, earthquake, or other casualty or disaster or catastrophe or water plant failures and water main breaks, neither party shall be liable for such non-performance.
 5. Property Owner acknowledges that a number of outside conditions may affect the County's performance under this Agreement, and that this Agreement in no way guarantees that there will never be a wastewater backup from the Facilities. County agrees that it will use its very best efforts to avoid a wastewater backup from the Facilities.

6. Property Owner agrees to indemnify, release, and hold forever harmless, County, its agents, employees, and elected officers against any claims, liability, expense, loss, cost, damages or causes of action of every kind or character, including attorney's fees at all levels, arising out of this Agreement. The provisions of this paragraph shall survive termination or expiration of this Agreement.
7. This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement will be held in Palm Beach County. No remedy herein conferred is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder now or hereafter.
8. The failure of either party to insist on the strict performance of any of the agreements, terms, covenants and conditions hereof shall not be deemed a waiver of any rights or remedies that said party may have for an subsequent breach, default, or non-performance, and said party's right to insist on strict performance of this Agreement shall not be affected by an previous waiver of course or dealing.
9. If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable by any court of competent jurisdiction, then the remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.
10. all notices provided for herein shall be in writing and transmitted by mail or by courier, and, if to County, shall be mailed or delivered to County at:

Palm Beach County Water Utilities Department
P.O. Box 16097
West Palm Beach, Florida, 33416-6097
Attn: Department Director

And if to Property Owner, shall be mailed or delivered at:

Name
Address
Address
Attn:
11. This Agreement may only be amended, modified, changed, supplemented or discharged by an instrument in writing signed by the parties hereto.
12. County and Property Owner agree that this Agreement and any Exhibits hereto set forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties.
13. This Agreement is not assignable.

~~THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK~~

IN WITNESS WHEREOF, County and Property Owner have executed or have caused this Agreement, with the named Exhibits attached, to be duly executed in several

counterparts, each of which counterpart shall be considered an original executed copy of this Agreement.

As to County:

WITNESS

Carolyn Shambler
Witness Name

Carolyn Shambler
Signature

Harry Johnson
Witness Name

Harry Johnson
Signature

PALM BEACH COUNTY

By: Bryce Beaudin
Director of Water Utilities

As to Property Owner:

WITNESS

Regina DeBose
Witness Name

Regina DeBose
Signature

Jessie Mobley
Witness Name

Jessie Mobley
Signature

PROPERTY OWNER

By: Joel Tumarkin
Title: DIRECTOR

(Seal)

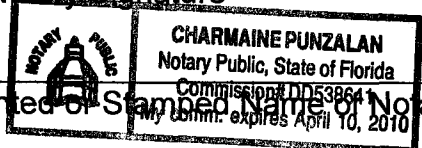
NOTARY CERTIFICATE

**STATE OF FLORIDA
COUNTY OF PALM BEACH**

The foregoing instrument was acknowledged before me this 31st day of AUGUST, 2009 by JOEL TUMARKIN and _____ who is/are personally known to me or who has produced FDLTS6024253420 as identification.

My Commission Expires: 4.10.10.

Charmaine Punzalan
Notary Signature



Typed, Printed or Stamped Name of Notary

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

By: [Signature]
County Attorney

**WATER UTILITIES DEPARTMENT
APPROVAL**

By: Debra M. Vest
Director, Finance and Administration
PBC Water Utilities Department

PALM BEACH COUNTY
WATER UTILITIES DEPARTMENT

Agreement for Emergency Generator Purchase, Operation, and Maintenance

Homeowner's Association (HOA): Villaggio @Villages of Windsor

Mailing Address: 6935 Via Bernard
Lake Worth, Fl 33467

Contact: Joel E. Tumarkin
Phone Number: 561- 964-4846

Lift Stations in HOA Community:

<u>LS#</u>	<u>LS Address</u>
<u>LS 651</u>	7225 VIA LAURIE
<u>LS 667</u>	8725 VIA AVELLINO
<u>LS 668</u>	6810 VIA BERNARDI