SUMTER COUNTY BOARD OF COMMISSIONERS
EXECUTIVE SUMMARY

SUBJECT: Contract for hauling and disposal of large tires (staff recommends approval)
REQUESTED ACTION: **Board approval**

☐ Work Session (Report Only) **DATE OF MEETING:** 10/26/2010
☒ Regular Meeting ☐ Special Meeting

CONTRACT: ☐ N/A Vendor/Entity: Waste Services Inc
Effective Date: 11/1/2010 Termination Date: indef
Managing Division / Dept: Public Works Division/Solid Waste

BUDGET IMPACT: $20,000
☒ Annual **FUNDING SOURCE:** Solid Waste Fund and General Fund
☐ Capital **EXPENDITURE ACCOUNT:** 104-170
☐ N/A

HISTORY/FACTS/ISSUES:
The Sumter County Solid Waste Facility (SCSWF) is restructuring their operations effective November 1, 2010 to cease the tipping floor operation and receipt of all commercial and business waste, to focus on the Citizens' Drop off Area (CDA), and reduce staff from 6 to 3 full time employees. To that end, the SCSWF must stream line their efforts at the CDA thru use of selected contracts.

Waste Services, Inc (WSI) submitted the low bid to collect and haul away, and dispose of large tires such as those from construction and agricultural activties. This line of waste constitutes one of the most difficult lines of waste to manage and dispose of, due to their size.

The contract requires WSI to position a 40 cy bin for large tires at the CDA, pull it and haul it to the designated disposal site when full, and ensure the load is tracked from the time it leaves the SCSWF to the time it is tipped at its designated site.

INDEPENDENT CONTRACTOR AGREEMENT

THIS AGREEMENT (Contract") is made this 26 day of October, 2010, between the Board of County Commissioners of Sumter County, Florida (the "Board"), 910 N. Main St., Ste. 201, Bushnell, FL 33513 (County) and Waste Services of Florida Inc. (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 Sumter County, from the Sumter County Solid Waste Transfer Station located in Lake Panasoffkee, Fl. to Omni Landfill located in St. Cloud, Fl. and;

WHEREAS, Waste Services of Florida Inc. is capable of providing all services as called for in the bid specifications and this contract. Waste Services of Florida Inc. shall be hereinafter referred to as Independent Contractor, and;

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", as set forth *in haec verba*.

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 5 (11-1-10) 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 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.

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, limits, and endorsements described herein. The requirements contained herein, as well as the county's review or acknowledgement, is not intended to and shall not in any manner limit or qualify the liabilities and obligation assumed by the Independent Contractor under this contract.

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. The coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations, Independent Contractors, Broad Form Property Damage, X-C-U Coverage, Contractual Liability or Cross Liability. The self-insured retention or deductible shall not exceed $25,000.

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 endorse the County as an "Additional Insured" on the Umbrella or Excess Liability, 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. Any self-insured retention or deductible shall not exceed $25,000.

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 endorsed 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 identify each policy's limits, flat & percentage deductibles, sub limits, or self-insured retentions, which exceed the amounts or percentages set forth herein.
4. Clearly indicate a minimum thirty (30) day endeavor to notify requirement in the event of cancellation or non-renewal of coverage.
5. 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** The Independent Contractor shall indemnify, defend and hold harmless the 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 Independent contractor's own employees or damage to property occasioned by a negligent act, omission or failure of the Independent Contractor.

15. **Builder's Risk (when applicable)** The Independent Contractor, prior to notice to proceed or commencement of work, whichever occurs first, shall maintain Builder's Risk insurance providing coverage to protect the interests of the County, Independent Contractor, subcontractors, including property acquired under a sales tax incentive program, property in transit, and property on or off-premises, which shall become part of the building or project. Coverage shall be written on an All-Risk, Replacement Cost, and Completed Value Form basis in an amount at least equal to 100% of the projected completed value of the Project as well as subsequent modifications of that sum. Any flat deductible(s) shall not exceed $25,000, any wind percentage deductible (when applicable) shall not exceed ten-percent (10%); and any flood sub limit shall not be less than 25% of the projected completed value of the project. The Independent Contractor shall endorse the policy with a manuscript endorsement eliminating the automatic termination of coverage in the event the building is occupied in whole or in part, or put to its intended use, or partially accepted by the County. The manuscript endorsement shall amend the automatic termination clause to only terminate coverage if the policy expires, is cancelled, the County's interest in the building ceases, or the building is accepted or insured by the County.

The Independent Contractor shall endorse the County as Additional Insured, or Loss Payee, on the Builder's Risk.

16. **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. For deductible amounts that exceed the amounts stated herein that are acceptable to the County, the Independent Contractor shall, when requested by the County, maintain a Commercial Surety Bond in an amount equal to said deductible amount.

17. **Waiver of Subrogation** The Independent Contractor shall provide a Waiver of Subrogation in favor of the County, Independent Contractor, subcontractor, architects, or engineers for each required policy providing coverage during the life of this Contract. When required by the insurer, or should a policy condition not permit the Independent Contractor to enter into a pre-loss agreement to waive subrogation without an endorsement, then the Independent Contractor 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 Independent Contractor enter into such an agreement on a pre-loss basis.

18. **Right to Revise or Reject** The County reserves the right, but not the obligation, to review and revise any insurance requirement, not limited to limits, coverages and endorsements based on insurance market conditions affecting the availability or affordability of coverage; or changes in the scope of work / specifications affecting the applicability of coverage. Additionally, the County reserves the right, but not the obligation, to review and reject any insurance policies failing to meet the criteria stated herein, or any insurer(s) providing coverage due to its poor financial condition or failure to operate legally. In such events, the County shall provide the Independent Contractor written notice of such revision or rejections.

19. **No Representation of Coverage Adequacy** The coverages, limits or endorsements required herein protect the primary 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 and limits of coverage to protect the Independent Contractor against any loss exposures, whether as a result of the Project or otherwise.

20. **Certificate(s) of Insurance** The Independent Contractor shall provide the County with Certificate(s) of Insurance clearly evidencing that all coverages, limits and endorsements 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.

21. 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. The Independent Contractor agrees the County reserves the right to withhold payment to the Independent Contractor until evidence of reinstated or replacement coverage is provided to the County. 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.

22. **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.

23. **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. Independent Contractor agrees to sign all such documents and do all such things as may be 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.

24. **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.

25. **Attorneys' 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.

26. Independent Contractor does hereby specifically promise and agree to defend, indemnify and "hold harmless" the County and the agents, servants, employees, officers and officials thereof from any liability or responsibility whatsoever in connection with the goods and/or services to be provided hereunder.

27. 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.

28. The Contract shall be binding upon the parties hereto, their successors and assigns.

29. This Contract shall not be assigned by Independent Contractor without the express written consent of the Board of County Commissioners of Sumter County.

30. **Independent Contractor.** It is understood that Waste Services of Florida Inc., including any of its employees or agents, is an independent contractor 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.

31. **Hazardous Materials and Environmental Compliance (as applicable).** For the purpose of this Section, "Hazardous Materials" shall also include but not be limited to substances defined as Ahazardous substances,@ Ahazardous materials,@ or Atoxic substances@ in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sec. 9601, *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, *et seq.*; and in any of the regulations adopted and publications promulgated pursuant to said laws; or any other pollutants or dangerous substances regulated pursuant to any other applicable environmental laws including, without limitation, polychlorinated biphenyls (PCB=s), oil, petroleum products and fractions, vinyl chloride, asbestos, heavy metals, radon or other radioactive materials, flammable or explosive materials, underground storage tanks (whether empty, filled or partially filled with any substance, regulated or otherwise), any substance or materials the presence of which on the Property is prohibited by any environmental laws, or any other substance or material which requires special handling or notification of any federal, state or local governmental entity regarding collection, storage, treatment or disposal. Independent Contractor shall not use, generate, manufacture, store or dispose on, under or about the Property or transport to the Property any (the AHazardous Materials@). If Hazardous Materials are discovered during construction, Independent Contractor shall immediately properly dispose of the Hazardous Substance in accordance with all applicable environmental laws.

33. **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 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.

34. 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 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: _____
_____ 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 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 is no additions or deletions to the loads, from the time they depart the Sumter County Solid Waste Facility until tipped at its designated location.