

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: June 23, 2015

Consent [X] **Regular []**
Public Hearing []

Department: Water Utilities Department

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to: **A) Approve** the revised Standard Agreement for Emergency Generator Purchase, Operation, and Maintenance (Standard Agreement); and **(B) Authorize** the County Administrator or his designee to enter into the Standard Agreement and any amendment thereto.

Summary: On March 14, 2006, the Board of County Commissioners (BCC) authorized the County Administrator or his designee to enter into agreements with interested homeowner's associations for the purchase, operation, and maintenance of emergency generators for wastewater pump stations within their residential communities. The interested party is responsible for 100% of the purchase cost of the unit. To date, the Water Utilities Department (WUD) has secured 31 emergency generators as a result of these partnerships. On May 15, 2007, the BCC approved two forms of the referenced standard agreement, (Full Payment and Installment versions). WUD desires to combine the Full Payment and Installment Standard Agreements into a single Standard Agreement that can be used for either form of payment. In addition, this new single standard agreement adds a provision for a pro-rated refund should the County terminate the agreement early. Countywide (MJ)

Background and Justification: WUD is responsible for the health, safety and welfare of the residents during hurricanes and other emergencies. To accomplish these responsibilities, WUD owns and operates numerous wastewater pump stations throughout its service area. In order to provide improved service and reduce the occurrence of wastewater backups during emergency events, WUD has entered into Standard Agreements with Property Owners to provide for the purchase of new emergency generators that are then transferred to the County, who assumes responsibility for the operation of the generators at lift stations within the specified community. The Standard Agreements additionally require the Property Owner to indemnify, release and hold the County harmless for any liability or damages arising under the Agreement.

Attachment:

1. One (1) Standard Agreement for Emergency Generator Purchase, Operation, and Maintenance

Recommended By: Jim Stiles 6-3-15
Department Director Date

Approved By: [Signature] 6/12/15
Assistant County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2015	2016	2017	2018	2019
Capital Expenditures	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
External Revenues	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Program Income (County)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
In-Kind Match County	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
NET FISCAL IMPACT	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

Budget Account No.: Fund _____ Dept _____ Unit _____ Object _____

Is Item Included in Current Budget? Yes X No

Reporting Category N/A

B. Recommended Sources of Funds/Summary of Fiscal Impact:

No Fiscal Impact

C. Department Fiscal Review: Delta invest

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:

Sherry Bm
6/10/15
OFMB

Ann J. Jacobson 6/10/15
Contract Development and Control
6-10-15 B. Wheeler

B. Legal Sufficiency:

LOLW 6/11/15
Assistant County Attorney

C. Other Department Review:

Department Director

This summary is not to be used as a basis for payment.

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

THIS AGREEMENT made and entered into this _____ day of _____, 2____, 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 _____ (hereinafter "Property Owner"), whose operating address is _____, _____, FL _____.

W I T N E S S E T H

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

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

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, provided, however, that if the County terminates prior to the conclusion of the term hereof the sums paid by the Property Owner shall be prorated for the term and any unearned portion shall be forthwith refunded to the Property Owner.
3. Property Owner hereby requests that _____ additional generator(s) be placed at lift stations within Property Owner's property. Payment shall be made by the Property Owner in one of the following manners:
 - A. Single Installment: Payment of _____ is due within 10 days following the Effective Date of this Agreement. Following the receipt of the payment 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".

- B. Two Installments: Payment of the first installment of _____ is due within 10 days following 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 the Facilities identified in Exhibit "A". Payment of the second installment of _____ 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.
4. 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).
 5. 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.
 6. 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.
 7. County shall be responsible for maintenance of the emergency generator(s).
 8. 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.
 9. 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.
 10. 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.

11. 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.
12. 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.
13. 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.
14. 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.
15. 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.
16. 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:

17. This Agreement may only be amended, modified, changed, supplemented or discharged by an instrument in writing signed by the parties hereto.
18. 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.

19. This Agreement is not assignable.
20. Palm Beach County Office of the Inspector General. Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421-2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the Property Owner(s), its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud.

Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

21. No Third Party Beneficiary. No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a Party to this Agreement, including but not limited to any citizen or employees of the Parties.
22. Non-Discrimination. Property Owner warrants and represents that all of their employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity and expression, or genetic information. Property Owner has submitted to County a copy of its non-discrimination policy which is consistent with the above paragraph, as contained in Resolution R-2014-1421, as amended, or in the alternative, if Property Owner does not have a written non-discrimination policy or one that conforms to County's policy, it has acknowledged through a signed statement provided to County that Property Owner will conform to County's non-discrimination policy as provided in R-2014-1421, as amended.

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

PALM BEACH COUNTY

Witness Name

By: _____
County Administrator or Designee

Signature

Witness Name

Signature

As to Property Owner:

WITNESS

PROPERTY OWNER

Witness Name

By: _____

Signature

Title: _____

(Seal)

Witness Name

Signature

NOTARY CERTIFICATE

**STATE OF FLORIDA
COUNTY OF PALM BEACH**

The foregoing instrument was acknowledged before me this _____ day of _____, 20__ by _____ and _____ who is/are personally known to me or who has produced _____ as identification.

My Commission Expires:

Notary Signature

Typed, Printed or Stamped Name of Notary

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

**WATER UTILITIES DEPARTMENT
APPROVAL**

By: _____
County Attorney

By: _____
Director, Finance and Administration
PBC Water Utilities Department