

**SUMTER COUNTY BOARD OF COMMISSIONERS  
EXECUTIVE SUMMARY**

**SUBJECT:** ACMS Class I Landfill Memorandum of Agreement

**REQUESTED ACTION:** Approve the Memorandum of Agreement

Work Session (Report Only)    **DATE OF MEETING:** 9/28/2010  
 Regular Meeting                       Special Meeting

**CONTRACT:**  N/A

Vendor/Entity: ACMS

Effective Date: 10/1/2010

Termination Date: \_\_\_\_\_

Managing Division / Dept: \_\_\_\_\_

Public Works

**BUDGET IMPACT:** Varies on Impact

Annual

**FUNDING SOURCE:** ACMS

Capital

**EXPENDITURE ACCOUNT:** N/A

N/A

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**HISTORY/FACTS/ISSUES:**

A memorandum of agreement (MOA) previously existed between ACMS and Sumter County related to the approval of a construction and demolition (C&D) facility proposed for location on CR529. With the recent annexation into the city limits of Bushnell and the use change proposed to a Class I landfill, a new MOA is required as well as providing for the lease of the scales and scale house for the duration of the Class I landfill operations.

Attached is a draft prepared by the County Attorney and modified based on comments from Public Works. An updated contract following negotiations with ACMS and final review by the County Attorney will be provided prior to the BOCC meeting.

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**MEMORANDUM OF AGREEMENT  
ACMS, INC.  
JOINT USE OF SUMTER COUNTY SOLID WASTE FACILITY TO ACCESS  
CLASS I SOLID WASTE LANDFILL**

This Memorandum of Agreement (the "Agreement") made this 28<sup>th</sup> day of September, 2010, by and between the County of Sumter, State of Florida (the "County"), and ACMS, Inc., ("ACMS")

**WITNESSETH:**

**WHEREAS**, ACMS is the fee simple owner of certain real property located in Sumter County, Florida, described in Exhibit "A", attached hereto and incorporated herein (the "property"), and;

**WHEREAS**, on the 14<sup>th</sup> day of August 2007, ACMS received conditional use approval by the Board of County Commissioners (BOCC) for the development of an 80 acre construction and demolition landfill (C & D) facility (C2007-0001), and;

**WHEREAS**, on the 22<sup>nd</sup> day of January, 2008, ACMS, received operating permit approval by the BOCC for the operation of a Construction & Demolition Material Disposal Facility (OP2007-001) ("C&D Facility"), and;

**WHEREAS**, on the 22<sup>nd</sup> day of January, 2008, ACMS entered into a Memorandum of Agreement with the BOCC for the use of the Sumter County Solid Waste Facility to access a C&D Facility (the "CD Agreement"), and;

**WHEREAS**, pursuant to the CD agreement, ACMS contributed the sum of \$33,000.00 toward the replacement of the scales located on BOCC property in exchange for certain rights of access, and

**WHEREAS**, ACMS property intended for use as a Construction and Demolition Landfill has been annexed into the City of Bushnell, and;

**WHEREAS**, ACMS is now seeking a permit for a Class I Solid Waste Landfill, and;

**WHEREAS**, an agreement is needed to supersede and replace the CD Agreement, and;

**WHEREAS**, ACMS and the County find that this Agreement evidencing cooperation in the operation of ACMS' Class I Solid Waste Landfill is in the best interest of both Parties.

**NOW THEREFORE**, in consideration of the foregoing, accepting the above WHEREAS clauses as true and with the intention that they will be legally bound, the Parties agree that the following terms and conditions shall apply to utilization of the SCSWF by Sumter County and ACMS:

1. Joint access shall be across the Sumter County Solid Waste Facility (SCSWF) scales.
2. Within 90 days of the end of the ACMS' first year of operation of the Class I Landfill, ACMS shall employ an Engineering Firm who will determine the following:
  - a. The maximum vehicular scale capacity per hour and the actual scale use at the time of the study.
  - b. The peak capacity and actual hour traffic volume.
  - c. The number, type of vehicles, and destination (end user) of traffic crossing the scales.
  - d. Peak hour vehicular traffic shall be weighted in the form of Equivalent Single Axle Loads (ESALs).

This data obtained shall be utilized to calculate the pro-rata share of ACMS and other end users, current and future.

3. At the County's discretion, improvements may be undertaken to upgrade CR 529 from C-470 south to the northeast property line of Exhibit "A", until such time as the road segment and contiguous right-of-way transitions to the control of the City of Bushnell. All end users shall reimburse the County, within 30 days of the County's invoicing of the pro rata share (as defined in #2) of the said CR 529 improvements.
4. ACMS shall be solely responsible for the improvement of the existing unimproved internal SCSWF roadway running along the west side of the facility commencing at the southerly limit defined in #3 above south to Class I Landfill facility entrance. The minimum improvement shall consist of a milled asphalt haul road no less than the width shown in Exhibit "B". This improvement shall be completed before any site construction for the ACMS Class I Landfill commences. ACMS shall be solely responsible to maintain the aforementioned internal roadway.
5. ACMS shall construct a turn lane on C-470 to the County's satisfaction, if warranted by a traffic study prepared by an engineering firm retained by ACMS and approved by County. This traffic study, limited to the traffic generated from the Class I Landfill proposed by ACMS, shall occur after the first year of operation of the Class I Landfill proposed by ACMS. ACMS is responsible for the full cost of this improvement.
6. As further consideration for use of the County's scale and scale house (said building that is immediately adjacent to the scales and addressed as 835 CR 529, Lake Panasoffkee, FL 33538), ACMS shall pay the County an annual rent of \$12,253.09, adjusted annually by the March CPI of the same year, unless jointly used by County and ACMS at which time the annual rent shall

be fifty percent (50%) of the above annual rent, adjusted annually by the March CPI of the same year, (exclusive of the point-to-point connectivity existing), due on the first business day of each calendar year. ACMS shall be responsible for all cleaning, maintenance, and utility costs of the scales and scale house. ACMS shall also maintain insurance coverage on the scale and scale house building sufficient to fund the replacement cost of each in the case of total loss, and shall carry liability insurance in an amount no less than \$2,000,000.00. ACMS will indemnify the County and defend same against any actions or judgments arising from ACMS' utilization of the County's scales and scale house building. ACMS shall have the right to modify the building, replace components of the building and the scales at its own expense with notice to and consent of the County.

7. All questions, issues or disputes arising out of or under this Agreement, shall be governed by the laws of the State of Florida and State jurisdiction is hereby agreed by ACMS to be in only Sumter County, Florida, and Federal jurisdiction is hereby agreed by ACMS to be only in the Middle District of Florida and all Federal litigation shall be filed and litigated in Tampa, Hillsborough County, Florida. In the event suit is commenced to enforce this Agreement, costs of said suit including reasonable attorney 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.
8. The parties agree that this Agreement shall supersede and replace the CD Agreement as defined herein.
9. This agreement may be assigned by ACMS with written notice to County and the consent of the County, which consent shall not be unreasonably withheld and is binding upon the parties, their successors and assigns.
10. The effective date of this agreement shall be October 1, 2010 or Florida Department of Environmental Protection Permit Issuance Date for the ACMS Class I Landfill whichever comes later. This agreement shall be recorded in the public records of Sumter County and shall be binding on all successors and assigns of ACMS.

**IN WITNESS THEREOF**, the hands and seals of the parties on the date set forth above.

**ATTEST: BOARD OF COUNTY COMMISSIONERS, SUMTER COUNTY,  
FLORIDA**

\_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Doug Gilpin, Chairman

Approved as to form and content by the Sumter County Attorney

\_\_\_\_\_  
County Attorney

ACMS, INC.

\_\_\_\_\_  
Charles S. Dean, President

Exhibit "A"

Section 22, Township 20 S, Range 22 E: the E ½ of NW ¼; and NE ¼ of SW ¼; and W ½ of NE ¼ (less E 50 ft. of NW ¼ of NE ¼); and SE ¼ of NE ¼; and N ½ of SE ¼.

