

**SUMTER COUNTY BOARD OF COMMISSIONERS  
EXECUTIVE SUMMARY**

**SUBJECT:** Residential Citizen Solid Waste Drop Off (CDA) Contract Operations with ACMS, Inc.

**REQUESTED ACTION:** Approve the Final Contract as Presented on 6/12/12

Work Session (Report Only)    **DATE OF MEETING:** 6/12/2012  
 Regular Meeting                       Special Meeting

**CONTRACT:**  N/A    Vendor/Entity: ACMS, Inc.  
Effective Date: 12/30/2012                                      Termination Date: 12/29/2015  
Managing Division / Dept: Public Works

**BUDGET IMPACT:**                      Pricing is the final negotiation point as of 6/7/12; however, final pricing will be with the final contract for presentation at the 6/12/12 meeting

Annual                      **FUNDING SOURCE:** General Fund  
 Capital                      **EXPENDITURE ACCOUNT:** \_\_\_\_\_  
 N/A

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**HISTORY/FACTS/ISSUES:**

The BOCC directed the privatization of the CDA through direct negotiations with ACMS, Inc. The basis of the BOCC direction related directly to the fact that ACMS, Inc. will have their landfill in operation in January 2013. Due to the proximity of the new location of the CDA to the incoming waste stream on CR 529, the opportunity to consolidate the personnel needed for the landfill operation and the CDA provided a cost savings and increased recycling collection at the CDA.

Attached is the final draft pending the changes to the subsidy to ACMS, Inc. to operate the CDA.

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**PROFESSIONAL SERVICES AGREEMENT**  
**BETWEEN SUMTER COUNTY AND A.C.M.S., INC. FOR**  
**OPERATION OF CITIZEN DROP-OFF AREA AT**  
**SUMTER COUNTY SOLID WASTE FACILITY**

This PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into on this 12<sup>th</sup> day of June, 2012, by and between SUMTER COUNTY, a political subdivision of the State of Florida, whose address is 7375 Powell Road, Wildwood, Florida, 34785 (hereinafter the "COUNTY") and A.C.M.S., Inc., whose address is P.O. Box 949, Lake Panasoffkee, Florida, 33538, (hereinafter "ACMS"). It is hereby agreed as follows:

**Recitals**

WHEREAS, COUNTY currently owns and operates a Citizen Drop-Off Area ("CDA") of the Sumter County Solid Waste Facility ("Solid Waste Facility"); and,

WHEREAS, ACMS is a for-profit corporation, organized under the laws of the State of Florida, that is in the business of managing solid waste activities; and,

WHEREAS, COUNTY wishes to enter into this Agreement for the purpose of providing its citizens with efficient, cost-effective waste management services at its CDA; and,

WHEREAS, the Sumter County Board of County Commissioners recognizes the benefits of engaging private industry to perform certain COUNTY functions in an effort to provide efficient, high-quality and cost-effective services to its citizens; and,

WHEREAS, ACMS has expressed an interest in entering into this Agreement in an effort to provide the citizens of Sumter County with high-quality, efficient and cost-effective services at the CDA; and,

WHEREAS, the Sumter County Board of County Commissioners has determined that entering into this Agreement serves the best interests of the health, safety and welfare of the citizens of Sumter County, Florida.

**Terms and Conditions**

1. Recitals. The parties agree that the recitals which comprise the Whereas clauses to this Agreement are all true and correct and are fully intended by the parties to be completely incorporated herein as part of this Agreement *in haec verba*.

2. Term.

- a. It is the intention of the parties that the initial term of this Agreement shall be five (5) years. ACMS may request the extension of this Agreement for three (3) potential renewal terms of five (5) years each. ACMS must provide COUNTY

with written notice of its intent to extend this Agreement throughout any of the renewal terms at least one hundred and twenty (120) days prior to the expiration of the initial term of this Agreement, and at least one hundred and twenty (120) days prior to the expiration of any subsequent renewal period. The COUNTY may determine, in its sole and exclusive discretion, whether the extension of this Agreement into any of the renewal terms will be authorized. COUNTY shall notify ACMS of its decision to deny any extension or renewal term of this Agreement no later than thirty (30) days after receipt of a written notice from ACMS of its intent to extend this Agreement pursuant to this section. It is also specifically acknowledged and agreed by the parties that the initial term, and any renewal term of this Agreement, may be terminated earlier than the scheduled expiration of such term as contemplated by the provisions of this Agreement.

- b. COUNTY and ACMS acknowledge and agree that either of them may terminate this Agreement prior to the expiration of the initial term, or during any renewal term, by providing the other party with at least one hundred and eighty (180) days written notice of the terminating party's intent to terminate this Agreement. Any charges or fees incurred from the date of any notice of termination through the actual date of termination will be payable in their normal course, pursuant to the terms of this Agreement.
- c. COUNTY may terminate this Agreement for cause, by providing ACMS with at least sixty (60) days written notice of its intent to terminate this Agreement for cause. ACMS shall have thirty (30) days to cure the deficiencies identified in COUNTY'S notice of intent to terminate this Agreement for cause. If ACMS is unable to cure said deficiencies within the time provided, this Agreement shall be deemed to be terminated, and ACMS shall be required to remove all of their equipment and property from the Solid Waste Facility. ACMS will also be obligated to return any unearned fees to COUNTY.

3. Covenants of ACMS. In furtherance of this Agreement, ACMS hereby agrees to the following covenants:

- a. ACMS will comply with all existing policies of the COUNTY, as related to the Solid Waste Facility, as well as any rules or policies specific to the CDA, and to otherwise comply with any future policies that govern said areas;
- b. ACMS agrees to exercise due and appropriate care while operating the CDA, ensuring that its activities are not unreasonably impairing the ability of others to utilize the Solid Waste Facility;

- c. ACMS agrees to ensure that areas utilized by ACMS in operating the CDA are left in the manner in which they existed prior to ACMS arriving or initiating its operational activities, with the exception of reasonable wear and tear;
- d. ACMS agrees to operate the CDA facilities in a clean and sanitary manner, consistent with the DEP operating permit attached hereto as Exhibit "A";
- e. ACMS agrees to provide any and all requested documentation associated with this Agreement that COUNTY may request, including but not limited to, corporate documents, license information and proof of insurance;
- f. ACMS agrees to report any accidents or injuries occurring at the CDA to COUNTY'S Public Works Director ("PWD") within twenty-four (24) hours of occurrence;
- g. ACMS agrees to ensure and verify through appropriate process, including background checks, that no individual or employee associated with its operational activities will be present at the CDA for any purpose, is a Sexual Predator or Sexual Offender as defined by Florida Statutes Chapter 775, Florida Statutes Chapter 943, any similar or analogous law of another jurisdiction or any statute which is intended by the Legislature to be a successor to any of the aforementioned statutes;
- h. ACMS agrees to certify its use of the U.S. Citizenship and Immigration Service E-Verify;
- i. ACMS agrees to conduct operations at the CDA only during the following days and hours: Monday through Saturday, 7:00 a.m. to 4:00 p.m., daily. It is understood that any changes to the operating days or times shall be authorized by COUNTY in writing by the PWD, prior to any such changes taking effect;
- j. ACMS agrees to indemnify and hold COUNTY harmless for any damage or injury to any person or property caused by ACMS's negligence, intentional acts or omissions;
- k. ACMS agrees to repair any damage caused to any County property or personal property of another by caused by ACMS's operations; furthermore, ACMS shall reimburse the COUNTY in the event COUNTY expends any funds for any costs, labor or other expenses reasonably expended to make reasonable repairs of any such damages.
- l. ACMS will take over operation of the Sumter County CDA at 0700 December 31, 2012.
- m. ACMS's sole consideration for conducting the operations contemplated by this Agreement shall be the cash receipts received from operating the CDA, to include income derived from the sale of scrap metals, cardboard, other recyclable

items, and the fixed subsidy payable to ACMS from COUNTY, said subsidy including COUNTY's payment of the utilities for the CDA, as agreed upon by County for each five (5) year term.

- n. ACMS acknowledges and agrees that a Small County Solid Waste Grant will not be requested by COUNTY for the CDA, by virtue of the fact that the CDA will be operated by a commercial entity.
- o. ACMS agrees that it must maintain the same level of service currently provided to customers of the CDA, and shall provide customer support at the existing CDA, as well as the new CDA area once said facility is re-located.
- p. ACMS shall report weights and provide sufficient staffing for the annual household hazardous waste "Amnesty Day". It is understood that this provision shall only include services on the actual date of the "Amnesty Day" event.
- q. ACMS shall not change the fee schedule charged at the CDA without COUNTY's written authorization, and further acknowledges that the Senior Permit, currently in place, will remain in effect.
- r. ACMS shall distribute quality assurance survey cards to each resident that stops at the CDA cash window.
- s. ACMS acknowledges that COUNTY will continue to use Quality Assurance Survey Cards to monitor the citizen's feedback regarding the operation of the CDA.
- t. ACMS shall not limit access to COUNTY's staff, its consultants or agents or the City of Bushnell staff, to their wastewater treatment plant and any others that may later be identified by COUNTY anywhere on the Solid Waste Facility, with the understanding that such access shall not unreasonably impede ACMS's operations.
- u. ACMS shall provide any and all information to COUNTY'S Public Works Division ("PWD") which may be necessary required reporting to the State of Florida regarding waste and recycling.

- v. ACMS acknowledges that PWD may use inmate crews for maintenance of other areas at the Solid Waste Facility.
- w. ACMS shall maintain the CDA yard, cash window, and other areas accessed or utilized in a clean and sanitary state.
- x. ACMS agrees to grant due consideration to the current employees of the CDA, when hiring personnel for their operations at the CDA.
- y. ACMS shall use and maintain their own Material Handling Equipment (“MHE”) for operation of the CDA.
- z. ACMS shall use their own computer system and software for the operation of the CDA, which is capable of tracking all aspects of the operation of the CDA.
- aa. ACMS shall provide CDA workers with their appropriate uniforms that contain employee first name identification and ACMS logos.
- bb. ACMS shall provide all the necessary equipment to operate the CDA to include, but not be limited to, any and all roll-off containers, balers, tire de-mount equipment, and any other equipment required by the DEP permit or otherwise necessary to comply with this Agreement.
- cc. ACMS may have access to pictures and data from the closed circuit television (“CCTV”) cameras around the new CDA upon written request.
- dd. ACMS shall be responsible for locking and unlocking the CDA yard gate in accordance with approved operating hours.
- ee. ACMS agrees that ACMS personnel working in the cash window area of the new Animal Services and CDA building shall not use other portions of that building other than the cash window area, break room and restrooms. ACMS further agrees that its employees shall utilize the cash window, break room and restrooms in a neat and clean manner, and shall not otherwise impede other COUNTY operations conducted within the Animal Services and CDA building.

- ff. ACMS acknowledges that PWD will be responsible for modifications to the permit or operations manual and all associated costs except those proposed by ACMS to COUNTY for consideration.
- gg. ACMS acknowledges that the DEP permits for the Solid Waste Facility and CDA shall remain in the name of COUNTY, identifying ACMS as the operator of the CDA. ACMS shall be responsible for complying with the DEP permit and providing notification to DEP (and PWD) of any unusual occurrences at the CDA.
- hh. ACMS acknowledges that it shall be responsible for any fines DEP may levy and furthermore, shall be responsible for any required corrective actions, and costs associated for such corrective action, for violations associated with ACMS's operation of the CDA. ACMS, at its own expense, may appeal said determinations by DEP, pursuant to any applicable procedures established by DEP for such appeals.
- ii. ACMS shall be responsible for any spills (oil, chemical, etc.) or leachate, should any such spills occur during ACMS operation of the CDA.
- jj. ACMS shall be responsible for maintaining insurance on the property/buildings/equipment/workers, at the levels required by COUNTY, and shall name COUNTY as an additional insured on any such policies.

4. Worker's Compensation Insurance. ACMS shall maintain its own Worker's Compensation Insurance and Employer's Liability, as they may be respectively applicable, in accordance with Florida Statutes Chapter 440.

5. Indemnification. ACMS agrees to and shall indemnify, defend and hold harmless COUNTY, its offices, agents and employees from and against any and all claims, losses or liability, or any portion thereof, including attorney's fees and costs, arising from injury or death to persons, including injuries, sickness, disease or death to the ACMS's own employees or participants or damage to property occasioned by ACMS's operation of the CDA, including, but not necessarily limited to any negligent act, omission or failure of ACMS during its operation of the CDA.

COUNTY expressly retains all rights, benefits and immunities of sovereign immunity in accordance with Section 768.28 Florida Statutes. Notwithstanding anything set forth in any section, article or paragraph of this Agreement to the contrary, nothing in this Agreement shall be deemed as a waiver of sovereign immunity or limits of liability which may have been adopted by the Florida Legislature or may be adopted by the Florida Legislature, and the cap on the amount and liability of County for damages, attorney's fees and costs, regardless of the number or nature of claims in tort, equity or contract, shall not exceed the dollar amount set by the Florida Legislature for tort. Nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim against COUNTY which would otherwise be barred by the Doctrine of Sovereign Immunity or operation of law.

6. General Liability Insurance. ACMS shall continuously have in effect for the duration of this Agreement, at a minimum, an Insurance Policy of General Liability from an insurance company having a financial rating of A- or higher as set forth by A.M. Best. In addition, ACMS agrees that:

- a. Said policy shall have a limit of liability not less than \$1,000,000.00 per Occurrence and \$2,000,000.00 in the Annual Aggregate.
- b. The policy shall not contain any endorsement(s) excluding nor limiting independent contractors, broad form property damage, contractual liability or cross liability.
- c. The self-insured retention or deductible shall not exceed \$25,000.00.

7. Certificates of Insurance. ACMS shall provide the COUNTY with Certificate(s) of Insurance clearly evidencing that all coverage, limits and endorsements required herein or which are otherwise requested by the COUNTY from time to time are in full force and effect. A minimum thirty day endeavor to notify due to cancellation or non-renewal of coverage shall be indentified on each Certificate of Insurance In the even the COUNTY is notified that a required insurance coverage will cancel or expire during the period of this Contract, ACMS agrees to furnish the COUNTY prior to the expiration of such insurance, a new Certificate of Insurance evidencing replacement coverage. When notified by the COUNTY, ACMS shall cease providing the program or otherwise utilizing COUNTY facilities for storage pursuant to this Agreement unless all required insurance remains in effect. Nothing contained herein shall permit ACMS to permit insurance to lapse in order to avoid its obligations under the Contract and any such cessation of insurance prior to the end of the term shall not alleviate ACMS of its liability for damages incurred by the COUNTY, should such damages exist. In the event that ACMS fails to maintain insurance as set forth herein, the COUNTY shall have the right, but not the obligation to purchase replacement insurance and the ACMS agrees to reimburse any premiums or expenses incurred by the COUNTY as a result.

- a. ACMS agrees that the Certificate(s) of Insurance shall:

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- i. Clearly indicate the COUNTY has been endorsed on the Commercial General Liability with a CG 2010 Additional Insured – Owners, Lessees, or Contractors, or CG 2026 Additional Insured – Owners, Lessees, or contractors – Scheduled Person or Organization endorsement, or similar endorsement providing equal or greater Additional Insured coverage.
- ii. Clearly identify each policy’s limits, flat and percentage deductibles, sub limits or self-insured retentions which exceed the amounts or percentages set forth herein.
- iii. Clearly indicate a thirty day endeavor to notify requirement in the event of cancellation or non-renewal of coverage.
- iv. Have the name of the organization endorsed as the additional insured for all endorsements be listed as “Sumter County Board of County Commissioners.”
- v. Forward original to and clearly indicate Certificate Holder and Additional Insured as:

1. Sumter County Board of County Commissioners  
Attention: Financial Services  
7375 Powell Road, Suite 206  
Wildwood, FL 34785

8. Deductibles, Coinsurance Penalties, etc. ACMS shall be fully and solely responsible for any costs or expenses as a result of a coverage deductible, coinsurance penalty or self-insured retention, including any loss not covered because of the operation of such deductible, coinsurance penalty, self-insured retention or coverage exclusion or limitation.

9. Waiver of Subrogation. ACMS shall provide a waiver of subrogation in favor of the COUNTY for each required policy providing coverage during the life of the Contract. When required by the insurer, or should a policy condition not permit ACMS to enter into a pre-loss agreement to waive subrogation without an endorsement, then ACMS shall notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or an equivalent endorsement. This Waiver of Subrogation requirement shall not apply to any policy which includes a condition specifically prohibiting such an endorsement or voids coverage should the ACMS enter into such an Agreement on a pre-loss basis.

10. COUNTY’s Right to Revise or Reject. COUNTY reserves the right, but not the obligation, to review and revise any insurance requirement, not limited to limits, coverage and endorsements based on insurance market conditions affecting the availability or affordability of coverage. Additionally, COUNTY reserves the right, but not the obligation, to review and reject any insurance policies which fail to meet the criteria stated herein or which are otherwise, in the sole discretion of COUNTY, inadequate or deficient, or any insurer(s) providing coverage due to

its poor financial condition, failure to operate legally or for any other reason which the COUNTY, in its sole discretion, deems fit. In such an event, COUNTY shall provide ACMS written notice of such a revision or rejection.

11. No Representation of Coverage Adequacy. The coverage limits or endorsements, as required herein or which may from time to time be amended by the COUNTY in its sole discretion, protect the interests of the COUNTY, and these coverages, limits or endorsements shall in no way be required to be relied upon when assessing the extent or determining appropriate types of limits of coverage to protect the ACMS against any loss exposures, whether as a result of the programs, issues or storage arrangements detailed herein or otherwise.

12. Waiver. Any waiver by any party of a breach of any provision of this Agreement by any other party shall not operate or be construed as a waiver of any subsequent breach by that party. To be effective, any waiver must be in writing and signed by the applicable party (with the same formalities as this Agreement).

13. Binding Effect. The rights and obligations of the parties under this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties.

14. Governing Law and Submission to Jurisdiction. This Agreement shall be interpreted, construed and governed according to the laws of the State of Florida without regard to conflicts of laws principles that would result in the application of the laws of any other jurisdiction. Both parties agree that all disputes, claims, actions or lawsuits between them arising out of this Agreement, or for the alleged breach of this Agreement, shall be heard and determined by a state court sitting in Sumter County Florida. Nothing contained within this Agreement shall be construed to allow or permit the party bringing any claim, action or lawsuit to do so in any Court other than state courts sitting in Sumter County, Florida and constitutes an express and irrevocable waiver of litigating any dispute in a Federal Court. Furthermore, each party waives its right to a jury trial.

15. Waiver of Jury Trial. THE PARTIES WAIVE ANY RIGHT TO JURY TRIAL IN CONNECTION WITH ANY LAWSUIT BROUGHT BY ANY PARTY UNDER OR PURSUANT TO THIS AGREEMENT.

16. Attorney's Fees. The prevailing party in any litigation to enforce the terms of this Agreement shall be entitled to have its reasonable attorney's fees and costs reimbursed by the non-prevailing party.

17. Severability. All agreements and covenants contained herein are severable, and in the event any of them shall be held to be prohibited or invalid under applicable law, the Agreement shall be interpreted as if such invalid covenants were not contained herein.

18. Other Agreements. This Agreement is the whole Agreement and is the only Agreement between the parties. This Agreement supersedes any prior oral or written contracts between the parties. This Agreement may not be amended except in writing signed by the parties.  
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19. Assignability. ACMS shall not be authorized to assign this Agreement to any other individual or entity without the express written authorization of COUNTY. COUNTY agrees not to unreasonable withhold authorization for ACMS to assign this Agreement to a duly organized subsidiary of ACMS, which has been properly registered with the Florida Secretary of State as a wholly owned corporate entity. Furthermore, COUNTY shall not prohibit ACMS from operating the CDA under a fictitious name, duly registered by ACMS with the Florida Secretary of State.

20. Counterparts and Facsimile Signatures. This Agreement may be executed in two or more copies, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement or its terms to produce or account for more than one of such copies. Execution and delivery of this Agreement by exchange of facsimile copies bearing the facsimile signature of a party hereto shall constitute a valid and binding execution and delivery of this Agreement by such party. Such facsimile copies shall constitute enforceable original documents.

21. Exhibits and Interpretation. The terms of any Exhibits incorporated into this Agreement shall be supplemental to the terms of the Agreement. Any contradictory or vague terms shall be resolved in favor of construing provisions of the Agreement as valid and reasonable.

22. Subsidy. The annual subsidy shall be \$60,000.00 for the first term of this Agreement, and shall be paid in twelve equal monthly installments, payable on the fifth day of each month, beginning in January 2013. In addition to this subsidy amount, COUNTY agrees to provide and pay for all utilities utilized at the CDA, and shall make such payments directly to the utility provider. Upon ACMS providing COUNTY with written notice of its intent to extend this Agreement beyond the initial term, or any subsequent renewal term, the Parties shall determine any modifications to the subsidy.

For Sumter County:

For ACMS

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Signed

(Print Name) \_\_\_\_\_

(Print Name) \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_