

Purchasing Department
Madison County Board of Supervisors
146 West Center Street
Canton, Mississippi 39046

601-855-5503
hardy@madison-co.com

26 March 2014

District 1 Supervisor John Bell Crosby
District 2 Supervisor Ronny Lott
District 3 Supervisor Gerald Steen
District 4 Supervisor Karl Banks
District 5 Supervisor Paul Griffin

Subject: Magnolia Data Solutions, LLC.

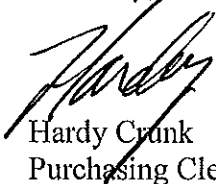
Gentlemen:

For several years Madison County has been the conduit for a grant for Ridgeland's Household Hazardous Waste Day. The board previously approved applying for the grant for this year's Household hazardous Waste Day in Ridgeland.

Attached is the proposed contract with Magnolia Data Solutions, LLC, which will provide disposal of electronic equipment at this year's Household Hazardous Waste Day. The grant is in Madison County's name; therefore, the contract has to be as well for grant reimbursement purposes.

I recommend that the board approve the attached contract and authorize the board president to execute same.

Sincerely,



Hardy Crunk
Purchasing Clerk

ELECTRONICS RECOVERY AND DISPOSAL SERVICES AGREEMENT

This Electronics Recovery and Disposal Services Agreement ("Agreement"), dated effective as of the last date of signature hereto ("Effective Date"), is entered into by and between **MAGNOLIA DATA SOLUTIONS, LLC**, a Mississippi limited liability company, its subsidiaries and affiliates (collectively, the "Company") and the undersigned customer (the "Customer"), each individually referred to as "Party" or collectively as the "Parties."

Customer desires to engage the Company to provide certain recovery, disposal and/or recycling services to Customer. The Company and Customer desire to establish the terms and conditions pursuant to which such services will be provided.

Accordingly, the Parties hereto, intending to be legally bound, hereby covenant and agree as follows:

1. **Services.** The Company will provide Customer with electronic asset recovery, destruction, disposal and/or recycling services (the "Services") as more particularly described on a statement of work substantially in the form of Exhibit A hereto and incorporated herein by this reference (the "Statement") to be executed by the Parties prior to each transaction. Company will perform the Services for Customer's functional, non-functional, decommissioned and end-of-life electronic equipment, including, but not limited to, computers, servers, monitors, televisions, routers, modems and peripheral devices (collectively, the "Equipment") and various electronic components, sub-assemblies and other equipment parts (collectively, the "Components" and together with Equipment, the "Electronic Waste") on an as needed basis; provided, however, that the Company reserves the right to reject any request for Services in its discretion due to: (i) failure of the Customer to comply with Company requirements, (ii) Customer having any account payable to Company aged over 30 days, (iii) Customer shipping Electronic Waste of a type or character materially different from the type normally handled by Company, or (iv) contamination of Customer's Electronic Waste. For purposes of this Agreement, Customer's Electronic Waste will be deemed contaminated if Company, in its discretion, determines that the Electronic Waste contains chemicals, biological agents, or other substances that are not integral to the original Electronic Waste or otherwise associated with normal office or household environments or if Environmentally Sensitive Materials (defined below) are found to be physically damaged, broken, or leaking through no fault of the Company (collectively, the "Contaminated Waste"). The terms and conditions of any Statement, purchase order, or any other document submitted by Customer which conflicts with or in any way purports to amend any of the terms and conditions of this Agreement are hereby specifically objected to by the Company and shall be of no force or effect.

2. **Fees; Payment Terms.** Company will pay to Customer or invoice Customer for, as applicable, any net amounts due as set forth in a Statement. Customer shall pay Company the invoiced amount within 30 days of the date listed on the invoice. A late fee in the amount of 1% per full or partial month will be applied to all balances not paid by Customer by the due date. Company shall assess an additional fee of \$40, or such other amount as is permitted by law, for any check returned for nonpayment. Customer shall pay Company all amounts due, including disputed amounts, by the due date regardless of the status of any objection. Customer must

provide Company written notice of any objection within sixty (60) days of the date of an invoice or Customer shall be deemed to have waived any objection..

3. **Term; Termination.** The term of this Agreement shall be for a period of one (1) year commencing on the Effective Date. This Agreement shall automatically renew for successive one-year periods. Either Party may terminate this Agreement for any reason or no reason upon thirty (30) days' prior written notice. Upon termination, Customer shall be responsible for payment to the Company for (a) all Services performed through the date of termination; (b) all materials purchased by the Company for the Customer; (c) all administrative costs associated with the termination of this Agreement; and (d) all reasonable demobilization fees.

4. **Company's Obligations.** The Company shall: (a) except as otherwise set forth herein, be solely responsible for the performance, supervision and direction of the Services; (b) except for Electronic Waste packaged by Customer, properly package the Electronic Waste in compliance with all federal, state and local laws, statutes, rules, regulations and ordinances in effect or subsequently enacted concerning or relating to the protection of human health and/or the environment, including Superfund and any similar law (collectively, the "Environmental Laws") and create a pre-shipment inventory of all Electronic Waste packaged; (c) except for Electronic Waste delivered to Company by Customer, properly load, transport, store and dispose of Electronic Waste in compliance with all Environmental Laws; (d) ensure that it and its subcontractors comply with all applicable Environmental Laws and prevent shipping of any Electronic Waste that contains elements, compounds or other materials defined as toxic, reactive, corrosive or otherwise hazardous by the U.S. Environmental Protection Agency regulations (typical Environmentally Sensitive Material parts include, but are not limited to, all batteries (lead, cadmium, lithium), glass from cathode ray tubes (lead), LCD fluorescent bulbs (mercury), and electronic components/cards (antimony, cadmium, lead) (the "Environmentally Sensitive Materials") to solid waste (non-hazardous waste) landfills or incinerators for disposal or energy recovery; (e) not export Environmentally Sensitive Materials from developed to developing countries for disposal; and (f) provide Customer with a certificate of destruction, as applicable, upon completion of the Services.

5. **Customer's Obligations.** Customer shall: (a) except for Electronic Waste packaged by Company, ensure that all Electronic Waste is packaged on or in pallets or other appropriate containers and stored at Customer's premises in accordance with all Environmental Laws, ensure that the Electronic Waste so packaged and stored does not contain any Contaminated Waste, and ensure that a pre-shipment inventory listing of all Electronic Waste for each pallet or container shipped and related bill of lading is properly prepared; (b) except for Electronic Waste picked up by Company, ensure that all Electronic Waste delivered by Customer to Company is properly loaded, transported, and stored in compliance with all Environmental Laws and that no Contaminated Waste is delivered to Company; (c) promptly, at its sole cost and expense, retrieve from Company's facilities any and all Contaminated Waste either packaged or delivered by Customer; (d) provide as part of each Statement an accurate and complete description of the Electronic Waste for which Company will provide the Services (the "Waste Profile"); (e) retrieve whatever information it needs from any hard drive or any other data-

storage medium prior to transfer of the Electronic Waste to Company; (f) fulfill all other obligations to Company set forth elsewhere in this Agreement and any Statement.

6. **Relationship of the Parties.** Each Party acknowledges and agrees that each is an independent contractor in performing its obligations under this Agreement, and this Agreement will not be construed to create a partnership, joint venture or employment relationship between the Parties. Each Party agrees that all its employees or subcontractors assigned to perform under this Agreement are, for all purposes, employees and/or subcontractors of the hiring Party, and not employees or agents of the other Party.

7. **Confidentiality.** It may be necessary or desirable for the Parties to disclose to each other information, including, but not limited to, pricing information, cost, analyses, process methodology, internal audits, financial information, trade secrets, identity of downstream service providers, general proprietary information, and other information disclosed by either Party to the other in writing and marked "confidential" or "proprietary" or other similar legend, that the disclosing Party regards as confidential (collectively, "Confidential Information"). Each Party shall use Confidential Information only for purposes of this Agreement and shall not disclose Confidential Information to any third party without the other Party's prior written consent. Disclosure to employees shall only be made on a need-to-know basis. Each Party agrees to take all appropriate action and to utilize the same effort to safeguard Confidential Information as each utilizes to protect its own similar information.

8. **Indemnification**

a. **Company.** Company will indemnify, defend and hold Customer and its officers, directors, employees and agents harmless from any loss, damage, claim, demand, suit, liability, civil penalties (including removal and remedial costs), cost or expense (including, without limitation, fines, penalties and reasonable attorneys' fees) arising out of or resulting from any claims of any type, kind or character arising out of or related to (1) the Company's performance (or failure to perform) its obligations under this Agreement or any Statement and (2) Company's gross negligence or willful misconduct occurring while providing the Services.

b. **Customer.** Customer will indemnify, defend and hold Company and its officers, directors, employees and agents harmless from any loss, damage, claim, demand, suit, liability, civil penalties (including removal and remedial costs), cost or expense (including, without limitation, fines, penalties and reasonable attorneys' fees) arising out of or resulting from any claims of any type, kind or character arising out of or related to (1) Customer's performance (or failure to perform) its obligations under this Agreement or any Statement; (2) Customer's failure to provide clear title to the Electronic Waste to Company; (3) Customer's packaging, transportation, or delivery of Contaminated Waste; (4) Customer's failure to provide an accurate waste profile in the Statement or otherwise; (5) Customer's gross negligence or willful misconduct occurring while performing any and all transactions contemplated by this Agreement.

9. **Limitation of Liability.** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER OR TO ANY THIRD PARTY FOR SPECIAL,

PUNITIVE, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES, INCLUDING LOSS OF CAPITAL, LOST PROFITS OR BUSINESS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

10. **Non-Circumvention.** Customer acknowledges that in reliance upon this Agreement, the Company will expend considerable efforts in connection with the Services to be performed by Company on behalf of Customer (the "Business Relationship"), and will provide Customer with access to Confidential Information and will introduce Customer, directly or indirectly, to certain of the Company's subcontractors, vendors, suppliers or other parties with whom the Company conducts business (the "Restricted Parties"). Customer agrees that Customer shall not, directly or indirectly, on behalf of any person or business, circumvent any business opportunity of the Company or solicit, contact, or call upon (a) any Restricted Parties during the term of the Business Relationship and for a period of two (2) years after the termination hereof, (b) any Restricted Parties which previously engaged the Company to provide services during the one (1) year period immediately preceding termination of the Business Relationship, or (c) any Restricted Parties with whom the Company has initiated discussions or is actively negotiating an agreement to provide services at the time of termination of the Business Relationship, or any representative of the same with a view toward selling or providing any service or product competitive with any service or product sold or provided by the Company during the Business Relationship.

11. **Title; Risk of Loss.** Title to and ownership of the Electronic Waste will remain vested in Customer until it is (a) delivered to Company's facilities, if Customer bears the responsibility of transporting the Electronic Waste or (b) loaded onto trucks at Customer's Facilities, if Company bears the responsibility of transporting the Electronic Waste. The risk of loss shall transfer with title. Notwithstanding the foregoing, title to Contaminated Waste does not transfer to Company, unless and until, the Company expressly consents in writing to accept title to Contaminated Waste.

12. **Insurance.** Company shall purchase and maintain, at its own expense and at all times during the term of this Agreement, insurance of the following types and amounts: (a) commercial general liability, with limits of insurance of not less than \$1,000,000 per occurrence and \$2,000,000 in the annual aggregate; (b) business automobile liability, with limits of at least \$1,000,000 per occurrence, including coverage for liability arising out of all owned, leased, hired and non-owned automobiles; and (c) workers' compensation and unemployment insurance in such amounts and upon such terms as is required by law. Company shall provide certificates of coverage upon request. The Parties mutually waive their respective rights of subrogation.

13. **General.**

a. **Notices.** Any notice, request, instruction or other communication to be given under this Agreement will be in writing and will be: (a) delivered personally; (b) sent by Federal Express or other similarly reputable overnight courier; or (c) transmitted by facsimile, to the addresses and/or facsimile numbers set forth on the signature page of each Party hereto or to another address as either Party may indicate by notice delivered to the other Party in accordance

with the provisions of this Section. Notices will be deemed given: (x) if delivered personally, at the time delivered; (y) if sent by Federal Express or other similarly reputable overnight courier, at the time sent; or (z) if transmitted by facsimile, at the time when receipt is confirmed by the sender or sending facsimile machine.

b. **Governing Law; Designation of Forum.** This Agreement shall be deemed to have been executed and entered into in the State of Mississippi, and this Agreement, and its formation, operation, and performance shall be governed, construed, performed, and enforced in accordance with the substantive and procedural laws of the State of Mississippi, without regard to principles of conflicts of laws. All suits, proceedings, and other actions relating to or arising out of this Agreement shall be brought in a federal or state court of appropriate jurisdiction that presides in Hinds County, Mississippi, and venue shall lie exclusively therein. The Parties hereto consent to personal jurisdiction and venue in any federal or state court which presides in Hinds County, Mississippi, and expressly waives the right to bring action in, or to transfer or remove any action to, any other state or federal court. Each Party waives any claim that any action or proceeding brought in any such court has been brought in an inconvenient forum.

c. **Amendments.** The Parties may amend this Agreement only by a written agreement of the Parties that identifies itself as an amendment to this Agreement.

d. **Waivers.** The Parties may waive the provisions in this Agreement only by a writing executed by the Party or Parties against whom the waiver is sought to be enforced. No failure or delay in exercising any right or remedy, or in requiring the satisfaction of any condition, under this Agreement, and no act, omission or course of dealing between the parties, operates as a waiver or estoppel of any right, remedy or condition. A waiver made in writing on one occasion is effective only in that instance and only for the purpose stated. A waiver once given is not to be construed as a waiver on any future occasion or against any other person.

e. **Severability.** If any provision of this Agreement is determined to be invalid, illegal or unenforceable, the remaining provisions of this Agreement remain in full force, if the essential terms and conditions of this Agreement for each Party remain valid, binding, and enforceable.

f. **Merger.** This Agreement constitutes the final agreement between the Parties. It is the complete and exclusive expression of the Parties' agreement on the matters contained in this Agreement. All prior and contemporaneous negotiations and agreements between the Parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement. The provisions of this Agreement may not be explained, supplemented or qualified through evidence of trade usage or a prior course of dealings. There are no conditions precedent to the effectiveness of this Agreement.

g. **Counterparts.** The Parties may execute this Agreement in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. This Agreement is effective upon delivery (by e-mail, facsimile or regular mail)

of one executed counterpart from each party to the other Party. In proving this Agreement, a Party must produce or account only for the executed counterpart of the Party to be charged.

h. **Successors and Assigns.** This Agreement binds and benefits the Parties and their respective heirs, executors, administrators, legal representatives, and permitted successors and assigns.

i. **Assignment and Delegation.** No Party may assign any of its rights under this Agreement, except with the prior written consent of the other Party who shall not unreasonably withhold, condition or delay its consent, provided, however, Company may assign its rights and delegate its duties to any successor by merger, consolidation, or sale of substantially all of its assets.

j. **Third-Party Beneficiaries.** Except as may be specifically set forth herein, this Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than the signatories.

k. **Captions.** The descriptive headings of the sections and subsections of this Agreement are for convenience only, do not constitute a part of this Agreement, and do not affect this Agreement's construction or interpretation.

l. **Announcements.** Except as required by law, so long as this Agreement is in effect, any Party intending to make any disclosure concerning this Agreement, or the transactions it contemplates, shall provide the other Party a copy of the proposed disclosure and an opportunity to comment on it at least five business days before the disclosure. Afterwards, the disclosing Party may issue the release with the changes, if any, to which it agreed.

m. **Rights and Remedies Cumulative.** The enumeration of a Party's rights and remedies set forth in this Agreement is not intended to be exhaustive. The exercise by a Party of any right or remedy under this Agreement does not preclude the exercise of any other rights or remedies, all of which are cumulative and are in addition to any other right or remedy given under this Agreement or which may now or subsequently exist in law or in equity or by statute or otherwise.

n. **Waiver of Right to Trial by Jury.** EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

[SIGNATURES ARE ON THE NEXT PAGE]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

CUSTOMER:

[_____]

By: _____

Name: _____

Title: _____

Date: _____

Notice Address:

Attn: _____

Fax: (601) _____

(Signature Page of Customer to Electronics Recovery and Disposal Services Agreement)

COMPANY:

MAGNOLIA DATA SOLUTIONS, LLC

By: _____

Name: _____

Title: _____

Date: _____

Notice Address:

Magnolia Data Solutions, LLC

Attn: Christopher Lumaghini

160 Fairbanks St.

Jackson, MS 39202

Fax: (601) 510-9094

(Signature Page of Company to Electronics Recovery and Disposal Services Agreement)

EXHIBIT A

Statement of Work

This Statement of Work ("Statement") is incorporated by reference into and made an integral part of the Electronics Recovery and Disposal Services Agreement between Customer and Company (the "Agreement"). Capitalized terms not defined in this Statement shall have the meaning ascribed to them in the Agreement. To the extent of any conflict or inconsistency between this Statement and the terms and conditions of the Agreement, this Agreement will prevail.

Waste Profile: Electronic Waste form House Hold Hazardous Waste Community Day

Start Date: (if applicable): 2014 (Actual Date to Be Determined)

End Date: (if applicable):

Services to be provided: The Complete Collection, Packing, Transportation and Recycling of all equipment including the destruction of all data containing devices. Magnolia Data Solutions will provide all staff, however should the city have volunteers they may help but this is not mandatory.

Who is responsible for packaging the Electronic Waste: Magnolia Data Solutions, LLC

Who is responsible for Transporting the Electronic Waste: Magnolia Data Solutions, LLC

Fees: Magnolia Data Solutions, LLC charges a flat rate of \$0.25 per pound.

IN WITNESS WHEREOF, the Parties have agreed to the services and pricing contained in this Statement.

Customer: Madison County

Company: Magnolia Data Solutions, LLC

Signature:

Signature:

Title:

Title: Management Rep

Date:

Date: