

TOWN OF DAVIE
TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM/PHONE: Joseph Montopoli Fire Chief/EMC 954-797-1842

PREPARED BY: Frank Suriano, Assistant Chief Administration 954-797-1843

SUBJECT: Resolution

AFFECTED DISTRICT: All

ITEM REQUEST: Schedule for Council Meeting

TITLE OF AGENDA ITEM: AGREEMENT - A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE TOWN OF DAVIE TO ENTER INTO AN AGREEMENT WITH SOUTH BROWARD HOSPITAL DISTRICT, A FLORIDA SPECIAL TAX DISTRICT AND ZINN PETROLEUM COMPANIES, LLC TO PROVIDE PROMPT AVAILABILITY AND DISTRIBUTION OF GASOLINE FOR THE TOWN, TOWN EMPLOYEES AND AUTHORIZED PERSONNEL IN THE EVENT OF A DISASTER, MANMADE OR NATURAL.

REPORT IN BRIEF: The South Broward Hospital District, a Florida Special Tax District and Zinn Petroleum Companies, LLC wish to provide for the prompt availability and distribution of gasoline to the Town, their employees and authorized personnel in the event of a disaster, manmade or natural in which widespread and/or sustained power outages maybe expected, including hurricanes, floods, epidemics and acts of terrorism. Town employees and authorized personnel will pay the cost of gasoline in accordance with the Florida Price Gouging Statute. The agreement will be for a period of ten (10) years, effective April 21, 2008 and at no cost to the Town.

PREVIOUS ACTIONS:

CONCURRENCES:

FISCAL IMPACT: not applicable

Has request been budgeted? n/a

RECOMMENDATION(S): Motion to approve Resolution

Attachment(s): Resolution, Disaster Agreement

RESOLUTION _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE TOWN OF DAVIE TO ENTER INTO AN AGREEMENT WITH SOUTH BROWARD HOSPITAL DISTRICT, A FLORIDA SPECIAL TAX DISTRICT AND ZINN PETROLEUM COMPANIES, LLC TO PROVIDE PROMPT AVAILABILITY AND DISTRIBUTION OF GASOLINE FOR THE TOWN, TOWN EMPLOYEES AND AUTHORIZED PERSONNEL IN THE EVENT OF A DISASTER, MANMADE OR NATURAL.

WHEREAS, Zinn Petroleum Companies will secure a permanent generator or generators to allow to continue its operations in the event of a disaster at no cost to the Town; and

WHEREAS, South Broward Hospital District and the Town of Davie will provide immediate availability of gasoline to the Hospital and the Town employees and authorized personnel; and

WHEREAS, Zinn Petroleum Companies, LLC agrees that the cost of gasoline shall be paid by each employee and consistent with the Florida Price Gouging Statute.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA.

SECTION 1. The Town Council authorizes the Mayor or designee to enter into an agreement with South Broward Hospital District, Zinn Petroleum Companies, LLC for a period of ten (10) years.

SECTION 2. This resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS _____ DAY OF _____, 2008

MAYOR/COUNCILMEMBER

ATTEST:

TOWN CLERK

APPROVED THIS ____ DAY OF _____, 2008

DISASTER AGREEMENT

THIS DISASTER AGREEMENT ("Agreement") is made effective as of the 21st day of April, 2008, by and among SOUTH BROWARD HOSPITAL DISTRICT, a Florida special tax district ("Hospital District"), ZINN PETROLEUM COMPANIES, LLC, located at 4450 South Pine Island Road, Davie, FL 33328, ("Gas Station") and the TOWN of DAVIE ("Town").

RECITALS:

WHEREAS, Hospital District and Town wish to provide for the prompt availability and orderly distribution of gasoline for themselves and their respective employees and authorized personnel in the event of a Disaster, which for purposes of this Agreement, means any event, manmade or natural, which may reasonably be expected to cause widespread and/or sustained power outages, including, without limitation, hurricanes, floods, epidemics, and acts of terrorism;

WHEREAS, Gas Station wishes to secure a permanent generator or generators of sufficient capacity to allow Gas Station to continue its operations in the event of a Disaster; and

WHEREAS, the Parties believe that it is in their respective best interests to provide for the continuous availability of gasoline for Hospital District and Town, and their respective employees and authorized personnel, the distribution of which shall be monitored by Town, in exchange for Hospital District's provision to Gas Station of the installation of a generator purchased by Gas Station, which shall allow Gas Station to maintain its operation during a Disaster.

NOW, THEREFORE, in consideration of the foregoing and the following terms, conditions and obligations, the parties hereby agree as follows:

I. INCORPORATION OF RECITALS

All the above recitals hereby accepted by the parties as true and correct and are incorporated herein by reference.

II. OBLIGATIONS

2.1 Generator. Gas Station shall purchase Generator at its sole expense. Hospital District or its agent shall install Generator at its sole expense. Upon the execution of this Agreement, Gas Station shall provide Hospital District all information Hospital District requires to allow Hospital District to install the generator supplied by Gas Station ("Generator"). Gas Station shall allow Hospital District access to Gas Station for this purpose at reasonable times and upon reasonable notice.

2.2 Response to Disaster. In the event Hospital District determines, in its sole discretion, that a Disaster is imminent, is occurring or has occurred, Hospital District shall contact Gas Station to initiate distribution of gasoline. Gas Station shall provide immediate access with no waiting to Hospital District, Town and their respective employees and authorized personnel. A window sticker will be placed on the vehicles in Hospital District line to denote they are with the Hospital District. Hospital District shall obtain proof that any such employee or personnel is entitled to obtain gasoline pursuant to this Agreement. Hospital District and Town shall each advise Gas Station as to what form of identification their respective employees or personnel must provide to Gas Station in order to receive gasoline. Hospital District shall advise Gas Station of the amount of gasoline each of Hospital District's and Town's employees and personnel will be entitled to receive.

Gas Station understands and agrees that the cost of gasoline shall be paid by each employee or authorized personnel, and that the cost per gallon of gasoline shall be consistent with the Florida Price Gouging Statute. At all times while this Agreement is in effect, Town shall assign a sufficient number of officers, as mutually determined by Hospital District and Town, to Gas Station who shall ensure that the gasoline is distributed in an orderly fashion and only to only those individuals with proper identification

2.3 Use & Possession of Generator. Hospital District understands that the Generator is the property of Gas Station. However, in consideration of installing Generator, Gas Station shall not remove or relinquish possession thereof without the prior consent of Hospital District.

2.4 No Warranty. Hospital District has not made and does not make, and expressly excludes any representation, warranty or covenant, express or implied, with respect to the condition, quality, performance, design, durability or suitability of the Generator, or any other aspect of the Generator or its material or workmanship, including, without limitation, warranties of merchantability and fitness for purpose. Hospital District shall not be accountable to or liable to Gas Station for any liability, loss, damage or cause of action caused or alleged to be caused directly or indirectly by the Generator by, or rising from or related to Gas Station's use of, the Generator under this Agreement.

2.5 Non-Exclusivity. Gas Station understands and agrees that this Agreement is non-exclusive and nothing shall prevent Hospital District from entering into similar agreements with other gas stations, in its sole discretion.

2.6 Insurance and Indemnification. Gas Station shall procure, at its sole cost and expense, and maintain in full force and effect continuously throughout the term of this Agreement comprehensive general liability and property damage insurance in the

amount of One Million and No/Dollars (\$1,000,000.00). Upon the execution of this Agreement and as requested by Hospital District, Gas Station shall provide Hospital District with a certificate of insurance evidencing same. In addition, Gas Station shall indemnify, save and hold harmless Hospital District and its officers, commissioners, employees and agents from and against any and all claims, actions, awards, judgments, settlements, damages, liabilities and expenses of whatever nature, including attorneys' fees and witness fees, related to, arising from or in connection with the use, operation or maintenance of the Generator by Gas Station or its employees or agents. The provisions of this Section shall survive the expiration or early termination of this Agreement.

III. TERM AND TERMINATION OF AGREEMENT

3.1 Agreement Term. This Agreement shall be effective as of April 21, 2008, and shall continue for a period of ten (10) years or until such time as (i) Hospital District determines that Hospital District no longer requires the gasoline to be provided hereunder, (ii) Hospital District terminates this Agreement without cause by providing Gas Station and Town with two (2) days' notice.

3.2 Effect of Termination. Upon termination of this Agreement, as herein provided, neither party shall have any further obligation hereunder except for (i) obligations accruing prior to the date of termination, and (ii) obligations, promises, or covenants contained herein which are expressly made to extend beyond the term of this Agreement.

IV. MISCELLANEOUS

4.1 Third Party Beneficiaries. This Agreement is made for the sole benefit of the parties; and this Agreement does not give any third parties any claim, demand or right of action against the Hospital District, or against any of its agents or employees, or against Gas Station or Town. Without limitation of the foregoing, there are no intended third

third party beneficiaries of this Agreement.

4.2 Assignment. None of the parties may assign or transfer, in whole or in part, this Agreement or any respective party's rights, duties or obligations under this Agreement without the prior written consent of the parties hereto, and any such assignment or transfer without such consent shall be null and void.

4.3 No Waiver. The waiver by any party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or other provision hereof.

4.4 Entire Agreement. This Agreement supersedes all previous contracts and constitutes the entire Agreement among the parties. No oral statements or prior written material not specifically incorporated shall be of any force and effect and no changes in, or additions to this Agreement shall be recognized unless incorporated herein by a written amendment, executed by all parties. The parties specifically acknowledge that in entering into and executing this Agreement, each relies solely upon the representations and agreements contained in this Agreement, and no others.

4.5 Invalidity. The invalidity or unenforceability of any one or more of the words, phrases, sentences, clauses or sections contained in this Agreement shall not affect the validity or enforceability of the remaining provisions of this Agreement and in the event any such word, phrase, sentence, clause or section is declared invalid or unenforceable, this Agreement shall be construed as if such word, phrase, sentence, clause or section had not been inserted or shall be enforced as nearly as possible according to their original terms and intent to eliminate any invalidity or unenforceability.

IN WITNESS WHEREOF, SOUTH BROWARD HOSPITAL DISTRICT, a Florida special tax district, has caused this Agreement to be executed in its corporate name by its duly authorized undersigned Chief Executive Officer on the day and year first above written.

IN WITNESS WHEREOF, THE TOWN OF DAVIE has caused this Agreement to be executed on the day and year first above written.

IN WITNESS WHEREOF, GAS STATION has caused this Agreement to be executed on the day and year first above written.

SOUTH BROWARD HOSPITAL DISTRICT:

By _____
Frank V. Sacco, President and Chief Executive Officer

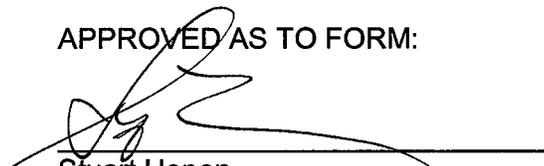
THE TOWN OF DAVIE:

By: _____

GAS STATION

By: DAVID ZINN
~~Stanley Zinn~~ for Zinn Petroleum CO's LLC.

APPROVED AS TO FORM:



Stuart Hopen
Associate General Counsel
Memorial Healthcare System