



April 17, 2006

Interested Home Owner's Associations

**RE: Optional Homeowner's Association Generator Agreement**

Palm Beach County experienced a complete loss of electric power for several days last year as a result of Hurricane Wilma. The Water Utilities Department was one of the few utilities in the County that maintained water system pressure throughout the hurricane, but we did experience sewage overflows at many lift stations and manholes due to the extended power outages.

This year the Department has increased the level of service to all communities within our service area to reduce sewage spills after hurricanes. We are doubling the number of portable emergency generators to 220, and increasing the number of personnel responding to an emergency by 50%. The additional equipment and personnel will allow the department to provide an average service level of one generator per every five lift stations. It is not necessary to have a generator at each lift station because the lift station can be pumped down in two to three hours. The portable trailer-mounted generator can then be pulled to the next station, so that up to five lift stations are pumped down each day. We locate skid mounted generators at "Master" lift stations that have high flows, so these stations can be pumped down as needed. Utilities throughout Florida are using a standard of one generator per five lift stations, and we expect that this service level will minimize sewage spills following a hurricane.

If Homeowner's Associations (HOAs) wish to have a higher level of service than the one-to-five standard, the County has agreed to allow them to donate funds to purchase additional portable generators, which will be specifically assigned to their community. The Board of County Commissioners approved the enclosed revised agreement on March 14, 2006, for HOAs to donate funds for emergency generator purchases, with the direction that the Department may purchase the generators to exempt sales tax from the purchase. The portable generator(s) will be designated to the specific HOA community, and the name of the community will be stenciled on the side of the unit. The portable generator(s) purchased from funds donated by the HOA will be rotated among the lift stations within the individual community.

**Water Utilities Department  
Administration**  
P.O. Box 16097  
West Palm Beach, FL 33416-6097  
(561) 493-6000  
FAX: (561) 493-6008  
www.pbcwater.com



**Palm Beach County  
Board of County  
Commissioners**

Tony Masilotti, Chairman

Addie L. Greene, Vice Chairperson

Karen T. Marcus

Jeff Koons

Warren H. Newell

Mary McCarty

Burt Aaronson

**County Administrator**

Robert Weisman

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The Department will own, operate, fuel, and maintain the generators during their 10 year service life. Following the 10 year agreement, the Department will continue operating the generator as long as it is serviceable, and will salvage it when it no longer is serviceable. At that time, the Department will notify the HOA to determine if they wish to enter into another agreement for a replacement generator, or rely on the Department's standard level of service. The Department expects that the agreement will remain in place for the 10 year period. The Department cannot transfer ownership of the equipment to the HOA once the County owns it due to a state law concerning surplus of County equipment. During extreme emergencies, if the community has electrical service, while a neighboring community does not, the Utility Director has the option of temporarily relocating the generator to the other community. However, should an outage be experienced within the original community, the generator will be sent back.

If your HOA wishes to enter into this agreement for the 2006 hurricane season, please provide the following documents to the Palm Beach County Water Utilities Department Customer Service Center at 9045 Jog Road, Boynton Beach, FL 33437 near Gateway by May 1, 2006:

1. Three signed originals of the agreement
2. Proof of authorization for the person signing the document
3. A check for \$26,395 per portable generator to be purchased

Delivery time is 8-10 weeks once the generators are ordered. If your HOA submits its agreement and check by May 1, 2006, the portable generators should be located in the community by July 15, 2006. Agreements submitted after May 1, 2006, will be honored as soon as possible.

We appreciate your interest and cooperation with the Department concerning this important emergency preparedness issue. Please contact Wendy Mundell at 561-493-6005 if you have further questions.

Sincerely,

*Larry A. Johnson*

Larry A. Johnson, P.E.  
Assistant Director

Cc: Bevin Beaudet, P.E.  
Leisha Pica, P.E.  
Wendy Mundell

Gregory Balicki, P.E.  
Michael Jones, Esq.  
Debra West  
Nadine Masiello

Enclosure: Revised Agreement



May 4, 2006

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Administration**  
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West Palm Beach, FL 33416-6097  
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**RE: Optional Generator Contract Questions**

Dear Interested HOA Communities:

Thank you for your interest in the Water Utilities Department's Optional Generator Agreement for Homeowner's Associations. We have had quite a response and have received many inquiries.

In order to update everyone, here are the responses to your questions:

1. What happens if the Contract gets terminated?
  - a. *The Water Utilities Department does not intend to terminate contracts before the 10-year time period. However, if this did occur, the Water Utilities Department would refund a portion of the money paid by the HOA on a pro-rated basis.*
2. What happens after the 10 years is up?
  - a. *If, after 10 years, the purchased generator is in good repair, and both parties agree, contract continues with no further requirement from the HOA. If after 10 years, the generator is no longer serviceable, the parties may enter into a new agreement if so desired.*
3. What is the procedure for getting the generator started, once electricity fails?
  - a. *On a rotating basis, Utilities employees will come through your area and start up your generators and pumps. Also, there is an emergency phone number listed on the lift station. This is the number to call, should you experience any issues.*
4. Who is responsible for fueling and maintaining the generator?
  - a. *Water Utilities Department refuels and conducts maintenance on the generator for the entire 10-year period.*

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5. For those communities which have signed up for the program, the County needs to know your preference for placement of the generator. We've had some requests for placement in the community at the start of Hurricane Season and removal at the end. For it to be placed in your community during the entire season, we need to work together to identify a secure storage area. Others have asked that the generator be placed at an alternate location where Water Utilities has access. If you do not want it located in your community until a hurricane threatens, we will keep it in our storage area, and transport it to your community following the storm. After Water Utilities obtains the purchased units, and gets them licensed, we would like to arrange a meeting with your HOA board for a small ceremony and 'photo op.'

Should you have additional questions, please call Wendy Mundell directly at 561-493-6005.

Sincerely,



Bevin A. Beaudet, PE  
Utilities Director

cc: Commissioner Aaronson  
Jon Van Arnam  
Mike Jones

Larry Johnson  
Greg Balicki  
Wendy Mundell

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

**THIS AGREEMENT** made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, 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 \_\_\_\_\_.

**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 \_\_\_\_\_ 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 \_\_\_\_\_ 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 \_\_\_\_\_ 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**

\_\_\_\_\_  
Witness Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Witness Name

\_\_\_\_\_  
Signature

**PALM BEACH COUNTY**

By: \_\_\_\_\_  
Director of Water Utilities

**As to Property Owner:**

**WITNESS**

\_\_\_\_\_  
Witness Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Witness Name

\_\_\_\_\_  
Signature

**PROPERTY OWNER**

By: \_\_\_\_\_

Title: \_\_\_\_\_

(Seal)

**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**

By: \_\_\_\_\_  
County Attorney

**WATER UTILITIES DEPARTMENT  
APPROVAL**

By: \_\_\_\_\_  
Director, Finance and Administration  
PBC Water Utilities Department