

INDEPENDENT CONTRACTOR AGREEMENT

THIS AGREEMENT (Contract") is made this 14th day of December, 2010, by and among the Board of County Commissioners of Sumter County, Florida (the "Board"), 7375 Powell Road, Suite 200, Wildwood, FL 34785 (the "County"), Omni Waste of Osceola County, LLC ("Omni"), and Waste Services of Florida, Inc. ("WSI") (Omni and WSI are hereinafter collectively referred to as the "Independent Contractor").

WHEREAS, the Board has duly advertised bids and selected to award a contract for transportation and disposal of large off-road, and construction tires such as loaders, and agricultural tires, loaded in a 40 cubic yard container supplied by the County, from the Sumter County Solid Waste Transfer Station located in Lake Panasoffkee, Florida. to Omni Landfill located in St. Cloud, FL, and;

WHEREAS, the Independent Contractor is capable of providing all services as called for in the bid specifications and this Contract.

WHEREAS, this Contract supersedes the bid, specifications and the terms and conditions described herein shall prevail;

NOW THEREFORE, the parties agree as follows:

1. County does hereby contract with the Independent Contractor to provide goods and or services consistent with the Scope of Work attached hereto and incorporated herein as Exhibit "A".
2. The parties accept the above recitals as true and correct, and incorporate them as stated herein.
3. **Commencement and Completion.** The services outlined in Exhibit "A" must be commenced within five (5) days of the date the last party executes this Agreement.
4. **Contract Sum.** The Independent Contractor shall be paid \$400 per round trip and \$80 per ton disposed at Omni's JED Landfill (the "Contract Sum") upon completion of the services contemplated by the Scope of Work attached hereto as Exhibit "A". Any increase or decrease in the Scope of Work within Exhibit "A" must result in a proportionate increase or decrease in the Contract Sum, which must be agreed to by the parties and set forth in writing. There shall be no increases in the Contract Sum without the written approval of the County. Contractor shall bill the County on the first business day of each month, and upon receipt of such bill, the County shall remit funds within thirty (30) calendar days and otherwise comply with Florida's prompt payment law.

5. All goods and/or services provided by Independent Contractor shall be performed and/or provided in a good and workmanlike fashion in compliance with any applicable industry standards and any applicable codes and regulations.
6. The Independent Contractor agrees to secure and maintain any and all proper and applicable County, Municipal and State licensing and permits and abide by all applicable Federal, State and Local Regulations.
7. The Independent Contractor must maintain, on a primary basis and at its sole expense, at all times during the life of this Contract, or the performance of work hereunder, the insurance coverages described herein.
8. **Financial Rating of Insurance Companies** All insurance companies must have financial rating of A- or higher by A.M. Best.
9. **Commercial General Liability** The Independent Contractor shall maintain Commercial General Liability at a limit of liability not less than **\$1,000,000** Each Occurrence and **\$2,000,000** Annual Aggregate.
10. **Business Automobile Liability** The Independent Contractor shall maintain Business Automobile Liability at a limit of liability not less than **\$1,000,000** Each Occurrence. Coverage shall include liability for Owned, Non-Owned & Hired automobiles. In the event the Independent Contractor does not own automobiles, the Independent Contractor shall maintain coverage for Hired & Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.
11. **Worker's Compensation Insurance & Employers Liability** The Independent Contractor shall maintain its own Worker's Compensation Insurance & Employers Liability in accordance with Florida Statute Chapter 440. **(NOTE: Elective exemptions or coverage through an employee leasing arrangement will NOT satisfy this requirement).**
12. **Umbrella or Excess Liability (needed for large contracts as determined by Risk Management)** The Independent Contractor shall maintain either a Commercial Umbrella or Excess Liability at a limit of liability not less than **\$2,000,000** Each Occurrence and **\$2,000,000** Aggregate. The Independent Contractor shall list the County as an **"Additional Insured"** on the Umbrella or Excess Liability certificate, unless the Commercial Umbrella/Excess Liability provides coverage on a pure "True Follow-Form" basis, or the County is automatically defined as an Additional Protected Person.

13. **Certificate'(s) of Insurance** shall:

1. 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.
2. Clearly indicate the County is listed as an Additional Insured, or Loss Payee, on the Builder's Risk, and when applicable, Additional Insured on the Commercial Umbrella/Excess Liability as required herein.
3. Clearly indicate a minimum thirty (30) day endeavor to notify requirement in the event of cancellation or non-renewal of coverage.
4. Forward original to and clearly indicate Certificate Holder and Additional Insured as follows:

Sumter County Board of County Commissioners
Risk Management Department
Attn: Lita Hart
7375 Powell Road
Wildwood, FL 34785

14. **Indemnification**

(A) WITHOUT WAIVING THE PROTECTIONS OF SOVEREIGN IMMUNITY AND F.S. 768.28, TO THE EXTENT AVAILABLE UNDER LAW, THE COUNTY SHALL DEFEND (IF REQUESTED BY INDEPENDENT CONTRACTOR), INDEMNIFY, AND HOLD HARMLESS INDEPENDENT CONTRACTOR, ITS DIRECT AND INDIRECT SUBSIDIARIES AND AFFILIATES AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND SERVANTS, FROM AND AGAINST ANY AND ALL LIABILITIES, CLAIMS, DEMANDS, CAUSES OF ACTION, PENALTIES, FORFEITURES, SUITS, AND THE COSTS AND EXPENSES INCIDENT THERETO, INCLUDING THE COSTS OF DEFENSE, SETTLEMENT AND REASONABLE ATTORNEYS' FEES, WHICH INDEPENDENT CONTRACTOR MAY HEREAFTER INCUR, BECOME RESPONSIBLE FOR, OR PAY OUT AS A RESULT OF DEATH OR BODILY INJURIES TO ANY PERSON, DESTRUCTION OR DAMAGE TO ANY PROPERTY, CONTAMINATION OF OR ADVERSE EFFECTS UPON THE ENVIRONMENT, OR ANY VIOLATION OF LAWS, (I) CAUSED IN WHOLE OR IN PART BY THE COUNTY'S BREACH OF ANY WARRANTY, TERM, OR PROVISION OF THIS AGREEMENT OR (II) ARISING OUT OF ANY NEGLIGENT OR WILLFUL ACTS OR OMISSIONS OF THE COUNTY, ITS EMPLOYEES, AGENTS, DESIGNEES, OR SUBCONTRACTORS IN THE PERFORMANCE OF THIS AGREEMENT (INCLUDING

ANY PERSON AUTHORIZED BY SUCH PARTY TO PICKUP, DELIVER OR TRANSPORT SOLID WASTE).

(B) TO THE SAME EXTENT THAT THE COUNTY WOULD BE LIABLE TO INDEPENDENT CONTRACTOR WITHOUT WAIVING THE PROTECTIONS OF ITS SOVEREIGN IMMUNITY AND F.S. 768.28, INDEPENDENT CONTRACTOR SHALL DEFEND (IF REQUESTED BY COUNTY), INDEMNIFY, AND HOLD HARMLESS THE COUNTY, ITS DIRECT AND INDIRECT SUBSIDIARIES AND AFFILIATES AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND SERVANTS, FROM AND AGAINST ANY AND ALL LIABILITIES, CLAIMS, DEMANDS, CAUSES OF ACTION, PENALTIES, FORFEITURES, SUITS, AND THE COSTS AND EXPENSES INCIDENT THERETO, INCLUDING THE COSTS OF DEFENSE, SETTLEMENT AND REASONABLE ATTORNEYS' FEES, WHICH THE COUNTY MAY HEREINAFTER INCUR, BECOME RESPONSIBLE FOR, OR PAY OUT AS A RESULT OF DEATH OR BODILY INJURIES TO ANY PERSON, DESTRUCTION OR DAMAGE TO ANY PROPERTY, OR ANY VIOLATION OF LAWS TO THE EXTENT CAUSED AT THE DISPOSAL FACILITY BY: (I) INDEPENDENT CONTRACTOR'S BREACH OF ANY WARRANTY, TERM, OR PROVISION OF THIS AGREEMENT OR (II) ANY NEGLIGENT OR WILLFUL ACTS OR OMISSIONS OF INDEPENDENT CONTRACTOR, ITS EMPLOYEES, AGENTS, DESIGNEES, OR SUBCONTRACTORS IN THE PERFORMANCE OF THIS AGREEMENT.

(C) SUBJECT TO THE LIMITATIONS ON DAMAGES IN SECTION 14(D) HEREOF, THE LIABILITIES AND OBLIGATIONS OF THESE INDEMNITIES ARE EXPRESSLY INTENDED TO COVER, AMONG OTHER LIABILITIES, DAMAGES, CLAIMS AND STRICT LIABILITY ARISING UNDER APPLICABLE LAWS. THE PARTIES UNDERSTAND AND AGREE THAT THE OBLIGATIONS SET FORTH IN THIS SECTION 14(A), 14(B) AND 14(C) WILL SURVIVE THE PERFORMANCE AND TERMINATION OF THIS AGREEMENT.

(D) NEITHER COUNTY NOR INDEPENDENT CONTRACTOR SHALL BE AWARDED CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES FOR ANY BREACH OF THIS CONTRACT, EACH OF WHICH IS EXPRESSLY WAIVED.

15. **Deductibles, Coinsurance Penalties, & Self-Insured Retention** The Independent Contractor 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.

16. **Waiver of Subrogation** The Independent Contractor shall provide a Waiver of Subrogation in favor of the County for each required policy providing coverage during the life of this Contract.

17. **Certificate(s) of Insurance** The Independent Contractor shall provide the County with Certificate(s) of Insurance clearly evidencing that all coverages, limits required herein are maintained and in full force and effect. A minimum thirty (30) day endeavor to notify due to cancellation or non-renewal of coverage shall be identified on each Certificate of Insurance. In the event the County is notified that a required insurance coverage will cancel or expire during the period of this Contract, the Independent Contractor 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, the Independent Contractor agrees not to continue work pursuant to this Contract, unless all required insurance remains in effect.
18. The County shall have the right, but not the obligation, of prohibiting the Independent Contractor from entering the Project site until a new Certificate of Insurance is provided to the County evidencing the replacement coverage. If the Independent Contractor fails to maintain the insurance as set forth herein, the Independent Contractor agrees the County shall have the right, but not the obligation, to purchase replacement insurance, which the Independent Contractor agrees to reimburse any premiums or expenses incurred by the County.
19. **Governing Law** All questions, issues or disputes arising out of or under this Contract, shall be governed by the laws of the State of Florida and State jurisdiction is hereby agreed by Independent Contractor to be only in Sumter County, Florida, and Federal jurisdiction is hereby agreed by Independent Contractor to be only in the Middle District of Florida and all Federal litigation by subject matter or removal must be filed and litigated in Tampa, Hillsborough County, Florida. In the event suit is commenced to enforce this Contract, costs of said suit including reasonable attorneys fees in all proceedings, trials, investigations, appearances, appeals and in any bankruptcy proceeding or administrative proceeding shall be paid to the prevailing party by the other party. In the event any litigation is commenced by either party to enforce this Contract, the action will be filed and litigated in a Court of competent jurisdiction located only in Sumter County, Florida. Independent Contractor waives any and all rights to have this action brought in any place other than Sumter County, Florida, under applicable venue laws. Independent Contractor hereby agrees the jurisdiction and venue of all disputes arising out of this Contract lie in no Court other than those stated above.
20. **General** The invalidity of any provision of this Contract or any covenant herein contained on the part of any party shall not affect the validity of any other provision or covenant hereof or herein contained which shall remain

in full force and effect. The County and Independent Contractor agrees to do all such things as may be reasonably necessary or desirable to completely and effectively carry out the terms and conditions of this Contract. Time shall be of the essence in this Contract. In this agreement, wherefore the singular and masculine are used, they shall be construed as if the plural or the feminine or the neuter had been used, where the context or the party or parties so requires, and the rest of the sentence shall be construed as if the grammatical and the terminological changes thereby rendered necessary had been made. Paragraph headings are provided as an organizational convenience and are not meant to be construed as material provisions of this agreement. Independent Contractor agrees this Contract is consummated and entered into in Sumter County, Florida.

21. **Severability** Whenever possible each provision and term of this Contract will be interpreted in a manner to be effective and valid but if any provision or term of this Contract is held to be prohibited or invalid, then such provision or term will be ineffective only to the extent of such prohibition or invalidity, without invalidating or affecting in any manner whatsoever the remainder of such provision or term or the remaining provisions or terms of this Contract.
22. **Attorney's Fees** If any action is commenced to construe or enforce this Contract or the rights and duties created hereunder, then the party prevailing in the action shall be entitled to recover its costs and fees in the action, the cost and fees incurred in any appeal thereof, and the costs and fees incurred in enforcing any judgment entered as a consequence of an action.
23. Independent Contractor shall not be construed to be the agent, servant or employee of the County or of any elected or appointed official thereof, for any purpose whatsoever, and further Independent Contractor shall have no express or implied authority of any kind or nature whatsoever, to incur any liability, either in contract or in tort, as the agent, servant, or employee of the Board.
24. The Contract shall be binding upon the parties hereto, their successors and assigns.
25. This Contract shall not be assigned by either party without the express written consent of the other party; provided, however, that that the Independent Contractor may assign this Contract to any direct or indirect affiliate or subsidiary of the Independent Contractor or to any person or entity succeeding to all or substantially all of the Independent Contractor's

assets (whether by operation of law, merger, consolidation or otherwise) without the County's consent.

26. **Independent Contractor** It is understood that WSI and OMNI, including any of their employees or agents, are independent contractors and not an agent or employee of the County for any purpose including, but not limited to, federal tax and other state and federal law purposes. The Independent Contractor assumes responsibility for payment of all federal, state and local taxes imposed or required of the Independent Contractor under unemployment insurance, Social Security and income tax laws. Independent Contractor shall be solely responsible for any worker's compensation insurance required by law and shall provide the County with proof of insurance upon demand. The parties agree that the County will not:

- (a) Pay dues, licenses or membership fees for Independent Contractor;
- (b) Control the method, manner or means of performing and providing the goods and services within Exhibit "A"; or
- (c) Restrict or prevent Independent Contractor from working for any other party except as specially provided for in non-compete agreements entered into between the parties for independent consideration.

The County does not have the right or power to enter into any contract or commitment on behalf of the Independent Contractor, including entering into agreements with third parties, exercising incidents of ownership with respect to property owned by the Independent Contractor, or executing documents on the Independent Contractor's behalf.

27. **Hazardous Materials and Environmental Compliance (as applicable)**

The County warrants that the waste materials delivered to Contractor hereunder will contain no regulated hazardous, toxic or radioactive wastes or substances as defined by applicable law or regulations nor any "special waste". "Special Waste" includes the following: all treated/de-characterized (formerly hazardous) wastes; polychlorinated biphenyl ("PCB") wastes; industrial process wastes; asbestos containing material; chemical containing equipment; demolition debris; incinerator ash; medical wastes; off-spec chemicals; sludges; spill-cleanup wastes; underground storage tank ("UST") soils; and wastes from petro-service industries. Contractor shall acquire title to the waste materials when loaded into Contractor's vehicles; provided, however, that title to and liability for any waste materials excluded from the Agreement above shall remain with County.

28. **Citizenship** The Independent Contractor shall not employ individuals not licensed or legally permitted to work in the United States of America

(“Illegal Aliens”). Independent Contractor shall maintain current Employee Eligibility Verification Forms (I-9 Forms) for all employees of Independent Contractor. County reserves the right to audit Independent Contractor’s employee records without cause or notice to verify that all employees of Independent Contractor are licensed or legally permitted to work in the United States of America and are not Illegal Aliens. Should Independent Contractor or County discover that Contractor is employing an individual who is an Illegal Alien as defined herein, that individual shall be immediately discharged by Contractor from this Contract and shall not be allowed to participate in the work described by this Contract in any manner. It is understood that it is the duty of Contractor to prevent the employment of Illegal Aliens, and the County’s right to audit Contractor’s employee records does not evidence or suggest a duty on behalf of County to perform such audit or otherwise police the legal status of Independent Contractor’s employees.

29. This Contract was executed the day and year first above written, and will remain in effect for one year. The County retains the right to renew this contract, with the consent and mutual written agreement of the Independent Contractor, under the same terms and conditions for two (2) additional one (1) year terms. Additional terms and conditions and/or services may be added to this contract upon satisfactory negotiation of price by the contract manager and the independent contractor.

Deputy Clerk

BOARD OF COUNTY COMMISSIONERS,
SUMTER COUNTY, FLORIDA

Witness:

By: _____

Title: _____

WASTE SERVICES OF FLORIDA, INC.

Witness:

By: _____

Title: _____

LLC

OMNI WASTE OF OSCEOLA COUNTY,

Witness:

By: _____

Title: _____

EXHIBIT A – SCOPE OF WORK

Transportation and disposal of off-road loader and other large tires such as construction and farm equipment tires, including all 10.00 – 20 and larger tires, in a 40 cubic yard container provide by Sumter County.

The designated disposal facility for this will be the Omni's JED Landfill, 1501 Omni Way, St. Cloud, FL 34773. The haul cost is \$400 per bin/load and the disposal cost is \$80 per ton.

The contractor will ensure the loads remain in tact, that there are no additions or deletions to the loads, from the time they depart the Sumter County Solid Waste Facility until tipped at the designated location.

The Contractor is required to ensure their drivers submit a trip ticket or receipt to the staff at the CDA, for each bin pulled, reflecting the date, truck number, bin number and load.