

Meeting Date
March 3, 2015



AGENDA	
Section	Consent
Item No.	II.A.2

AGENDA REPORT
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Indemnification and Hold Harmless Agreement between the County and Anderson Rentals, Inc. to access County-owned property to recycle oyster shell for the Indian River Lagoon (IRL) Oyster Restoration Program.
DEPT/OFFICE	Natural Resources Management Department (NRM)

Requested Action:

It is requested that the Board authorize the Chairman to execute the Indemnification and Hold Harmless Agreement for the use of County property for the provisional storage of Oyster Shells necessary for the construction of Oyster Reefs as part of the Indian River Lagoon Restoration Strategy.

Summary Explanation & Background:

In Brevard County's portion of the Indian River Lagoon (IRL), record setting algal blooms have caused the loss of over 40,000 acres of seagrass, and the unusual mortality of 100's of manatees, dolphins, and pelicans. Brevard County has embarked on an aggressive restoration strategy for the Lagoon to **Reduce** excess nutrient inputs, **Remove** the legacy load of muck, **Restore** the filtration system (oysters, clams and wetlands) and ensure the sound **Research** is the basis of the effort. As part of this comprehensive strategy, oyster reef restoration is a integral component to restoring natural filtration of major pollutants from the waters of the Lagoon.

Specifically, one of the projects the County launched on October 17, 2013 aims in reducing nutrient loads and to restore the filtration system through oyster reefs. Oysters are effective filter feeders that clarify the water column at rates of up to 50 gallons of water filtered per day, per oyster. Oyster reefs also provide wave breaks that slow erosion, provide habitat for many commercially and recreationally important species, and create an environment that removes polluting nitrates from the water column and releases inert nitrogen gas to the atmosphere. Via filtration and denitrification, oyster ecosystems can significantly improve IRL water quality and water clarity. Brevard County's ultimate goal is to increase the number of oysters in Brevard County to a self-sustaining population level and restore their associated ecosystem benefits to the IRL.

The County is currently working with the Brevard Zoo, the Marine Resources Council, the University of Central Florida and others to restore oyster reefs in the Lagoon. In order to launch the oyster reef program, the Partnership engaged concerned citizens in what is now, the United States' largest Oyster Gardening Program. Residents are provided with oyster larvae (spat) attached to old shell and tend to them at there local docks. Once the oysters grow large enough, they are collected from the gardeners and placed on the reef's locations. Three oyster reefs have been constructed and are currently being expanded. In order to ensure the success of the program, a sustainable source of oyster shell is needed to build the reefs. The County has been receiving shell from a local shucking facility and requires a site for storage. Specifically, the shell must be stockpiled and quarantined for at least 90 days prior deployment. Brevard County Solid Waste Department has provided property just southeast of the flea market near Eau Gallie Blvd as a centralized storage location. (see Attachment A). The Solid Waste Department has agreed to allow the County vendor, Anderson Rentals, access to the property for the purpose of storing the shells until they are utilized for the reef construction. This Indemnification and Hold Harmless Agreement is needed in order for Anderson Rentals to access the County property.

This Agreement will ensure a sustainable source of shell for the Indian River Lagoon Oyster Restoration Program.

Fiscal Impact:

FY 14/15 – \$9,720.00 1700/200500

FY 15/16 – \$0.00

Name: Virginia Barker, NRM, X52439

Clerk to the Board instruction: Please return an original or certified copy to NRM

Exhibits Attached: A – indemnification and Hold Harmless Agreement

Contract / Agreement (If attached):		Reviewed by County Attorney		Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	PR	<input type="checkbox"/>
County Manager	Assistant County Manager	Department Director / Extension							
Stockton Whitten	Mel Scott	Virginia Barker/X52439							



Tammy Etheridge, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972

March 4, 2015

M E M O R A N D U M

TO: Virginia Barker, Interim Natural Resources Management Director

RE: Item II.A.2., Indemnification and Hold Harmless Agreement with Anderson Rentals, Inc. for Access to Brevard County Owned Property to Recycle Oyster Shells for the Indian River Lagoon (IRL) Oyster Restoration Program

The Board of County Commissioners, in regular session on March 3, 2015, executed Indemnification and Hold Harmless Agreement with Anderson Rentals, Inc. for use of County property for the provisional storage of oyster shells necessary for the construction of oyster reefs as part of the Indian River Lagoon Restoration Program. Enclosed are two certified copies of the Agreement.

Your continued cooperation is greatly appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Etheridge, Deputy Clerk

Encls. (2)

cc: Contracts Administration
Finance
Budget

INDEMNIFICATION AND HOLD HARMLESS AGREEMENT

THIS AGREEMENT by and between the Board of County Commissioners of Brevard County, Florida, a political subdivision of the State of Florida (hereinafter the "County"), and Anderson Rentals, Inc., a business having its primary business location at 3660 US-1, Mims, Florida 32854, Brevard County (hereinafter the "Contractor")

WHEREAS, the Contractor desires to haul oyster shell to a shell recycling facility on County property for Brevard County's Indian River Lagoon Oyster Restoration Partnership with Brevard Zoo, and

WHEREAS, the Contractor has a Purchase Order (P.O. No. 4500085540) from the County to haul shell from 1500 Maple Avenue, Melbourne to the County's recycling site located adjacent to the County's Mitigation Property south of Eau Gallie Boulevard and west of I-95, and

WHEREAS, the County agrees to allow such shell recycling for the Indian River Lagoon Oyster Restoration Partnership as long as operations are not detrimental to the County's property,

NOW THEREFORE, in consideration of the covenants contained herein, it is mutually agreed:

1. The recitals stated above are hereby incorporated herein.
2. The County shall allow the placement of oyster shell hauled by the Contractor to the location shown at Exhibit "A". The County may terminate use of the property at any time. Hauling shall occur regularly for the duration of the Purchase Order, as amended by any fully

executed Change Orders. Failure to haul an average of 40 cubic yards per week, absent obstructive acts of God, shall result in termination of this agreement.

3. The County shall allow access to the construction area shown in Exhibit "A" for the purpose of hauling, stockpiling and recycling oyster shell.

4. The County shall allow access to the construction area shown in Exhibit "A" for the duration of the Purchase Order, as amended by any fully executed Change Orders.

5. The Contractor shall be responsible for all costs associated with hauling and delivery of the oyster shell.

6. The Contractor is familiar with conditions at the oyster shell recycling site, including limitations of access, as well as size and stability of access berm and deposition site.

7. The Contractor shall indemnify and hold harmless the County and its agents and employees from and against all claims, losses, and expenses, including attorney's fees arising out of or resulting from the performance of its work under this agreement, which also includes access to the site for the described work, where such claim, damage, loss, or expense is caused, in whole or in part, by the act or omission of the Contractor, or anyone directly or indirectly employed by the Contractor, or anyone for whose acts any of them may be liable, regardless of whether or not it is caused by in part by a party indemnified thereunder. In any and all claims against the County, or any of its agents or anyone directly or indirectly employed by the Contractor, or anyone for whose acts any of them may be liable, indemnification obligation under this paragraph shall not be limited in any way by a limitation on the amount or type of damages, compensation or benefits payable by or for the custodial contractor, under workers' compensation acts, or other related policies of insurance. The parties acknowledge specific consideration had been exchanged for this provision.

8. The Contractor, at its own expense, shall keep in force and at all times maintain during the term of this agreement:

a. General Liability Insurance issued by responsible insurance companies and in a form acceptable to the County, with combined single limits of not less than One Million Dollars (\$1,000,000.00) for Bodily Injury and Property Damage per occurrence.

b. Automobile Liability coverage shall be in the minimum amount of One Million Dollars (\$1,000,000.00) combined single limits for Bodily Injury and Property Damage per occurrence.

c. Full and complete Workers' Compensation Coverage, as required by State of Florida law, shall be provided.

d. The Contractor shall provide the County with Certificate(s) of Insurance on all the policies of insurance and renewals thereof in a form(s) acceptable to the County. Said Liability Policies shall provide that the County be an additional insured. The County shall be notified in writing of any reduction, cancellation or substantial change of policy or policies at least thirty (30) days prior to the effective date of said action. All insurance policies shall be issued by responsible companies who are acceptable to the County and licensed and authorized under the laws of the State of Florida.

9. The Contractor shall provide an up-to-date list of the persons accessing the County's property for the purpose of hauling and stockpiling oyster shell. All persons on said list shall be covered by the insurance required in paragraph 7 above. No persons, other than those listed, shall be permitted to access the County property.

10. This agreement does not convey to the Contractor any property rights, nor any rights or privileges other than those specified herein.

11. In the event of any legal action to enforce the terms of this contract each party shall bear its own attorney's fees and costs.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the day and year first written.

ATTEST:

Scott Elhi
Clerk

BOARD OF COUNTY COMMISSIONERS OF
BREVARD COUNTY, FLORIDA

Robin Fisher
Chairman

MAR 03 2015

As approved by the Board on: _____, 2015

Reviewed for Legal Form and Content By:

Christine Lepore
Christine Lepore, Assistant County Attorney

WITNESSES:

ANDERSON RENTALS, INC.

Eric Anderson
[Signature]

E. Adley
President Corp. Sec.

(Corporate Seal)

I hereby certify that ERIC Anderson personally appeared before me and executed the foregoing instrument as the _____ of _____ on behalf of said corporation. Witness my hand and seal this 16 day of Feb, 2009.

Michelle Bishop
NOTARY PUBLIC
My Commission Expires:



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WHEREAS, the County agrees to allow such shell recycling for the Indian River Lagoon Oyster Restoration Partnership as long as operations are not detrimental to the County's property,

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7. The Contractor shall indemnify and hold harmless the County and its agents and employees from and against all claims, losses, and expenses, including attorney's fees arising out of or resulting from the performance of its work under this agreement, which also includes access to the site for the described work, where such claim, damage, loss, or expense is caused, in whole or in part, by the act or omission of the Contractor, or anyone directly or indirectly employed by the Contractor, or anyone for whose acts any of them may be liable, regardless of whether or not it is caused by in part by a party indemnified thereunder. In any and all claims against the County, or any of its agents or anyone directly or indirectly employed by the Contractor, or anyone for whose acts any of them may be liable, indemnification obligation under this paragraph shall not be limited in any way by a limitation on the amount or type of damages, compensation or benefits payable by or for the custodial contractor, under workers' compensation acts, or other related policies of insurance. The parties acknowledge specific consideration had been exchanged for this provision.

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d. The Contractor shall provide the County with Certificate(s) of Insurance on all the policies of insurance and renewals thereof in a form(s) acceptable to the County. Said Liability Policies shall provide that the County be an additional insured. The County shall be notified in writing of any reduction, cancellation or substantial change of policy or policies at least thirty (30) days prior to the effective date of said action. All insurance policies shall be issued by responsible companies who are acceptable to the County and licensed and authorized under the laws of the State of Florida.

9. The Contractor shall provide an up-to-date list of the persons accessing the County's property for the purpose of hauling and stockpiling oyster shell. All persons on said list shall be covered by the insurance required in paragraph 7 above. No persons, other than those listed, shall be permitted to access the County property.

10. This agreement does not convey to the Contractor any property rights, nor any rights or privileges other than those specified herein.

11. In the event of any legal action to enforce the terms of this contract each party shall bear its own attorney's fees and costs.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the day and year first written.

ATTEST:

[Signature]
Clerk

BOARD OF COUNTY COMMISSIONERS OF
BREVARD COUNTY, FLORIDA

[Signature]
Robin Fisher, Chairman

As approved by the Board on: MAR 03 2015, 2015

Reviewed for Legal Form and Content By:

[Signature]
Christine Lepore, Assistant County Attorney

WITNESSES:

ANDERSON RENTALS, INC.

[Signature]
[Signature]

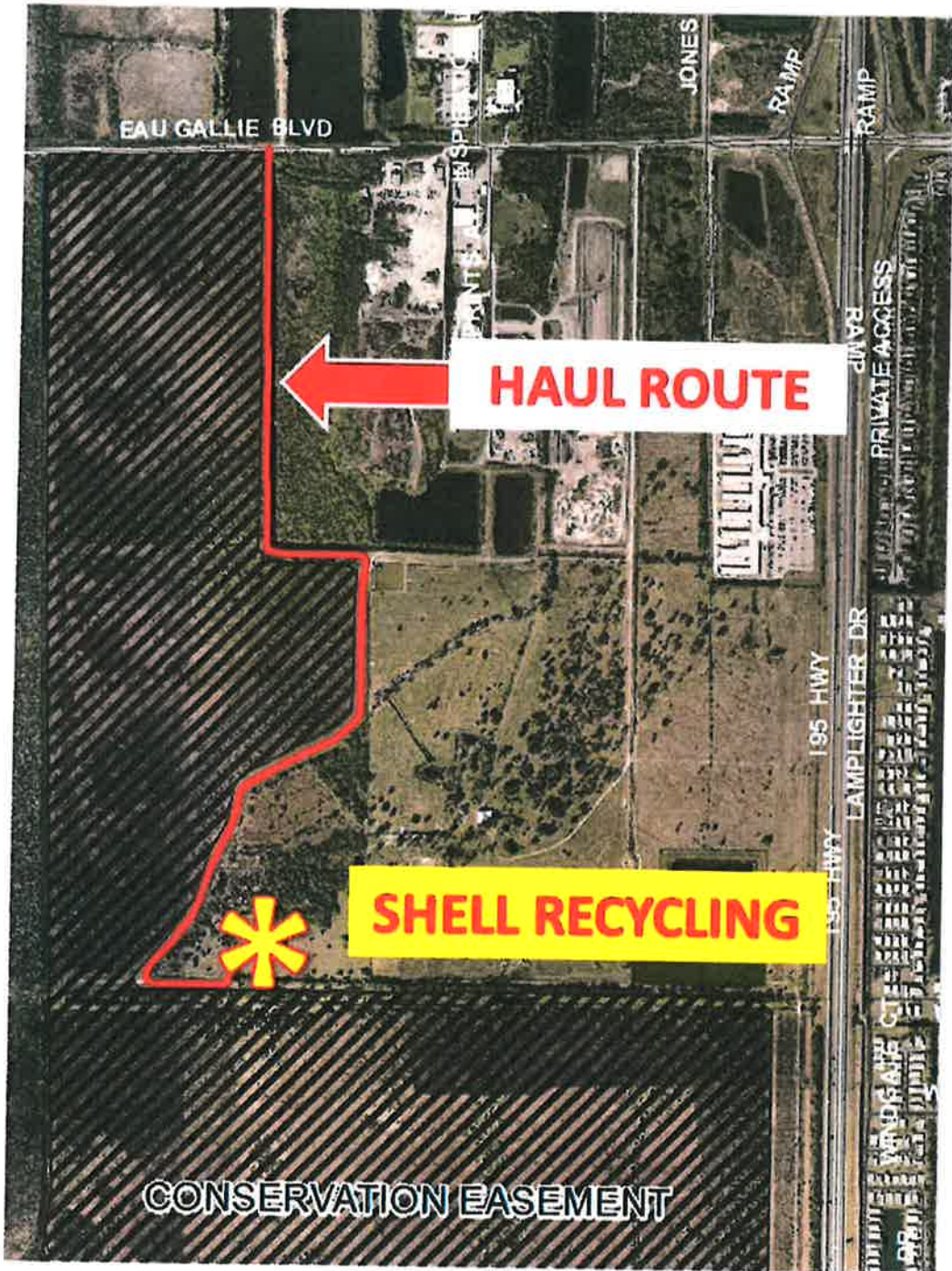
[Signature]
[Signature]
President Corp Sec.

(Corporate Seal)

I hereby certify that ERIC Anderson personally appeared before me and executed the foregoing instrument as the _____ of _____ on behalf of said corporation. Witness my hand and seal this 16 day of Feb, 2009.

[Signature]
NOTARY PUBLIC
My Commission Expires:





Note: No material shall be deposited within the conservation easement.

Brevard County Natural Resources Department
2725 Judge Fran Jamieson Way
Viera, Florida 32940
(321)633-2014
Fax: (321)633-2029



Oyster Shell Recycling Area

EXHIBIT A

MAP IS NOT TO SCALE
Date: 2-10-2015

**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**

RECEIVED

FEB 16 2015

BREVARD COUNTY
NATURAL RESOURCES MGT.

RCVD-BCHR-FEB 12 '15

INITIAL CONTRACT FORM

SECTION I

The following information must be completed on all new contracts submitted to the Board.

1. Contractor: Anderson Rentals, Inc	
2. Fund/Account #: 0001/200500/5340000	Division Name: Natural Resources
4. Contract Description: Indemnification and Hold Harmless Agreement	
5. Contract Monitor: Virginia Barker	6. Mail Stop #: 81
7. Dept./Office Director: Ernest N. Brown	8. Contract Type: Agreement
ACTION DATE: March 3 rd BOCC Meeting	ACTION REQUIREMENT: Review and Approval

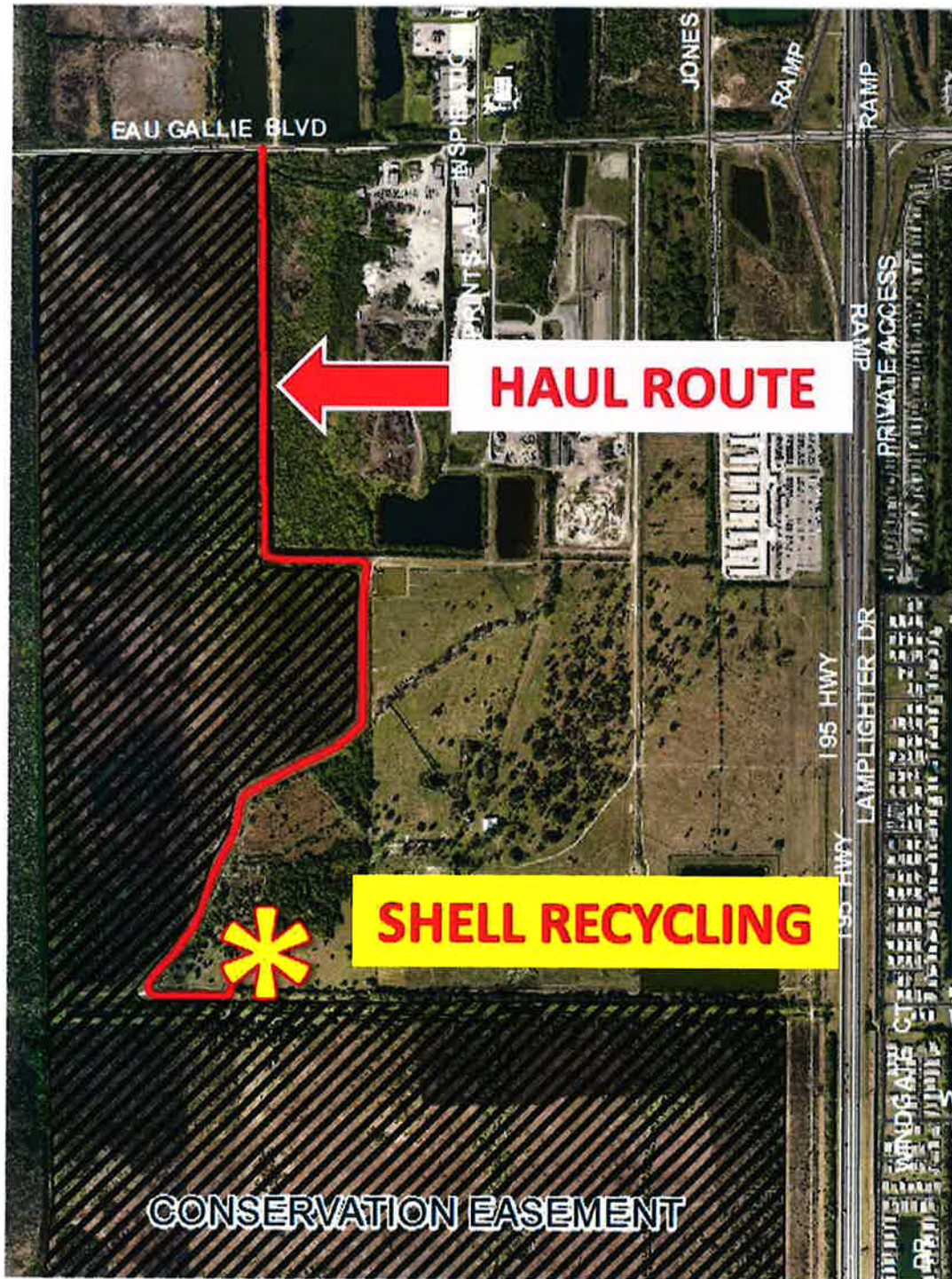
SECTION II

The following departments must approve all contracts submitted to the Board:

<u>COUNTY OFFICE</u>	<u>APPROVAL</u>		<u>INITIALS</u>	<u>DATE</u>
	<u>YES</u>	<u>NO</u>		
User Agency	✓	_____	<u>[Signature]</u>	<u>2/10/15</u>
Risk Management	✓	_____	<u>[Signature]</u>	<u>2/12/15</u>
County Attorney	✓	_____	<u>[Signature]</u>	<u>2/10/15</u>

If any office denies approval, the package will be returned immediately to the User Agency.

NOTE: This form should be attached to all new contracts being submitted to the Board for approval. After the contract has been approved, the contract package, including this form, will go to the Clerk to the Board. The Clerk's office will return the Initial Contract Form to department for contract to be entered into the Contract Management System. See AO-29 for additional information.



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