

PROFESSIONAL SERVICES AGREEMENT # \_\_\_\_\_  
Electronics Recycling Services  
Felix Pino Transfer Station Waste Facility

This agreement, made this \_\_\_ day of \_\_\_\_\_ 2012, by and between the City of Cheyenne, Wyoming, a municipal corporation organized pursuant to the laws of the State of Wyoming. Hereinafter referred to as "CITY" and Tatooine Electronic Services Inc., hereinafter referred to as "CONTRACTOR".

WITNESS TO

In consideration of the mutual covenants and obligations herein expressed, it is agreed by and between the CITY and CONTRACTOR as follows:

1. SCOPE OF SERVICES:

CONTRACTOR agrees to provide services as set forth in pages 1-11 and Exhibits A & B of this agreement which is attached hereto and incorporated by this reference.

2. COMPENSATION:

- (a) This is a unit price, not-to-exceed contract. CONTRACTOR shall charge and the CITY shall pay for actual services rendered. Contract shall not exceed \$160,000.00 without governing body approval.
- (b) All billings submitted to CITY by CONTRACTOR for services provided under this agreement shall be itemized according to each activity, as outlined in Exhibit B, showing the total units or pounds and unit or pound costs therefore. The CITY shall pay invoices within 45 days of receipt. In the event of a dispute regarding an invoice, the CITY shall timely pay the undisputed amount and shall notify CONTRACTOR of the amount(s) in dispute and the basis of the dispute within the 45 day period. Disputed amounts shall bear no interest.
- (c) The CITY shall pay the CONTRACTOR for packaging and labeling of e-waste as listed in Exhibit A (to the extent needed and requested by the CITY), as well as transporting, processing, and recycling of the Waste Material in accordance with the terms as stated in Exhibit B.

3. TERM/EFFECTIVE DATE:

This agreement shall become effective upon award of the contract by the CITY and shall be in effect for a period of two years. The City maintains the right to terminate the contract with 30 days written notice. This agreement may be extended for one additional two year period by agreement of both parties.

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4. \_\_\_\_\_ INSURANCE REQUIREMENTS

- (a). The Contractor shall file a Certificate of Insurance with the City of Cheyenne verifying each type of insurance coverage listed below.
- (b). The Certificate of Insurance shall be submitted to and approved by the City of Cheyenne prior to commencement of performance under this bid and the subsequent contract.

(c).	<u>Type of Coverage</u>	<u>Minimum Limits</u>
	Commercial General Liability (Including Products and Completed Operations; Explosion, Collapse and Underground if applicable to the hazards of a specific project. )	\$1,000,000 per Occurrence  \$2,000,000 Aggregate
	Business Automobile Liability	\$1,000,000 CSL
	Workers' Compensation OR Employer's Liability	Statutory  \$500,000 Each Accident \$500,000 Each Disease- Policy Limit \$500,000 Disease/Each Employee
	Environmental Impairment Liability (Including third party liability claims arising from environmental hazards and clean up costs)	\$1,000,000 Per Occurrence  \$2,000,000 Aggregate

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- (d). It is understood and agreed that these policies are primary and not contributory. All policies required under this contract shall be in effect for the duration of the project and contract. It shall be an affirmative obligation upon Contractor to immediately notify in writing the city risk manager, city clerk, and city attorney of any fact, circumstance, or occurrence that has resulted in or may result in the cancellation or substantive change of any insurance coverage required by this contract, and failure to do so shall be construed to be a breach of this contract.
- (e). The City of Cheyenne shall be named as an **additional insured** on the Contractor's insurance policies, except workers' compensation, and the Contractor shall provide a copy of the endorsements providing this coverage.
- (f). The City has the right to reject a certificate of insurance if the Contractor's insurance company is widely regarded in the insurance industry as financially unstable. Any insurance company providing coverage under this contract shall have a minimum A.M. Best rating of A- (excellent).
- (g). The City has the right to review the insurance certificates of any or all subcontractors used by the Contractor. Further, the City requires that the subcontractor's insurance coverages be at least equivalent to that required of the Contractor.
- (h). The City has the right to increase the required minimum limit of liability on any contract project as warranted by an increase in hazard. Examples of increased hazard include, but are not limited to:
  - a. handling of hazardous materials
  - b. activities involving large congregations of people
- (i). The City shall have the right to consult with the Contractor's insurance agent for disclosure of relevant policy information, but the City's failure to request or review such policies, endorsements, or certificates shall not affect the City's rights or Contractor's obligations hereunder. Disclosure of relevant policy information would specifically involve, but is not limited to:
  - a. exclusions
  - b. deductibles
  - c. claims in progress which could significantly reduce the annual aggregate limit

The construction, interpretation, and enforcement of this agreement shall be governed by the laws of the State of Wyoming. The courts of the State of Wyoming shall have jurisdiction over this agreement and the venue shall be the First Judicial District, Laramie County, Wyoming.

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5. \_\_\_\_\_ INDEMNITY:

In entering into the Agreement, the Contractor agrees to defend, hold harmless, and indemnify the City of Cheyenne, its officials, employees, agents, and authorized volunteers against any and all claims and costs, including attorney's fees, arising during or resulting from the Contractor's performance of the contract, and shall carry insurance as set forth in these contract documents. The Contractor acknowledges its understanding of this paragraph and realizes it may have a financial responsibility to the City. The City does not waive any applicable defenses and expressly reserves the right to invoke governmental immunity pursuant to the Wyoming Governmental Claims Act, Wyo. Stat. 1-39-101, et seq. for any claim arising out of performance of this agreement.

6. INDEPENDENT CONTRACTOR:

The Contractor shall function as an independent contractor for the purposes of this agreement. The Contractor shall assume sole responsibility for any debts or liabilities that may be incurred by the Contractor in fulfilling the terms of this agreement. Nothing in this agreement shall be interpreted as authorizing the contractor, its agents, or employees to act as an agent or representative of, or on behalf of the City, or to incur any obligation of any kind on the behalf of the City.

7. CONTRACTOR'S RESPONSIBILITY:

CONTRACTOR agrees to manifest, transport, store, and recycle e-waste received in accordance with all applicable federal, state and local laws, rules and ordinances. CONTRACTOR certifies and warrants that e-waste will be delivered to facilities which comply with all applicable federal and state permits, licenses and regulations (including all applicable record keeping, insurance, and financial assurance requirements) required for the collection, storage, transportation, and recycling of materials.

CONTRACTOR shall perform all work in a professional manner. CONTRACTOR shall be responsible for the quality and timely completion of all services as set forth in Exhibit B and CONTRACTOR shall, without additional compensation, promptly remedy and correct any deficiencies that arise from CONTRACTOR's performance.

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8. NOTICE:

Any notice, correspondence, or billing required to be given by the terms of this agreement shall be delivered by hand, or delivered by mail, postage prepaid, to the address of the respective party below:

CONTRACTOR:

Tatooine Electronic Systems, Inc.  
6520 Hinesley Rd.  
Cheyenne, WY 82001

CITY:

City of Cheyenne Sanitation Department  
ATTN: Dennis L. Pino  
2101 O'Neil Avenue  
Cheyenne, WY 82001

9. ACCEPTANCE NOT WAIVER:

The CITY's approval of, acceptance of, or payment for any of the services of this agreement shall not be construed to operate as a waiver of any of the CITY's rights under this agreement or any of its legal rights under statute or common law arising out of the performance of this agreement.

10. DEFAULT:

Each and every term and condition herein, including payment obligations, shall be deemed a material element of the agreement. In the event either party should fail or refuse to perform according to the terms of this agreement, such party may be declared in default, except when due to default of the CITY.

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11. REMEDIES:

- (a) In the event a party declares the other party in default hereof, said party declaring default shall notify the defaulting party in writing and such defaulting party shall be allowed a period of fifteen (15) days to cure said default. In the event the default remains uncorrected, the party declaring default may elect to:
1. Terminate the agreement and seek damages
  2. Treat the agreement as continuing and require specific performance; or
  3. Avail himself of any other remedy at law or equity.
- (b) In the event CONTRACTOR fails to strictly perform in accordance with this agreement, the CITY may elect to make good such deficiencies and charge CONTRACTOR therefore.

12. TERMINATION:

The CITY representative may, by thirty (30) days written notice to CONTRACTOR, terminate this contract in whole or in part for the CITY's convenience. In the event of termination for convenience, the CITY will pay CONTRACTOR for work performed as of the date of termination.

13. WAIVER:

The waiver by either party of any term, condition or covenant, or breach of any term, condition or covenant, shall not constitute a waiver of any other term, condition or covenant, or the breach thereof.

14. COMPLIANCE WITH LAWS:

The parties herein covenant and agree that they will perform their obligations as provided in this agreement in accordance with all applicable laws and ordinances.

15. SEVERABILITY:

If any provision, section, subsection, sentence, clause, or phrase of this agreement is invalidated by any court of competent jurisdiction, such holding shall not effect the validity of the remainder of the agreement, which shall continue in full force and effect.

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16. SUCCESSORS AND ASSIGNS:

All of the terms, conditions, and provisions herein shall ensure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

17. ASSIGNMENT:

The CONTRACTOR shall not assign this agreement and any attempt to so assign shall be void without prior written consent of the CITY. Any delegation or assignment shall not operate to relieve the CONTRACTOR of its responsibilities hereunder. However, nothing in this agreement shall prohibit the CONTRACTOR from subcontracting to a qualified subcontractor with written consent of the CITY.

18. DRUG-FREE WORKPLACE:

In compliance with the drug-free workplace act of November 1988, the CITY has established an alcohol and controlled substance policy that pertains to alcohol and drug usage by CITY employees. All independent contractors under contract with the CITY, and their employees and subcontractors, are required to comply with the provisions of the CITY's Alcohol and Controlled Substance Policy for drug and/or alcohol usage on CITY property or other sites occupied by CONTRACTOR while performing the duties and responsibilities of this policy and to inform all its employees and subcontractors of the requirements and to insure compliance therewith. If CONTRACTOR, its employees or subcontractor are found in violation of this policy, this contract may be terminated.

19. MINORITY BUSINESS ENTERPRISES:

The CONTRACTOR shall assure that no person shall be excluded from participation in, denied the benefits of, or otherwise discriminated against in connection with the award and performance of this agreement on the grounds of age, race, color, disability, national origin, or sex. The CONTRACTOR further assures they will include the language of this paragraph in all agreements associated or connected in any way with this agreement and shall cause all existing agreements to similarly include this clause therein.

20. ADA COMPLIANCE:

The CONTRACTOR is hereby notified that it must comply fully with all requirements of the Equal Employment Opportunity Commission (EEOC) and the Americans with Disabilities Act (ADA) in the same manner as is expected from the CITY. If the CONTRACTOR or its employees or subcontractors are found in violation of these requirements, this agreement may be terminated. The CONTRACTOR shall be responsible for all such non-compliant action and shall defend, hold harmless and indemnify the CITY therefrom.

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21. CONTRACTOR'S SERVICES:

CONTRACTOR shall perform all services in a careful, workmanlike, and lawful manner. Contractor shall take all necessary and lawful precautions as to avoid injury to persons and damage to property and natural resources.

22. TITLE AND LIABILITY:

Title to and liability for e-waste materials shall pass from the CITY to the CONTRACTOR once the loading operation onto the CONTRACTOR's vehicles has been completed and the vehicles are ready to leave the facility of the CITY.

E-waste materials which are discovered to be non-conforming may be rejected by CONTRACTOR. The City needs to be notified within thirty (30) days of any non-confirming e-waste. Title, risk of loss and all other incidents of ownership to non-confirming e-wastes shall remain at all times with CITY. E-waste materials shall be considered non-confirming for purposes of this Agreement if: (1) the e-waste materials are not properly packaged or labeled; or (2) the e-waste materials contain constituents or have characteristics or properties not disclosed on the e-waste Profile, and such constituents, characteristics, or properties increase the cost to CONTRACTOR or increase the risk of hazard to human health or the environment from the handling, transportation, storage or disposal of such materials; or (3) the designated disposal facility is not designed or permitted constituents, characteristics or properties.

E-waste materials discovered by CONTRACTOR to be non-conforming, if in CONTRACTOR's possession, shall be prepared for lawful transportation by CONTRACTOR and returned to CITY within a reasonable time after rejection by CONTRACTOR, unless the parties agree to an alternative and lawful manner to dispose of the waste materials. CITY shall pay CONTRACTOR at agreed rates for the handling, loading, preparing, transporting, storing and caring for and, if applicable of such non-conforming waste materials.

23. COLLECTION AND TRANSPORTATION:

(a) Suitable Transportation

The CONTRACTOR shall provide suitable transportation to remove the E-Waste Materials described in "Exhibit B", and haul waste materials to recycle location. CONTRACTOR shall comply with all applicable statutes, rules, regulations, ordinances, and laws of the United States and all applicable state and local regulations in moving, handling, transporting, and recycle of such e-waste material.



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(b) Loading

Unless otherwise agreed upon in writing, CONTRACTOR shall be solely responsible for loading the e-waste materials on vehicles provided by CONTRACTOR. As to all loading activities, CONTRACTOR assumes full risk of loss as to all equipment and premises of the CITY and as to all transportation vehicles furnished by the CONTRACTOR.

(c) Safe Workplace

The CITY shall provide a safe working environment for any CONTRACTOR employee, agent, or subcontractor who must enter the CITY's facility in the course of providing services under this agreement. The CITY shall provide safe, satisfactory roadways and approaches to the point of loading. While on CITY's premises, the CONTRACTOR employee, agent, or subcontractor shall comply with all of the CITY's safety procedures, particularly those related to the handling of e-waste materials, provided such procedures are conspicuously and legibly posted in the work area or have been furnished to the CONTRACTOR by the CITY at or prior to commencement of work at the CITY's Facility.

(d) Corrective Action

CONTRACTOR and CITY each agree to take whatever actions are necessary to eliminate, abate, and rectify any hazardous, unsafe, unhealthy, or environmentally unsound conditions resulting from activities and operations within its control. It is understood and agreed, however, that CONTRACTOR shall not be responsible for the elimination of safety hazards created by or otherwise resulting from work being performed by CITY's employees, its other contractors or agents. The CITY is responsible for all costs that may incur.

(e) Emergency Procedures

In the event an emergency occurs while a CONTRACTOR employee, agent, or subcontractor is on the premise of the CITY's Facility, the CITY shall make available to such person or persons emergency services, including first aid, to the same extent that emergency services would be available to an employee, agent, or subcontractor of the CITY.

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24. CONTRACTOR WARRANTIES:

- (a) CONTRACTOR understands the currently known hazards and risks which are presented to human beings, property, and the environment in the handling, storage, recycling, and processing of the e-waste materials.
- (b) CONTRACTOR is engaged in the business of transporting, recycling, and disposing e-waste materials, and has developed the requisite expertise for the handling and recycling of such.
- (c) CONTRACTOR will transport, store, treat and recycle of the e-waste material in full compliance with all valid applicable statutes, ordinances, rules and regulations of the federal, state and local governments in whose jurisdictions such activities are performed under this agreement.
- (d) Any recycle facility or facilities used for disposal will have permits, licenses, certificates, or approvals required by valid and applicable statutes, ordinances, rules and regulations of the federal, state and local governments in which the facility is located, necessary to allow such facility accept, and store, treat, process, and recycle of the involved waste materials.
- (e) In the event that the disposal facility loses its permitted status, or is the subject of the action of a government agency which could reasonably result in the loss of its permitted status, during the term of this agreement, CONTRACTOR will promptly notify the CITY of such loss, or possible loss, of permitted status.
- (f) CITY warrants that the Services to be provided under this Agreement will not violate any judicial or administrative order or any ruling of any governmental agency of which CITY had knowledge. CITY warrants that the description of the e-waste materials on the E-Waste Profile is accurate and complete; that e-waste materials to be transferred to CONTRACTOR will conform to such description; that containers of e-waste materials transferred to CONTRACTOR will be marked, labeled and otherwise conform with all applicable federal, state, and local laws, regulations, by-laws or ordinances; that it holds clear title to all waste materials to be transferred hereunder; that it is under no legal restraints or order which would prohibit transfer to possession or title to such materials to CONTRACTOR for transportation and disposal; and that it has communicated and will communicate to CONTRACTOR during the term hereof those hazards known by the CITY to be associated with the handling, transportation, treatment, storage and recycle of the e-waste materials.

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25. RIGHT TO AUDIT RECORDS:

The CITY may at reasonable times and places audit the books and records of the CONTRACTOR or any subcontractor as related to this contract with the CITY. The CONTRACTOR shall retain all books and records relating to this contract for a period of five years after completion of this contract, and shall advise each subcontractor to do the same. Upon request, a legible copy of any portion of such books and records shall be provided at the offices of the CITY clerk.

26. ENTIRE AGREEMENT OF PARTIES:

This agreement contains the entire understanding of the parties. There are no other terms or conditions, written or oral, concerning or controlling this matter. Time is of the essence hereof.

27. RIGHT TO INSPECT:

The CITY has the right to inspect the CONTRACTOR's facilities during normal working hours, upon notice, and when accompanied by a CONTRACTOR employee. The right of inspection and inspections already performed shall not limit any of the CONTRACTOR's responsibilities under this agreement.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

CITY OF CHEYENNE, WYOMING

BY: \_\_\_\_\_  
Richard L. Kaysen, MAYOR

(SEAL)  
ATTEST: \_\_\_\_\_  
Carol Intlekofer, CITY CLERK

CONTRACTOR

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

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**EXHIBIT A**  
**SCOPE OF SERVICES**

**General Requirements**

CONTRACTOR shall provide the planning, expertise, trained personnel, materials, equipment, insurance, registration, permits, manifests, licenses, placards, labels, EPA certifications, sub-agreements, and any other items necessary to handle, identify separate, record, package, transport, treat, and recycling of the electronic waste received from the CITY's Solid Waste Transfer Station and Landfill.

The CITY has personnel with training in receiving, classifying, and packaging Electronic Wastes. The CONTRACTOR will assist the CITY in what tasks the CITY requires assistance, including identifications, classification, packaging and labeling of E-Wastes received at the CITY's Solid Waste Transfer Station/Landfill. The CONTRACTOR shall bill the CITY according to unit rates established in Exhibit B for services performed.

**Response**

The CITY anticipates that it may find itself in short supply of storage space at times. To minimize inconvenience to the public the CITY may need a quick response time on pick-up of E-Waste Materials. The CONTRACTOR shall respond within 5 business days for transport of E-Wastes if requested by the CITY. The CITY does not anticipate that this quick of a response will be needed often.

**Documentation**

The CONTRACTOR agrees to provide certifications of recycling for all materials transported from the City of Cheyenne Solid Waste Transfer Station/Landfill within 360 days from the date of transport.

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**Anticipated Electronic Wastes Quantities to be Collected**

Below is an estimate of Electric Wastes recycling volumes. These are estimates only and are not guaranteed quantities.

Television	2763	Stereo	112	Monitors	1247
CPU	642	VCR	112	Keyboards	160
Mouse	40	Fax Machine	30	Printers	224
Microwave	327	Word Pro.	4	Calculator	52
Radio	42	PC	60	Modem	4
Power Supply	63	Cell Phone	10	Phones	60
Copier	12	Scanners	10	Shredder	10
Answer Machine	10	Computers	40	Camera	5
Typewriters	30	Satellite	6	UPS	26
CD Players	10	Laptop	6	Projectors	2
Reel to reel	4	Dick drive	4	Exercise machine	4
				Teletype machine	4

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**EXHIBIT B**  
**COMPENSATION**

**The Contractor is to provide a completed verison of the form below as part of the proposal. The form should include prices for all materials and items listed or an explanation of how these items are paid for, ie. included in other costs, flat rates, etc... The Proposer may change or add any price items that are necessary, but should do so with explanation. Price by item or by pound.**

Invoices made to the City must be based upon fees listed below or upon standard rates, approved by the City representative in writing before time of invoice. This is a two year contract.

<b>ITEM:</b>	<b>COST:</b>
CPU (TOWER)	\$.00
MONITOR	\$.15 p/lb
KEYBOARD	\$.00
PRINTER	\$.00
LAPTOP	\$.00
SERVERS	\$.00
WORK STATIONS	\$.00
MODEM	\$.00
EX. CD ROM & FLOPPY	\$.00
TAPE DRIVES	\$.00
MAIN FRAMES	\$.00
HARD DRIVES	\$.00
TELEPHONES	\$.00
CELLULAR PHONES	\$.00
FACSIMILE MACHINES	\$.00
PALM PILOT	\$.00
BATTERIES	\$.00
COPY MACHINES	\$.00
DOCKING STATIONS	\$.00
UPS BACK-UPS	\$.00
CIRCUIT BOARDS	\$.00
TYPEWRITERS	\$.00
VCRS	\$.00
STEREO EQUIPMENT (HOME COMPONENTS) _____	\$.00
STEREO EQUIPMENT (HOME UNIT) _____	\$.00
STEREO EQUIPMENT (CAR) _____	\$.00
ELECTRONIC EQUIPMENT PROFESSIONAL _____	\$.00
CALCULATORS/ADDING MACHINES _____	\$.00
CD PLAYER/DVDS _____	\$.00
ALL OTHER TYPES OF ELECTRONIC EQUIPMENT _____	\$.00
TELEVISIONS DIRECT VIEW	\$.15 p/lb.
PROJECTION TV	\$.15 p/lb.