

**Consumer Electronics Recycling Services Contract
City of Waukesha – Legacy Recycling, LLC**

This Contract is by and between the City of Waukesha, a Wisconsin municipal corporation, referred to herein as the City; and Legacy Recycling, LLC, 9825 Durand Avenue, Sturtevant, Wisconsin 53177, referred to herein as the Contractor. Together, the City and Contractor are referred to as the Parties.

Recitals

Waukesha County published a Request for Proposals, referred to as the RFP, for consumer, non-commercial electronics recycling services, on behalf of participating municipalities in the County.

The RFP contained specific requirements for the qualifications of the Contractor and the Scope of Work to be incorporated into the successful bidder's contract.

The Contractor submitted a proposal in response to the RFP, and was selected by the County as the Contractor with which municipalities should contract for electronics recycling services.

The Contractor is willing to perform electronics recycling services for the City according to the Scope of Work stated in the RFP and the Contractor's responsive Proposal, and to contract with the City for the performance of such services.

Now, therefore, the City and the Contractor agree and contract as follows:

1. **Definitions.** The following capitalized terms have these meanings:
 - a. **Collection Event.** The periodic events on dates and at times designated by the City at which Contractor perform its collection activities as required by this Contract.
 - b. **Program.** The City's electronics recycling program, administered by its Public Works Department.
 - c. **Collection Site.** The physical locations designated by the City at which Collection Events take place.
 - d. **Eligible Electronics.** Items that are either "covered electronic devices" as defined in Wisconsin Statutes §287.17(1)(f) or "eligible electronic devices" as defined in Wisconsin Statutes §287.17(1)(gs)
2. **Contractor Duties.** The Contractor shall perform the following, at Contractor's sole expense:
 - a. Conduct Collection Events at locations, dates and times designated by the City.
 - b. Accept all Eligible Electronics that are delivered to a Collection Event at a Collection Site by residents of the City of Waukesha. Contractor may refuse to accept items which are not Eligible Electronics.
 - c. Provide enclosed containers for deposit of items Collection Sites, which do not require lifting items higher than shoulder height for deposit, and which minimize breakage of items when deposited and during transport.
 - d. Promptly remove containers that are filled, and when requested to do so by the City.
 - e. Provide all personnel and equipment required to conduct Collection Events.
 - f. Provide all personnel and equipment required to haul away and dispose of items collected at Collection Events, and required to perform all of Contractor's obligations under this Contract.

- g. Comply with all federal, state, and local laws, ordinances and regulations that are applicable to Contractor's duties; comply with EPA and DNR guidelines for electronic and hazardous-materials management, and comply with EPA export regulations.
 - h. Obtain all required permits, licenses and certifications for all acts required by this Contract; and timely file all notices and paperwork required to comply with all applicable laws.
 - i. Prepare and provide educational and promotional materials to customers regarding computer data destruction and identification of materials accepted in the e-recycling program.
 - j. Provide containers for temporary storage of collected items at Collection Sites so that items are protected from theft or vandalism when the Collection Site is closed.
 - k. Keep the Collection Site clean and ensure that all collected items are deposited into containers.
 - l. Provide signage to identify the types of items that may be deposited into containers.
 - m. Comply with the City's directions for operation of the Collection Site, and comply with all City regulations concerning the Collection Sites.
 - n. Provide the City with reports showing the number of containers picked up at each Collection Event, and such other statistical information about the Program as the City reasonably requests.
 - o. Maintain records, including chain of custody, bills of lading covering a minimum of 3 months, written consent from competent authority in importing countries, etc., showing that each down-stream sub-contractor that sends environmentally-sensitive materials manages these materials in a way that protects worker safety, public health and the environment through final disposition.
 - p. Maintain a contingency plan for operating procedures that will take effect in the event of interruption of normal transportation or recycling site operations including work stoppage by Contractor's employees, emergency weather conditions, building or equipment failure, lack of access to the primary system for transportation or lack of access to the primary Collection Site.
3. **City Duties.** The City shall perform the following:
- a. Designate adequate areas for Collection Sites, and provide a firm, well-drained surface for collection containers.
 - b. Provide access to deliver and remove containers during normal operating hours of the Collection Sites.
 - c. Make good-faith efforts to direct the deposit of Eligible Electronics into the correct containers, provided Contractor has sufficiently identified the containers.
4. **Term.** This Contract shall commence on the date of its execution and shall terminate on December 31, 2016.
5. **Standard of Work.** Contractor shall dispose of all collected items in full compliance with all applicable federal, state, and local laws and regulations in existence now or at the time of disposal. Contractor shall perform its duties according to the usual and customary practices and standards of the recyclables-collection industry, and according to the certifications listed in section 8.
6. **Fees.** Contractor shall charge parties delivering Eligible Electronics to Contractor's collection events according to the following schedule:
- a. Twenty Dollars (\$20.00) per cathode-ray-tube television, whether intact or in pieces.

- b. Five Dollars (\$5.00) per cathode-ray-tube computer monitor, whether intact or in pieces.
 - c. No charge for any other Eligible Electronics.
 - d. Contractor may not charge any amount for items which are not Eligible Electronics.
7. **Compensation.** Contractor's compensation for providing the services required by this Contract shall be exclusively the fees collected pursuant to section 4 and the salvage value of the items collected. Collected items become the sole property of the Contractor upon their delivery to Contractor at a Collection Event, and Contractor shall be entitled to retain all salvage value recovered by Contractor. City shall provide the site for Collection Events without charge to Contractor. Contractor acknowledges and agrees that the consideration expressed in this Contract is mutual, adequate and sufficient to support this Contract as a binding obligation of the Parties.
8. **Contractor Certification.** Contractor certifies to the City that the Contractor:
- a. Is a registered E-Cycle recycler or collector with the Wisconsin Department of Natural Resources.
 - b. Is e-Steward 2.0 certified or R2 certified.
 - c. Has three years of experience in recycling of e-waste and has documented experience providing services of the type required by this Contract.
 - d. Has not been convicted of any misconduct; been fined for a civil or criminal violation of any federal, state, or local solid-waste disposal, transportation or recycling statute or regulation; or been subject to a court order to correct any violation of any federal, state, or local solid-waste disposal, transportation or recycling statute or regulation.
9. **Data Security.** Contractor will not access, read, compile, use, disclose to any third party, publish, or distribute any data contained in any electronic goods collected by Contractor. Contractor shall not allow any data-storage devices collected by it to be used for any purpose other than disassembly and recycling of components or materials. Contractor shall not direct or allow any electronics collected by it to be removed from the continental United States, or to be disposed of in any landfills. Contractor shall supply within 30 days following a Collection Event a signed and dated Certificate of Recycling and Destruction, warranting to the City that all data stored in any electronics collected at that collection event has been destroyed, either electronically or physically.
10. **Data Security Indemnification.** Contractor shall indemnify and hold the City harmless from any and all liabilities, costs, damages or other obligations that may arise as a result of Contractor's breach of section 5, including the costs of defense and actual, reasonable attorney fees.
11. **Environmental Indemnification.** Contractor shall indemnify and hold the City harmless from any and all liabilities, costs, damages or other obligations that may arise as a result of the release or presence of any toxic or hazardous materials in connection with Contractor's performance of its duties under this Contract, including the costs of defense and actual, reasonable attorney fees.
12. **General Indemnification.** Contractor shall indemnify and hold the City harmless from any and all liabilities, costs, damages or other obligations that may arise as a result of, or in connection with, Contractor's presence on any City property, Contractor's performance of its duties under this Contract, or any acts or omissions of Contractor or any of Contractor's employees, agents, or contractors, including the costs of defense and actual, reasonable attorney fees.
13. **Insurance.** Contractor shall maintain insurance of the following kinds and for not less than the following limits, at Contractor's sole expense, at all times during the term of this Contract and for no less than one year after the end of the term of this Contract. Policies shall be occurrence, and not claims-made, policies. Contractor shall

obtain an endorsement making the City an additional insured and loss payee, and Contractor's insurance shall be primary, not excess, and non-contributory. All policies shall be from insurers licensed to issue such policies in Wisconsin. Upon the execution of this Contract, Contractor shall deliver a certificate of insurance to City showing that all requirements of this section are met.

- a. Commercial general liability, including products-completed operations, \$1,000,000 per occurrence, \$1,000,000 aggregate per project.
- b. Pollution/environmental liability, \$1,000,000 per occurrence, \$1,000,000 aggregate per project.
- c. Automobile liability, \$1,000,000 bodily injury, \$1,000,000 property damage.
- d. Worker compensation, statutory requirements.

14. Hazardous Materials Provisions.

- a. Contractor shall provide evidence of an MCS-90 filing for each transporter carrying hazardous wastes collected by Contractor at Collection Sites.
- b. Contractor shall identify all treatment and disposal facilities to which hazardous wastes collected by Contractor at Collection Sites will be transported. All disposal facilities used by Contractor shall be appropriately licensed and permitted to store and dispose of the waste, materials, or hazardous substances.
- c. Contractor acknowledges that in the course of performing the services required by this Contract that its employees may be exposed to various toxic wastes which could cause injury, illness, or death. Contractor waives its right to seek compensation from the City for expenses incurred as a result of such exposure. The Contractor agrees that the indemnification provisions within this contract extend to any claims brought by or on behalf of any employee of the Contractor.

15. Record Keeping. Contractor shall keep all documents and records generated in the performance of this Contract for no less than 7 years after completion of the Work, and shall make them available to the City at the City's request. Contractor acknowledges that such documents and records may be subject to Wisconsin's Open Records Law.

16. Cooperation by City. The City shall cooperate with the Contractor in the performance of Contractor's duties, and shall respond timely to all reasonable requests for information and access.

17. Parties Are Independent Contractors. Nothing in this Contract shall be construed to create any relationship between the Parties other than independent contractors. Unless specifically provided in this Contract, the Parties are not agents for one another, have no authority to bind the other to contracts, and have no vicarious liability for the other's acts or omissions.

18. Governmental Immunities and Notice Requirement Preserved. Nothing in this Contract shall be construed to be a waiver or modification of the governmental immunities or notice requirements imposed by Wis. Stats. §893.80 or any other law.

19. Assignment Prohibited. This Contract, and the Contractor's responsibility to perform its duties under this Contract, may not be assigned by the Contractor without the City's written consent.

20. Notices. All notices required by this Contract, and all other communications between the Parties, shall be addressed as follows:

To the City: Attention Director of Public Works
City of Waukesha
130 Delafield Street
Waukesha WI 53188

To Contractor: Attention _____
Legacy Recycling, LLC
9825 Durand Avenue
Sturtevant, Wisconsin 53177

21. **Corporate Authorization.** The individuals executing this Contract on behalf of the Contractor warrant and represent that they are duly authorized to bind the Contractor to this Contract. Contractor warrants and represents that the execution of this Contract is not prohibited by the Contractor's articles of incorporation, by-laws, operating agreement, or other internal operating orders, or by any applicable law, regulation or court order. Contractor shall provide proof upon request.
22. **Assistance of Counsel, Voluntary Contract.** The Contractor acknowledges that it has either had the assistance of legal counsel in the negotiation, review and execution of this Contract, or has voluntarily waived the opportunity to do so; that it has read and understood each of this Contract's terms, conditions and provisions, and their effects; and that it has executed this Contract freely and not under conditions of duress.
23. **Adequacy of Consideration.** The Parties acknowledge that the consideration expressed in this Contract is adequate and sufficient to make the obligations contained in this Contract binding upon the Parties.
24. **Costs of Enforcement.** The Parties agree that in the event legal action is necessary to enforce any term or condition of this Contract, then the breaching Party will pay the non-breaching Party's costs incurred in such legal action, including actual attorney fees. If a judgment is taken, then costs of enforcement will be added to the judgment.
25. **Severability.** If any term of this Contract is held unenforceable by a court having jurisdiction, then to the extent the unenforceable term can be severed from the remainder of this Contract without affecting the enforceability of the remainder of this Contract or substantially frustrating its purpose, it will be so severed, and the remainder of this Contract will remain in effect and enforceable.
26. **Survival and Parties Bound.** Unless specifically limited in this Contract, any term, condition or provision of this Contract will survive the execution of this Contract or any stated time periods, to the extent necessary for their performance. This Contract is binding upon, and inures to the benefit of, the Parties' successors, assigns, heirs, executors, trustees and personal representatives.
27. **Governing Law and Jurisdiction.** This Contract will be construed and enforced according to the laws of Wisconsin. If a lawsuit arises out of this Contract, it shall be filed in the state Circuit Court for Waukesha County, Wisconsin. The Parties consent to personal and subject-matter jurisdiction in Wisconsin, and waive all jurisdictional defenses.
28. **Integration.** This Contract constitutes the entire agreement of the Parties formed by the County's RFP and the Contractor's responsive proposal; however, if any ambiguity in this Contract requires resolution, or this Contract is silent on a material point, then reference may be made to the RFP and the Contractor's proposal, in that order of priority, to construe this Contract. All other agreements and understandings of the parties with respect to the subject matter expressed in this Contract are unenforceable.

City of Waukesha

By Shawn N. Reilly, Mayor
Date: _____

Attested by Gina L. Kozlik, City Clerk
Date: _____

To certify that funds are provided for payment:

Richard L. Abbott, Director of Finance
Date: _____

Legacy Recycling, LLC

By (print name) _____
Title: _____
Date: _____

By (print name) _____
Title: _____
Date: _____