

Meeting Date
March 21, 2017



AGENDA	
Section	Consent
Item No.	II. A. 1.

AGENDA REPORT
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Agreement with Environmental Conservation Solutions to Upgrade Underdrains at County Facilities (D-1, D-2, D-3)
DEPT/OFFICE:	Natural Resources Management (NRM) Department / Stormwater

Requested Action:

It is requested that the Board of County Commissioners (1) Authorize the Chairman to execute an Agreement between Brevard County and Environmental Conservation Solutions LLC (f/k/a Plastic Tubing Industries, Inc.) to upgrade the septic system underdrains at three County facilities (2) Authorize the County Manager, or designee, to execute future contract amendments following approval from the County Attorney's Office and Risk Management.

Summary Explanation & Background:

On September 6, 2016, the Board authorized the Chair to execute Cost-Share Agreement Contract #28752 between Brevard County and St. Johns River Water Management District for Passive Nutrient Reduction at three County facility On-Site Treatment Disposal Systems. The Cost Share Agreement funds a County partnership with Environmental Conservation Solutions, LLC (f/k/a Plastic Tubing Industries, Inc.) to retrofit and upgrade three failing and/or aging County facility septic drain field systems located within close proximity of the Indian River Lagoon (IRL) or its tributaries.

ECS has been seeking approval from the Department of Health (DOH) for their innovative and patented Passive Onsite Treatment Systems (POTS)© to be considered an industry standard. In order to demonstrate its effectiveness compared to traditional drain-field systems, they are installing twenty (20) demonstration POTS throughout the State of Florida, with several in Brevard. The systems are designed to reduce nutrient and pathogen loading through the installation of bio-sorption activated media (BAM) and a multi-pipe system.

Each of the three system upgrades in Brevard is anticipated to reduce groundwater Total Nitrogen and Total Phosphorus loading. The site locations, all single-family property keeper locations per the DOH permit conditions, have now been finalized as: Chain of Lakes (Parks and Recreation), Chase Hammock Road (Public Works), and Maritime Hammock (Environmentally Endangered Lands) (Exhibit B). Each of the referenced Departments is aware of the upgrades. ECS will be managing, constructing, and fronting the entire construction costs of the three drain field upgrades, estimated at \$45,000. ECS will be reimbursed \$14,850 from the previously referenced grant cost-share from SJRWMD (\$14,850). NRM will provide post-installation monitoring at an estimated in-house labor value of \$10,000. This agreement is necessary to clarify responsibilities between ECS and Brevard County. Construction is expected to be completed by no later than May 31, 2017.

Fiscal Impact: FY 16-17: up to \$10,000 in-kind monitoring expense.

Contact: Robbyn Spratt (X56724) or Virginia Barker (X52435), NRM

Clerk to the Board Instructions: Three executed agreements required.

Exhibits Attached: Exhibit A – Clerk's Memo regarding the cost-share agreement with SJRWMD for this project
 Exhibit B – Locations of three facilities to be upgraded
 Exhibit C – Agreement with Environmental Conservation Solutions, LLC

Contract /Agreement (If attached):		Reviewed by County Attorney	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	PR <input type="checkbox"/>
County Manager		Assistant County Manager			Department Director / Extension		
Stockton Whitten		Assistant County Manager			Virginia Barker / 52435		

RECEIVED

MAR - 7 2017

County Manager's
Office

**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**

INITIAL CONTRACT FORM

SECTION I

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

1. Contractor: Environmental Conservation Solutions, LLC	
2. Fund/Account #:	Division Name: Watershed Management
4. Contract Description: Agreement between Brevard County and ECS for OSTDS Upgrades	
5. Contract Monitor: Robbyn Spratt ext. 56724 (call for pick-up)	6. Mail Stop #: 81
7. Dept./Office Director: Natural Resources Management Dept. Virginia Barker	8. Contract Type: Agreement
ACTION DATE: 3/3/17	ACTION REQUIREMENT: Review for Approval by the Board and Execution by the Chair

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>X</u>	_____	<u>RCS</u> 	<u>2/15/17</u> Revisions 3-2-17
Risk Management		_____		<u>3-3-17</u>
County Attorney	_____	_____	_____	_____

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.*

Exhibit B - Brevard County OSTDS Upgrades via ECS POTS OSTDS Upgrades

Site Location Name	Site Address	Lat./Long.	Managing Dept.
Chain of Lakes CareTaker	2300 Truman Scarborough Way, Titusville 32896	28.632419, -80.819792	P&R
Chase Hammock Road Property Keeper	995 Chase Hammock Trail Merritt Island 32953	28.448645, -80.696487	PW
Maritime Hammock Property Keeper	6100 South Hwy. A1A Melbourne Beach 32951	27.959038, -80.505220	EEL



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

Telephone: (321) 637-2001
Fax: (321) 264-6972
Tammy.Rowe@brevardclerk.us

March 22, 2017

MEMORANDUM

TO: Virginia Barker, Natural Resources Management Director Attn: Robbyn Spratt

RE: Item II.A.1., Agreement with Environmental Conservation Solutions, LLC to Upgrade Underdrains at County Facilities

The Board of County Commissioners, in regular session on March 21, 2017, executed Agreement with Environmental Conservation Solutions, LLC (f/k/a Plastic Tubing Industries, Inc.), to upgrade the septic system underdrains at three County facilities; and authorized the County Manager, or designee, to execute future contract amendments following approval from the County Attorney's Office and Risk Management. Enclosed are three executed Agreements.

Upon execution by Environmental Conservation Solutions, LLC, please return a fully-executed Agreement to this office for inclusion in the official minutes.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

Encls. (3)

cc: County Manager
Contracts Administration
Finance
Budget

AGREEMENT

THIS AGREEMENT (“Agreement”) is made and entered into between the **BOARD OF COMMISSIONERS OF BREVARD COUNTY, FLORIDA** (“Brevard County”) and Environmental Conservation Solutions, LLC., a Florida corporation (“ECS”).

WITNESSETH:

WHEREAS, ECS desires to install its Passive On-site Treatment System (POTS[®]) drainfield in accordance with the Florida Department of Health’s (FDOH) Innovative System Permit (“ISP”), as described in the FDOH approval letter dated April 14, 2016, attached and incorporated here in as Exhibit “A”, at certain locations in Brevard County, Florida; and

WHEREAS, the St. Johns River Water Management District recently awarded grant #28752 to Brevard County for a Passive Nutrient Reduction for Onsite Sewage Treatment and Disposal Project attached and incorporated herein as Exhibit “B”; and

WHEREAS, Brevard County desires to engage ECS to install such POTS[®] drainfields at certain locations in accordance with the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, the parties hereto agree as follows:

1. Installation. ECS will design and install three (3) POTS[®] drainfields which utilize Bold & Gold[®] media in each drainfield (the “Project”) in accordance with the ISP. The location for the drainfields will be selected by ECS and Brevard County by mutual agreement. ECS will be the sole source and provider for all materials and labor related to the installation. POTS[®] drainfield installations will occur under the guidance of ECS employees. ECS will select the installing contractor and provide all materials to complete the Project and pay permit fees relating to the Project. ECS is responsible for any monitoring and associated costs required by Section A.d. of the ISP
2. Disbursement of Grant Funds. Brevard County will follow SJRWMD grant reimbursement guidelines and will disburse to ECS such monies it receives pursuant to the Grant in accordance with such guidelines for qualifying expenses relating to the Project, not to exceed the per site maximum allowed by SJRWMD under the Grant. ECS will submit invoices to Brevard County regarding qualifying expenses it has incurred. ECS will be responsible for all costs over and above the amounts provided pursuant to the SJRWMD Grant and Brevard County will have no responsibility for such costs in excess of what it receives pursuant to the Grant.
3. Location. All locations associated with this agreement will be on county-owned property that meet the specifications of the ISP as shown in Exhibit A.
4. Monitoring. The POTS[®] will be monitored (sampled) for the first year following installation by Brevard County staff. During the first year of monitoring, Brevard County is responsible for the monitoring schedule and for meeting the FDOH monitoring protocol under

the ISP. The second year of monitoring will be at the expense of ECS per the ISP. During the first year of monitoring and until the permit reclassification is complete, any maintenance and repairs of the system will be at the expense of ECS. ECS is responsible for all other permit conditions and requirements associated with the ISP. ECS will be responsible for the cost and effort associated with the reclassification of the ISP to a standard permit. After one (1) year of monitoring under the FDOH ISP, the system will be the property owner's responsibility for maintenance and repairs provided the system is functioning as designed, all other ISP permit conditions besides monitoring have been met, and the permit reclassification is complete.

5. Research Data. The parties agree that the research data collected through monitoring of the POTS[®] drainfield may be used for public education, presentations, and media coverage by both parties at their discretion.

6. Warranty. If, for any reason, the POTS[®] drainfield does not perform substantially as intended during the first year after installation, ECS will be solely responsible for providing the owner with a conventional drainfield approved by the FDOH at NO COST to Brevard County or the owner of the property where the POTS[®] system was installed. ECS will be responsible for the cost and effort associated with the reclassification of the ISP to a standard permit.

7. Subordination. This Agreement is subordinate to Grant Agreement # 28752, attached as Exhibit B, and nothing in this Agreement shall conflict with or otherwise contravene the intent of the provisions of the Grant Agreement. In the event any grant funds must be refunded pursuant to the Grant Agreement, ECS shall refund any grant funds disbursed to it by Brevard County within 30 days of notification.

8. Indemnification. ECS agrees to the fullest extent permitted by law, to indemnify, defend and hold harmless Brevard County from and against all claims, losses, damages, personal injuries (including but not limited to death), or liability, arising from, out of, or caused by: ECS, its officers, employees, agents, or contractors, negligent or intentional acts, errors, omissions in the operation, maintenance, construction, repair or other use contemplated herein of the POTS[®] drainfield, except to the extent of negligence or wanton misconduct of Brevard County.

To the extent allowed by law, Brevard County agrees to indemnify and hold harmless ECS against all claims, damages, losses, and expenses, including attorney's fees, arising out of or resulting from Brevard County's monitoring of the POTS[®] drainfield sites, if such claims, damages, losses, or expenses are caused solely by the negligent or wrongful acts of Brevard County, its officers or employees. However, nothing contained herein shall constitute a waiver by either party of its sovereign immunity or the provisions of Section 768.28, Florida Statutes, or other limitations imposed on the Grantee's potential liability under state or federal law.

ECS and Brevard County agree to provide the other with written notice of any claim subject to this provision within ten (10) days of its receipt of notice that a claim exists. Notice of claim shall be deemed to be given on the date of mailing thereof by United States Mail, First Class Delivery. The parties agree to cooperate fully in the defense of any such claim.

9. Notices. Any notice to be delivered to either party under this Agreement or by any statute, decision, or rule of law shall be in writing and may be served personally or sent by registered or certified mail until a different address is furnished in writing addressed as follows:

Anthony Rios, Contract Manager for
Environmental Conservation Solutions, LLC
P.O. Box 607356
Orlando, FL 32860
407-298-5121
Anthony.Rios@enviroconsolutions.com

Robbyn C. Spratt, or Successor, Contract Manager for
BOARD OF COMMISSIONERS OF BREVARD COUNTY, FLORIDA
2725 Judge Fran Jamieson Way Building A-219
Viera, FL 32940
321-633-2016
Robbyn.Spratt@brevardfl.gov

Any such notice shall be deemed given as of the date delivered, if served personally, or as of the date when deposited in any post office box regularly maintained by the United States Postal Service, if mailed.

10: Right to Audit Records. In the performance of this Agreement, ECS shall keep books, records, and accounts of all activities, related to this Agreement, in compliance with generally accepted accounting procedures. Books, records and accounts related to the performance of this agreement shall be open to inspection during regular business hours by an authorized representative of Brevard County and shall be retained by ECS for a period of five (5) years after termination of the agreement. All records, books and accounts related to the performance of this agreement shall be subject to the applicable provisions of the Florida Public Records Act, Chapter 119, Florida Statutes.

11. Successors and Assigns. All of the terms and provisions contained herein shall inure to the benefit of and shall be binding upon the parties hereto and their respective heirs, personal representatives, successors and assigns.

12. Applicable Law and Venue. This document shall, in all respects, be governed by the laws of the State of Florida applicable to agreements executed and to be wholly performed within the State of Florida. Venue for any legal action brought by any party to this Agreement to interpret, construe or enforce this agreement shall be in a court of competent jurisdiction in and for Brevard County, Florida, and any trial shall be non-jury.

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

14. Insurance. ECS shall provide and maintain full and complete Worker's Compensation Insurance" as required by State of Florida Law for all of their employees employed at the site of the project and, in case any work is sublet, ECS shall require each Subcontractor similarly to provide full and complete "Worker's Compensation Insurance" for all of the latter's employees unless such employees are covered by the protection afforded by ECS. This coverage must include Employer's Liability with a limit of at least \$100,000 for each accident.

Insurance shall be provided and maintained with a combined single limit of \$1,000,000 for each occurrence in each of these policies with Brevard County named as additional insured as follows:

- a) Comprehensive General Liability Insurance, with a minimum of \$1,000,000 combined single limit for each occurrence to include the following coverage: Products and/or Completed Operations, Personal Injury, Contractual Liability, and no exclusions for Explosion Hazard, Collapse Hazard, and Underground Property Damage Hazard, Contractual Liability under this Contract.
- b) Comprehensive Auto Liability Insurance covering to include coverage for all owned, non-owned, and hired vehicles, in the minimum of \$1,000,000 per accident, combined single limit for Bodily Injury and Property Damage.
- c) Environmental Impairment Liability Insurance with minimum limits of \$500,000 per accident covering liability for environmental damage from an accident involving operations.

In any and all claims against Brevard County or Brevard County's employees by any employee of ECS, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for ECS or any Subcontractor under Workmen's Compensation Acts, Disability Benefit Acts or other employee benefit acts.

Before starting the work, ECS will file with the County certificates of such insurance, acceptable to Brevard County. These certificates shall contain a provision that the coverage afforded under the policies will not be canceled or materially changed until at least 30 days prior written notice has been given to Brevard County.

15. Construction of Agreement. The parties hereby acknowledge that they fully reviewed this Agreement, its attachments and had the opportunity to consult with legal counsel of their choice, and that this Agreement shall not be construed against any party as if they were the drafter of this Agreement.

16. Modifications to Contract. No modification of this agreement shall be binding on ECS or Brevard County unless reduced to writing and signing by a duly authorized representative of ECS and Brevard County.

17. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

18. Entire Agreement. This document constitutes the entire understanding and agreement of the parties with respect to the subject matter of this Agreement, and any and all prior agreements, understandings or representations are hereby terminated and canceled in their entirety.

19. Counterparts; Effectiveness. This Agreement and any amendments, waivers, consents or supplements may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which, when so executed and delivered, shall be deemed an original, but all of which counterparts together shall constitute but one agreement. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or in electronic (i.e., "pdf" or "tif") format shall be effective as delivery of a manually executed counterpart signature page.

20. Effective Date: The effective date of this Agreement is the date on which the last of the parties hereto executes this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

Attested by:



Name: Scott Ellis
Title: Clerk of Courts

**BOARD OF COMMISSIONERS OF
BREVARD COUNTY, FLORIDA**

By:


Curt Smith, Chairman

As Approved by the Board on:
March 21, 2017.

Reviewed for legal for and Content by:



Christine Valliere, Assistant County Attorney

Environmental Conservation Solutions, LLC
a Florida corporation

By: _____

Name: Chris Bogdan, President

Title: President

