

ENROLLED ORDINANCE 180-5

APPROVE SERVICE CONTRACT 2024034 FOR PROCESSING OF RECYCLABLE MATERIALS FOR WAUKESHA COUNTY AND TERMINATION OF INTERGOVERNMENTAL COOPERATION AGREEMENT BETWEEN WAUKESHA COUNTY AND THE CITY OF MILWAUKEE REGARDING A REGIONAL RECYCLING SYSTEM FOR PROCESSING AND MARKETING RECYCLABLES

WHEREAS, Waukesha County serves as the Responsible Unit ("RU") for recycling under Chapter 287 of the Wisconsin Statutes for twenty-five (25) local participating municipalities; and

WHEREAS, through Enrolled Resolution 168-3, the Waukesha County Board approved Capital Project 201409 for the construction of a joint recycling facility; and

WHEREAS, the Waukesha County Board adopted Ordinance 168-117 approving of an intergovernmental agreement between Waukesha County and the City of Milwaukee regarding the construction of a joint recycling facility; and

WHEREAS, in May of 2014, an Intergovernmental Cooperative Agreement Between Waukesha County and the City of Milwaukee Regarding a Regional Recycling System for Processing and Marketing Recyclables ("IGA") was executed; and

WHEREAS, the Waukesha County Board adopted Ordinance 168-118 authorizing increased expenditures to acquire and install the equipment necessary to process recyclables at the new City/County single-stream materials recycling facility (Joint MRF) pursuant to an agreement with Resource Recovery Systems, LLC to design, build and operate the Joint MRF in a City-owned building located in Milwaukee dated May 5, 2014 ("Agreement"); and

WHEREAS, the Joint MRF began operations in March 2015; and

WHEREAS, on May 31, 2023, the Joint MRF experienced a fire which left the building and equipment significantly damaged, rendering it unable to accept recyclables for processing; and

WHEREAS, after assessing the significant damage and losses suffered from the fire, a Notice of Termination was issued to Resource Recovery Systems, LLC d/b/a Republic Services on August 18, 2023, pursuant to Section 13.01 of the Agreement; and

WHEREAS, on August 21, 2023, citing provisions in Section III (d) 11 of the IGA with the City of Milwaukee, a processing contingency plan to coordinate alternative recycling material hauling and processing at other locations was agreed to; and

WHEREAS, the City of Milwaukee has agreed to proceed with a mutual termination of the IGA; and

WHEREAS, Department of Parks and Land Use staff coordinated with regional, third-party recycling companies to temporarily process recyclables for member communities; and

WHEREAS, on November 13, 2024, Request for Proposal ("RFP") #2024034 Waukesha County Materials Recycling Processing and Marketing was released; and

WHEREAS, following the scoring of proposals by the RFP committee, Waste Management of Wisconsin, Inc. ("Contractor") was selected to provide processing of all recyclable material at their existing privately-owned material recovery facility in Germantown, WI; and

WHEREAS, on January 22, 2025, the Finance Committee of the Waukesha County Board approved the competitive procurement process followed to solicit proposals; and

WHEREAS, Service Contract 2024034 for Processing of Recyclable Materials for Waukesha County was successfully negotiated between the Contractor and Waukesha County.

THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA ORDAINS that Service Contract 2024034 for Processing of Recyclable Materials for Waukesha County with Waste Management of Wisconsin, Inc., which is on file in the Office of the County Clerk, is hereby approved.


BE IT FURTHER ORDAINED that the County Executive or designee may execute the Service Contract on behalf of Waukesha County.

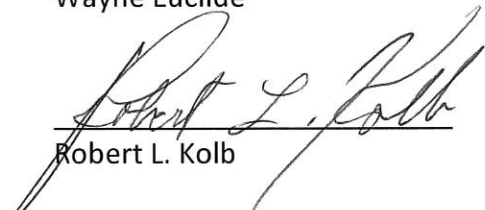
BE IT FURTHER ORDAINED in accordance with Section VI(q) of the Intergovernmental Cooperation Agreement between Waukesha County and the City of Milwaukee Regarding a Regional Recycling System for Processing and Marketing Recyclables, the agreement shall be terminated.

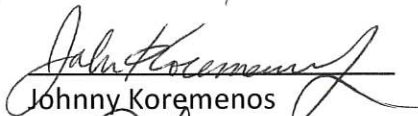
APPROVE SERVICE CONTRACT 2024034 FOR PROCESSING OF RECYCLABLE MATERIALS FOR  
WAUKESHA COUNTY AND TERMINATION OF INTERGOVERNMENTAL COOPERATION  
AGREEMENT BETWEEN WAUKESHA COUNTY AND THE CITY OF MILWAUKEE REGARDING A  
REGIONAL RECYCLING SYSTEM FOR PROCESSING AND MARKETING RECYCLABLES


Presented by:  
Land Use, Parks & Environment Committee

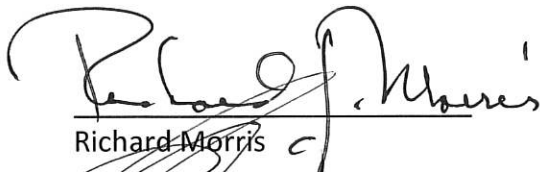
  
Christine M. Howard, Chair

  
Wayne Euclide

  
Robert L. Kolb

  
Johnny Koremenos

  
Brian Meier

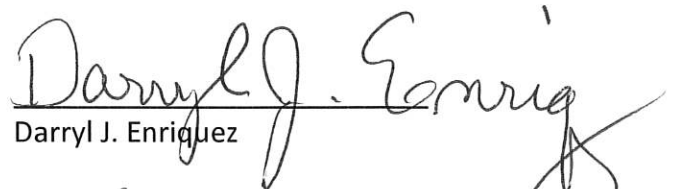
  
Richard Morris

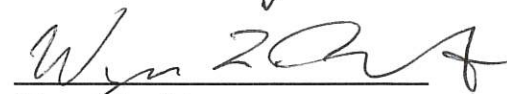
  
Steve Styza

Approved by:  
Finance Committee

  
Gary J. Szpara, Chair

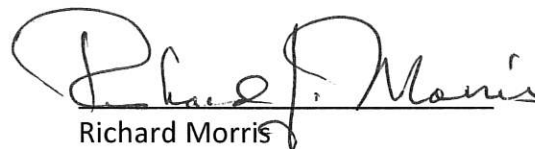
  
Timothy Dondlinger

  
Darryl J. Enriquez

  
Wayne Euclide

  
Joel R. Gaughan

  
Darlene M. Johnson

  
Richard Morris

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County,  
Wisconsin, was presented to the County Executive on:

Date: 04-24-2025   
Margaret Wartman, County Clerk

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County,  
Wisconsin, is hereby:

Approved: X  
Vetoed: \_\_\_\_\_

Date: 4/30/2025   
Paul Farrow, County Executive

FISCAL NOTE  
APPROVE SERVICE CONTRACT 2024034 FOR PROCESSING OF RECYCLABLE  
MATERIALS FOR WAUKESHA COUNTY AND TERMINATION OF  
INTERGOVERNMENTAL COOPERATION AGREEMENT BETWEEN WAUKESHA  
COUNTY AND THE CITY OF MILWAUKEE REGARDING A REGIONAL RECYCLING  
SYSTEM FOR PROCESSING AND MARKETING RECYCLABLES

This ordinance approves a service contract with Waste Management of Wisconsin, Inc. for the processing of recyclable materials for Waukesha County and terminates the current intergovernmental cooperation agreement between Waukesha County and the City of Milwaukee. The terms of the proposed agreement are to last about 10 years through December 31, 2034, with the option to extend the contract for two additional 5-year periods, upon written mutual agreement between the parties. The estimated expenses fall within adopted budget authority. Therefore, there is no need for modifying the 2025 Budget.

The table below displays the estimated revenues and expenses for running the program under the first twelve months of the contract. This includes items that are not directly affected by the contract (e.g., State Recycling Grant, personnel costs), in order to provide a more complete picture of anticipated program solvency.

The contract allocates 80% of the estimated material sales revenue, after deducting for residual tonnage (i.e., non-recyclable materials that must be landfilled), estimated to generate about \$1.8 million annually. Similarly, the county would receive \$3.00 for every recyclable ton, to continue funding its recycling education program. The contractor will charge the county \$79.75 per ton for processing, estimated to cost about \$2.0 million. This contract calls for this fee to increase based on the 12-month percent change in the "Employment Cost Index, Private Industry Workers, Wages & Salaries, Service Occupations, Service Providing, All Workers, United States (National), current dollars, Not Seasonally Adjusted (Series ID CIU201S000300000A)" from 4<sup>th</sup> quarter to 4<sup>th</sup> quarter over the previous calendar year, or 3% of the previous year's cost, whichever is lower. The current analysis shows an estimated favorable result of just over \$200,000. The long-term financial viability of this program will be dependent upon multiple factors, including the material sales market, the volume of recyclable materials, and rate of increase for processing fees.

**Projected Financial Results for First 12-Months of Contract**

4/1/25-03/31/2026

Year 1

**Revenues**

Estimate

<sup>1</sup>	Net Tonnage	22,638	
<sup>2,3</sup>	Revenue Share	80%	
	Average Commodity Revenue (ACR)/ton	\$ 100	
	<b>Material sales</b>		\$1,811,040
<sup>1</sup>	Net Tonnage	22,638	
<sup>2</sup>	Per Ton Rate	\$ 3.00	
<sup>4</sup>	<b>Education Fee</b>		\$67,914
	<b>State Grant</b>		\$ 972,683
<sup>5</sup>	<b>Investment income</b>		\$ 50,000
	<b>Total Revenues</b>		\$ 2,901,637

**Expenses**

	Tonnage	25,370	
<sup>2</sup>	Processing Fee Rate	\$79.75	
	<b>Processing Fee</b>		\$ 2,023,258
	<b>Personnel</b>		\$ 417,748
<sup>6</sup>	<b>Other Operating &amp; Interdepartmental</b>		\$ 254,256
	<b>Total Expenses</b>		\$ 2,695,262
	<b>Operating Income/(Loss)</b>		\$ 206,375

<sup>1</sup> Estimated tonnage net of residue. The residue rate is capped at 10.77% for the first 18 months of the contract, at which point it will be adjusted annually based on a composition analysis but capped at a 3% increase annually.

<sup>2</sup> Cited in updated contracted.

<sup>3</sup> Vendor receives 20% of material sales revenue.

<sup>4</sup> Education Fee funds are used for recycling education and to fund a Recycling Specialist

<sup>5</sup> Recent investment income earnings have been higher due to higher interest rates and fund balance levels. The figure used here is a more conservative estimate for what a typical year might generate.

<sup>6</sup> Includes indirect costs, management services, consulting fees, etc.

<sup>7</sup> Does not include future dividend payments to municipalities, which will be based on program financial results and criteria adopted by the County Board (enrolled ordinance 177-060).

*William Duckwitz*

William Duckwitz

Budget Manager

4/2/2025

JS

## **SERVICE CONTRACT 2024034 FOR PROCESSING OF RECYCLABLE MATERIALS FOR WAUKESHA COUNTY**

This Contract is made and entered into by and between Waukesha County, whose principal address is 515 West Moreland Boulevard, Room AC 260, Waukesha, WI 53188 (the "COUNTY") and Waste Management of Wisconsin, Inc. (the "CONTRACTOR") whose principal address is W132N10487 Grant Drive, Germantown, WI 53022, collectively referred to as "the parties".

### **RECITALS**

WHEREAS, the COUNTY is the "Responsible Unit" under Chapter 287 of the Wisconsin Statutes for twenty-six municipalities in Waukesha County ("Participating Municipalities"); and

WHEREAS, the COUNTY seeks processing, marketing and sale of single stream recyclables collected for Participating Municipalities served by the COUNTY as the Responsible Unit; and

WHEREAS, the COUNTY awarded on the Required Proposal: Processing of all Recyclable Material at Existing Privately-Owned Material Recovery Facility, with all Recyclable Material to be deposited at CONTRACTOR's principal address for processing; and

WHEREAS, the CONTRACTOR has established experience in operating a facility for single stream recyclable material; and

NOW, THEREFORE, for the consideration and the mutual promises set forth in this Contract, the COUNTY and the CONTRACTOR agree as follows:

### **1. TERMS AND DEFINITIONS:**

- a. For purposes of this Contract, the definitions listed in Section IV of the Request for Proposal apply to this Contract and are incorporated herein. Capitalized terms not otherwise defined herein shall have the definitions assigned to them in the Request for Proposal.
- b. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes," and "including" shall be deemed to be followed by the phrase "without limitation" except as the context may otherwise require.

### **2. CONTRACT TERM:**

- a. The term of this Contract shall commence on May 1, 2025 and shall continue in full force and effect until December 31, 2034. This Contract may be extended for two (2) additional five (5) year terms by signed, written mutual agreement of the parties.

### 3. SCOPE OF SERVICES:

- a. The CONTRACTOR is required to perform and carry out in a satisfactory, timely, and proper manner the services delineated in this Contract. The CONTRACTOR shall provide the services as stated in Waukesha County Request for Proposal #2024034 dated November 13, 2024, inclusive of Amendment 1, dated November 26, 2024, herein attached and incorporated by reference as Attachment A, and CONTRACTOR'S response dated December 12, 2024, herein attached and incorporated by reference as Attachment B. In the event of any inconsistencies amongst the documents, the order of precedence shall be 1) this Contract 2024034, 2) Attachment A, and 3) Attachment B.
- b. Section VI.C.A.12, on page 11 of Attachment A is hereby amended to include the following: The COUNTY will make its best effort to educate residents of Participating Municipalities on Recyclable and Non-Recyclable Materials. The COUNTY does not have direct control over the materials collected and delivered. Inadvertent deliveries of Non-Recyclable Materials or Hazardous Waste, on its own, shall not constitute a breach of COUNTY's obligations.
- c. The CONTRACTOR shall furnish all labor, materials, and equipment necessary for the processing, marketing and sale of all single-stream Recyclable Material listed in Schedule 1, collected from Participating Municipalities in the COUNTY Responsible Unit and from COUNTY facilities at CONTRACTOR's Designated Facility located at Waste Management of Wisconsin, Inc., principal address W132N10487 Grant Drive, Germantown, WI 53022. CONTRACTOR will not contract with a separate legal entity to utilize a transfer station for the provision of services contemplated under this Contract unless mutually agreed to otherwise by the parties in writing. Schedule 1 may be amended upon written mutual agreement between COUNTY and CONTRACTOR.
- d. CONTRACTOR's Designated Facility must be a Wisconsin self-certified materials recovery facility or shall become a self-certified processing facility through the Wisconsin Department of Natural Resources within one year of the effective date of this Contract.
- e. Hours of Operation. CONTRACTOR's Designated Facility shall be open and available to receive and accept Program Materials under this Contract from 7:00 a.m. to 4:00 p.m., Monday through Friday, excluding Holidays. However, if a Holiday falls on a weekday, the Designated Facility shall be open and available to receive and accept Program Materials on the following Saturday to compensate for the Holiday closure. The COUNTY requires flexibility from time to time for delivery of Program Materials to the Designated Facility, for instance, due to storm recovery, peak seasonal flow, and other factors. At the request of the COUNTY, CONTRACTOR shall open the Designated Facility for extended hours on an as-needed basis, at no additional cost to the COUNTY. COUNTY shall provide any request for extended hours to CONTRACTOR at least twenty-four (24) hours in advance.

#### 4. PROCESSING FEE AND RECYCLABLE REVENUE:

- a. Composition Analysis. The COUNTY recyclable material composition analysis from 2022 will be used for valuing recyclable material initially. The CONTRACTOR shall conduct a Recycling Composition Study ("RCS") at the CONTRACTOR'S expense within eighteen (18) months after Contract execution and every twelve (12) months after the initial RCS and throughout the Contract Term(s), at a time agreed to by both parties, unless otherwise waived in writing by the County Representative. The results of the most recent RCS shall be used to determine the AMV beginning the first of the month following acceptance of the RCS by the County Representative.
- b. Payment to the COUNTY by the CONTRACTOR. Each month, the CONTRACTOR shall pay the COUNTY 80% of the value of the COUNTY'S single-stream recyclable materials delivered to the CONTRACTOR's facilities. Refer to Schedule 2 for commodity pricing and index information.
- c. Payment to the CONTRACTOR by the COUNTY. Each month, the COUNTY shall pay the CONTRACTOR for the processing costs based upon the fee as proposed by the CONTRACTOR in their RFP response. For the first one-year term of the Contract the Processing fee is \$79.75 per ton.
- d. Monthly Reports and Invoices. The CONTRACTOR shall keep a record of total weights of Recyclables collected and delivered from Participating Municipalities in the COUNTY Responsible Unit and from COUNTY facilities and report those totals to the COUNTY monthly. The CONTRACTOR shall also provide a detailed report of loads received (date, ticket number, truck number, hauler, tonnage). A report will be included each month that details the value of the material, residual waste disposal cost and the cost of processing.

Payments from the CONTRACTOR to the COUNTY shall be made within thirty (30) days of the last day of each month. Payments from the COUNTY to the CONTRACTOR shall be made within thirty (30) days of the invoice date, but only if completion is satisfactory.

COUNTY shall pay all invoiced charges within thirty (30) days of the invoice date, by check mailed to CONTRACTOR's payment address on COUNTY's invoice or via electronic payment method elected by the CONTRACTOR utilizing COUNTY's thirty-party payment vendor portal. Payment by any other method or channel, including in person, online, or by phone, shall be subject to additional applicable convenience fees and other costs charged by CONTRACTOR or third-party billing portal or program.

- e. Pricing shall be fixed for the first year of the Contract. After the first year, pricing shall be subject to change annually and may not increase by more than the Employment Cost Index, Private Industry Workers, Wages & Salaries, Service Occupations, Service Providing, All Workers, United States (National), 12-month percent change, current dollars, Not Seasonally Adjusted (Series ID CIU201S000300000A) from the 4th quarter of the prior year to the current year, or



3% of the previous year's cost, whichever is lower. All other conditions of this Contract shall remain the same. The parties agree that they intend for the pricing to increase annually by a percentage calculated as described immediately above, but any changes in pricing must be by mutual written agreement of the parties that shall become an amendment to this Contract. Any requests to change the pricing must be submitted by either party in writing no later than sixty (60) days before the start of the new Contract year. Upon the receipt of a timely request for a pricing change, the parties agree to calculate the increase in the manner described above and to enter into an amendment reflecting that increase. Any agreed upon changes in pricing will not go into effect until the beginning of the new Contract year. If, for a particular new Contract year, the calculation described above results in a 0.0% or a negative percent change, then the pricing will not increase for the year.

## **5. REPORTS:**

- a. The CONTRACTOR agrees to timely submit reports as may be required by the COUNTY.
- b. All reports, studies, analyses, memoranda and related data and material developed during the performance of this Contract shall be submitted to and be the exclusive property of the COUNTY, which shall have the right to use them for any purpose without any further compensation to the CONTRACTOR. All of the documents and materials prepared or assembled by the CONTRACTOR under this Contract will not be made available to any individual, agency, public body or organization other than the COUNTY. Notwithstanding the foregoing, all right, title and interest to the underlying intellectual property and data incorporated into or set forth in any reports, studies, analyses, memoranda and related data and material prepared during the performance of the Contract shall be retained by, and shall be the sole property of, CONTRACTOR.
- c. The documents and materials prepared in whole or in part under this Contract shall not be made the subject of any report, book, writing or oral dissertation by the CONTRACTOR. If this Contract is terminated, all finished or unfinished documents or materials prepared under this Contract shall be immediately transmitted to the COUNTY upon termination.

## **6. CONDITIONS OF PERFORMANCE AND COMPENSATION:**

- a. Performance - The CONTRACTOR agrees that its work shall conform to such recognized high professional standards as are prevalent in its field of endeavor and like services.
- b. Place of Performance – The COUNTY shall determine the place or places where services shall be provided by the CONTRACTOR.
- c. Compensation - Compensation for services provided under this Contract is contingent upon the approval process set forth in Section 4, Processing Fee and Recyclable Revenue. Section 66.0135, Wisconsin Statutes, will apply to any late payments by the COUNTY, except as provided by Section 7.

- d. Taxes, Social Security and Government Reporting - Personal income tax payments, social security contributions and all other governmental reporting and contributions as a consequence of the CONTRACTOR receiving payment under this Contract shall be the sole responsibility of the CONTRACTOR.
- e. Subcontracting - The CONTRACTOR shall not subcontract for the performance of any of the services herein set forth without prior written approval obtained from the COUNTY. If any work or service is subcontracted, it shall be specified by written contract or agreement and shall be subject to each provision of this Contract. The CONTRACTOR shall be as fully responsible to the COUNTY for the acts and omissions of its subcontractors and or persons either directly or indirectly employed by them, as it is for the acts and omissions of persons directly employed by CONTRACTOR.

#### **7. FORCE MAJEURE:**

- a. If a party is unable, in whole or in part, to punctually carry out its obligations under this Contract because of a Force Majeure Event, such party's obligations, to the extent affected thereby, will be extended on a day-by-day basis during the continuance of the delay caused by such event. The party claiming the Force Majeure Event shall use reasonable efforts to remedy such Force Majeure Event as promptly as commercially practicable after such event occurs and at the time that it is no longer applicable. The party affected by the Force Majeure Event shall give the other party notice as soon as commercially practicable (but not later than 15 working days) after such event occurs, at 30-day intervals during any continuation of such incident, and at the time that it is no longer applicable. Notice shall state with particularity the nature of the claimed event and provide a reasonable estimate of the length of any delay in the fulfillment of obligations under this Contract.
- b. If a Force Majeure Event lasts for more than 60 calendar days, the party not claiming the Force Majeure Event may terminate this Contract immediately upon providing written notice to the other.

#### **8. RECORDS:**

- a. Establishment and Maintenance of Records - Records shall be maintained by the CONTRACTOR with respect to all matters covered by this Contract. The records shall be maintained for a period of seven (7) years regardless of when final payment under the Contract has taken place.
- b. Inadvertent Disclosure of Data by Waukesha County - In the event that data containing personally identifiable information (PII) as defined in Section 19.62(5), Wis. Stats., protected health information (PHI) as defined in HIPAA Privacy Rule, 45 CFR s. 160.103, or data that is otherwise subject to state or federal confidentiality laws is transmitted to CONTRACTOR in error, upon notification from the County CONTRACTOR shall promptly return the data or delete the information from its system, including any back-up systems, and/or destroy it as applicable so it is no longer

accessible. CONTRACTOR shall certify in writing to the County that it has returned, deleted or destroyed the data, and until such time that it does so, it shall strictly and securely maintain the data and not further distribute the data.

- c. Documentation of Cost - All costs shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers, or other official documentation evidencing in proper detail the nature and propriety of other accounting documents pertaining in whole or in part to this Contract and shall be clearly identified and readily accessible.

## **9. AUDITS AND INSPECTIONS:**

- a. In the event that the COUNTY deems it necessary to conduct an audit or inspection, CONTRACTOR shall, during normal business hours and with reasonable prior notification (at least two (2) business days in advance), furnish or make available at a time designated by the COUNTY and in the form required by the COUNTY, information, records and reports regarding powers, duties, activities, organization, property, financial transactions, method of operation, or any and all other records, reports or information in CONTRACTOR's custody or control pertinent to this Contract.
- b. CONTRACTOR shall provide the COUNTY'S inspectors or auditors access to all property, equipment and facilities in CONTRACTOR's custody or control related to the services provided or purchased under this Contract. CONTRACTOR shall be expected to provide, at CONTRACTOR's expense, reasonable time by CONTRACTOR's personnel as may be required for the COUNTY'S inspectors or auditors to perform the inspection or audit.
- c. Any information provided to the inspectors or auditors, which is deemed confidential by federal, state or local laws, shall be held as confidential and not disclosed to the public.

## **10. CONFLICT OF INTEREST:**

- a. Interest in Contract - No officer, employee or agent of the COUNTY who exercises any functions or responsibilities in connection with the carrying out of any services or requirements to which this Contract pertains, shall have any personal interest, direct or indirect in this Contract.
- b. Interest of Other Local Public Officials - No member of the governing body of the locality, who exercises any functions or responsibilities in the review or approval of the carrying out of this Contract, shall have any personal interest, direct or indirect, in this Contract.
- c. Interest of Contractor and Employees - If CONTRACTOR is aware or becomes aware that any person described in Sections 10, a. and b. has any personal financial interest, direct or indirect, in this Contract, CONTRACTOR shall immediately disclose such knowledge to the COUNTY. The CONTRACTOR further covenants that it presently

has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The CONTRACTOR further covenants that in the performance of this Contract no person having any conflicting interest shall be employed.

#### **11. MISCELLANEOUS:**

- a. Compliance with Laws. The CONTRACTOR shall comply with all applicable laws, regulations, ordinances, codes, and rules and any permits applicable to processing recyclable materials.
- b. Safety Requirements. All material, equipment and supplies used in performance of this Contract or provided to the COUNTY must comply with all safety requirements as set forth by the Wisconsin Administration Code, Rules of the Industrial Commission on Safety and all applicable OSHA standards.
- c. Assignment. This The CONTRACTOR shall not assign or transfer this Contract and shall not transfer any interest in it without the prior written consent of the COUNTY. Claims for money due or to become due to the CONTRACTOR from the COUNTY under this Contract may be assigned to a bank, trust company or other financial institution without COUNTY approval; however, notices of any such assignment or transfer shall be furnished promptly to the COUNTY.
- d. Relationship of the Parties. Neither the COUNTY nor the CONTRACTOR shall have any responsibility to perform services for or to assume obligations which are the obligation of the other Party. The CONTRACTOR agrees that it is an independent entity with respect to the services provided pursuant to this Contract. Nothing in this Contract shall be considered to create the relationship of employer and employee between the Parties or their respective employees.
- e. Waiver. Unless otherwise specifically provided by the terms of this Contract, no delay or failure to exercise a right or to declare any breach of this Contract shall impair the right or shall be construed to be a waiver of a default, but the right may be exercised from time to time and as often as may be deemed expedient. Any waiver shall be in writing and signed by the party granting the waiver. If any representation, warranty or covenant contained in this Contract is breached by either party and waived by the other party, the waiver shall be limited to the particular breach waived and shall not be deemed to waive any other breach under this Contract. One or more waivers by any party of any term of this Contract will not be construed as a waiver of a subsequent breach of the same or any other term. The consent or approval given by any party with respect to any act by the other party requiring such consent or approval shall not be deemed to waive the need for further consent or approval of any subsequent act by such party.
- f. Registration. Out of State Organizations Transacting Business in Wisconsin: Chapters 178, 179, 180, 181, and 183 of the Wisconsin Statutes contain a general provision that the following shall not transact business in this state until it has obtained a certificate of authority or registration from the Department of Financial Institutions:

A foreign (out-of-state) corporation, nonstock corporation, limited partnership, limited liability company, or limited liability partnership.

Firms meeting the above criteria must be registered to transact business in the State of Wisconsin with the Department of Financial Institutions  
(<https://dfi.wi.gov/Pages/BusinessServices/BusinessEntities/ForeignEntities.aspx>)

- g. Sole Proprietors. If CONTRACTOR is a sole proprietor, a Federal Employer Identification Number (FEIN) must be provided. If CONTRACTOR is a sole proprietor whose principal address is located outside of the state of Wisconsin, the CONTRACTOR must also designate an agent in the State of Wisconsin for service of process and submit that contact information for the in-state agent to COUNTY prior to execution of this Contract.
- h. Continuation. Continuation beyond December 31st of any year is contingent upon the appropriation of funds by the Waukesha County Board of Supervisors.
- i. Personnel. The CONTRACTOR represents that it has or will secure, at its own expense, all personnel required in performing the services under this Contract. Such personnel shall not be employees of or have a contractual relationship with the COUNTY. All of the services required hereunder will be performed by the CONTRACTOR or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform such services.
- j. Amendment. No amendment, modification, change or extension of this Contract shall be effective unless it is in writing and executed by the Parties.
- k. Severability. In the event that any provision of this Contract in any respect shall, for any reason, be determined to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the other terms of this Contract shall remain in full force and effect and be construed in such a manner as to implement and give effect to the intentions of the parties as reflected in the Contract. To the extent necessary to have such effect, the parties shall negotiate in good faith for necessary amendments, modifications, or supplements of or to this Contract.
- l. Discrimination Prohibited. In connection with the performance of work under this Contract, the CONTRACTOR shall not discriminate against any individual on the basis of age, arrest and/or conviction record, ancestry, color, national origin or race, creed, disability, genetic testing, honesty testing, marital status, military service, pregnancy or childbirth, sex, sexual orientation, or use or nonuse of lawful products off the employer's premises during nonworking hours. CONTRACTOR may refuse to employ individuals based on conviction and arrest records only as allowed by sec. 111.335, Wis. Stats. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous

places, available for employees and applicants for employment, notices setting forth the provisions of the non-discrimination clause. The CONTRACTOR will cause the foregoing provisions to be inserted into all subcontracts, if any, for any work covered by this Contract so that such provisions will be binding upon each subcontractor provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

- m. Dispute Resolution. Disputes by either party as to the applicability of this Contract's provisions including quality or content of delivered materials, non-recyclable residues, recordkeeping or the accuracy of applicable determinations or calculations, shall require notice to the other party in writing (notice via electronic mail is acceptable if acknowledged and accepted by other party). Parties shall make every reasonable effort to promptly resolve the matter through good faith negotiations within ten (10) business days. If not resolved, either party may seek such other redress as may be available, including mediation of such dispute if acceptable to both parties. A party may take necessary legal action to prevent immediate or irreparable harm.
- n. Reduced Capacity. If the CONTRACTOR is unable to receive or process Recyclable Material to its full capacity as a result of planned or unplanned downtime event, the CONTRACTOR shall continue to operate, if feasible and commercially practical, to the extent of its reduced capacity and find an alternative solution wherein the remaining Recyclable Material is responsibly processed at a self-certified materials recovery facility and under the guidelines of this contract at no additional cost to the COUNTY.
- o. Agreement Entirety. This Contract constitutes the entire agreement between the parties. No modification, amendment, alteration, revision, or waiver of this Contract or any of its provisions shall be permitted by or binding upon the parties unless so agreed in writing.

**12. INDEMNIFICATION:** The CONTRACTOR shall indemnify, hold harmless and defend the COUNTY, its officers, agents, and employees from and against any and all liabilities, claims, penalties, fines, forfeitures, suits and other costs and expenses incident thereto (including reasonable and documented cost of defense, settlement, and reasonable and documented attorney's fees) which may be alleged against the COUNTY or which the COUNTY may incur, become responsible for, or pay out as a result of death or bodily injury to any person, destruction or damage to any property, contamination of or adverse effects on the environment, or any violation or alleged violation of governmental laws, regulations or orders, to the extent that such damage, injury, contamination or violation was caused by the negligent or more culpable acts, errors or omissions of the CONTRACTOR.

**13. INSURANCE:** The CONTRACTOR agrees that it will, at all times during the Term, keep in force and effect insurance policies, at its own cost and expense, issued by a company or companies authorized to do business in the State of Wisconsin and satisfactory to the COUNTY. Such insurance shall be primary, and all insurers must be rated A-VIII or better by A.M. Best. The insurer must be satisfactory to the COUNTY. The CONTRACTOR shall maintain the following insurance policies at all times during the Term:

a. Workers' Compensation and Employer's Liability:

Limits of Liability		Statutory
Liability injury by accident	each accident	\$100,000
Bodily injury by disease	each employee	\$100,000
	Policy limit	\$500,000

Workers Compensation Waiver of Subrogation: COUNTY shall not be liable to CONTRACTOR or its employees for any injuries to CONTRACTOR'S employees arising out of the performance of work under this agreement. CONTRACTOR and its workers compensation insurance carrier agree to waive any and all rights of recovery from the COUNTY for workers compensation claims made by its employees. The CONTRACTOR agrees that the indemnification and hold harmless provisions within this contract extend to any claims brought by or on behalf of any employee of the CONTRACTOR.

To Include:

- Other States coverage.
- United States Longshoremen and Harbor Workers Compensation Act Endorsement (if transport of waste of any type includes delivery to sites where material is stored adjacent to navigable bodies of water or must be loaded on vessels, scows, barges, etc.).

b. General Liability Insurance:

Limits of Liability		
Bodily injury/property damage	each occurrence	\$1,000,000
	General aggregate	\$1,000,000
	Products/completed	
	Operations aggregate	\$1,000,000

To Include:

- Occurrence coverage.
- Commercial general liability insuring agreement.
- Coverage for the following hazards:
  - Premises/operations.
  - Products/completed operations.
  - Independent contractors.
- Contractual liability for risks assumed in this Contract.
- General aggregate limit to apply to each site.
- The COUNTY, its boards, commissions, agencies, officers, agents and employees are to be named as an additional insured to this General Liability Insurance policy.

c. Motor Vehicle Liability:

Limit of Liability		
Bodily injury/property damage	each accident	\$1,000,000

To include:

- Coverage for the operation of any owned, non-owned, or hired motor vehicle Contractual liability for risks assumed in the Contract.
- Pollution Liability – Broadened Coverage for Coverage Autos Endorsement.

- MCS – 90 Endorsement.

d. Umbrella:

Limits of Liability

Bodily injury/personal injury/

Advertising injury/property damage	each occurrence	\$10,000,000
	General aggregate	\$10,000,000
	Products/completed	
	Operations aggregate	\$10,000,000

To Include:

- Occurrence form will apply over the primary employer's liability, general liability, and automobile liability limits.
- The COUNTY, its boards, commissions, agencies, officers, agents and employees are to be named as an additional insured to this Umbrella policy.

e. Pollution Legal Liability:

Limits of Liability

Bodily injury/property damage	each loss	\$10,000,000
	Aggregate	\$10,000,000

To Include:

- Insuring agreement which will protect against sudden and gradual occurrences at:
  - Landfills.
  - Other permitted disposal facilities.
  - Deletion of contractual exclusion from the insuring agreement.
  - Explanation of terms with regard to the time period and cost for extended discovery period.
  - Defense costs shall be outside the policy limit.

**14. TERMINATION:** COUNTY shall have the right to terminate this Contract for cause in the event of CONTRACTOR's material breach of its obligations under this Contract by giving written notice to the CONTRACTOR of such termination delivered pursuant to Section 16. The written notice shall be provided to the CONTRACTOR at least thirty (30) days before the effective date of such termination. Within such thirty (30) day period, COUNTY shall permit the CONTRACTOR to cure such material breach of the terms of this Contract to the reasonable satisfaction of COUNTY, if the breach is amenable to a cure. If the breach is not cured within such thirty (30) day period, the COUNTY may terminate this Contract immediately upon written notice to the CONTRACTOR.

For purposes of this provision, a "material breach" includes, but is not limited to:

- CONTRACTOR's failure to perform a material obligation under the Contract; or
- CONTRACTOR's breach significantly impairs the overall purpose of the Contract; or
- CONTRACTOR's breach destroys or severely undermines the essential objectives of this Contract; or
- CONTRACTOR's breach involves repeated or persistent non-performance of any material term or condition of this Contract, despite prior written notices of non-compliance.



Notwithstanding the above, the CONTRACTOR shall not be relieved of liability to the COUNTY for damages sustained by the COUNTY by virtue of any breach of this Contract by the CONTRACTOR. COUNTY shall have the right to withhold or setoff payments owed to CONTRACTOR relating to CONTRACTOR's breach of the Contract prior to the termination date.

**16. NOTICES:** Notices required by this Contract shall be in writing and delivered via mail (postage prepaid), commercial courier, or personal delivery and sent by email. Any notice delivered or sent as aforesaid shall be effective on the date of delivery or sending. All notices and other written communications under this Contract shall be addressed to the individuals in the capacities indicated below, unless otherwise modified by subsequent written notice.

For the COUNTY:                   Waukesha County Parks and Land Use (PLU) Division  
  ATTN: Alan Barrows, Land Resources Manager  
  515 W. Moreland Blvd., Room AC260  
  Waukesha, WI 53188

In Witness Whereof, the COUNTY and the CONTRACTOR have caused this Contract to be executed by their duly authorized officers or representatives and have caused this Contract to be dated as of the date and year first written above.

---

CONTRACTOR

---

[Authorized Representative's Name & Title]

---

Date

WAUKESHA COUNTY, WISCONSIN

---

[Authorized Representative's Name & Title]

---

Date

## SCHEDULE 1

### SINGLE STREAM SPECIFICATIONS

RECYCLABLE MATERIALS must be dry, loose (not bagged), unshredded, empty, and include ONLY the following:

Aluminum cans	Newspaper
PET bottles with the symbol #1 -with screw tops only	Mail
HDPE plastic bottles with the symbol #2 (milk, water bottles detergent, and shampoo bottles, etc.)	Uncoated paperboard (ex. cereal boxes; food and snack boxes)
#4 LDPE Containers	Uncoated printing, writing, and office paper
PP plastic bottles and tubs with symbol # 5 - Empty; including black plastic containers	Old corrugated containers/cardboard (uncoated)
Steel and tin cans	Magazines, glossy inserts, and pamphlets
Food and beverage cartons	Glass bottles and jars

NON-RECYCLABLES include, but are not limited to the following:

Plastic bags and bagged materials (even if containing Recyclable Materials)	
Porcelain and ceramics	Mirrors, window or auto glass
Light bulbs	Waxed cardboard
Soiled paper, including paper plates, cups and pizza boxes	Plastics not listed above including but not limited to those with symbols #3, #6, #7 and unnumbered plastics, including utensils
Expanded polystyrene	Coat hangers
Glass cookware/bakeware	Household appliances and electronics
Hoses, cords, wires	Yard waste, construction debris, and wood
Flexible plastic or film packaging and multi-laminated materials	Needles, syringes, IV bags or other medical supplies
Food waste and liquids, containers containing such items	Textiles, cloth, or any fabric (bedding, pillows, sheets, etc.)
Hazardous Materials or containers which contained Hazardous Materials	Napkins, paper towels, tissue, paper plates, and paper cups
Fiber smaller than 4" by 4"	Propane tanks, fuel cannisters, aerosol cans
Batteries	Metal cookware/bakeware
Fiber Recyclable Materials with moisture exceeding commodity market limits	

## SCHEDULE 2

### *CONTRACT PAYMENT SCHEDULE*

Each month, the CONTRACTOR shall remit to COUNTY an amount equivalent to 80% of the value of the single-stream Recyclable Materials delivered to the CONTRACTOR's facilities. Additionally, payment shall include Education Fee (EF) of \$3.00 per ton of Recyclable Material received by the CONTRACTOR as separate line-item on monthly payment statement to the COUNTY to ensure these funds are earmarked for recycling education.

Payments are calculated based on the first posted prices of each month. Commodity values should reflect current average pricing from designated indexes.

#### **Commodity Pricing Sources and Indices:**

**Residue:** Residue from processing Recyclable Materials shall be accounted for as a negative revenue on the COUNTY's payment. This fee is subject to an annual rate adjustment, not to exceed 3% annually.

#### **Sourced from [www.recyclingmarkets.net](http://www.recyclingmarkets.net) Chicago (Midwest/Central) pricing:**

- Steel Cans (Densified) and Pots and Pans
- Aluminum Cans (Baled)
- Plastic PET (Baled)
- Plastic Natural HDPE (Baled)
- Plastic Colored HDPE (Baled)
- Plastic PP (Baled)
- Bulky Rigid Plastic
- Glass
- #4 LDPE Plastics\*      \* In the event COUNTY begins accepting these during the course of the Contract.

#### **Sourced from RISI PP/Pulp & Paper Week (Chicago) pricing:**

- OCC (Baled)
- Mixed Paper (Baled)
- Aseptic

**All commodity pricing shall reflect the specific bale grade processed and marketed by the CONTRACTOR.**

**Materials listed in Schedule 1 and Schedule 2 can be modified by mutual agreement between COUNTY and CONTRACTOR.**

## VOTE RESULTS

25 YES 0 NO 0 ABSTAIN 0 ABSENT

### Ordinance 180-O-005

Ordinance 180-O-005: Approve Service Contract 2024034 For Processing Of Recyclable Materials For Waukesha County And Termination Of Intergovernmental Cooperation Agreement Between  
Regarding A Regional Recycling System For Processing And Marketing Recyclables

Passed By Majority Vote

D1 - Styza	AYE	D10 - Thieme	AYE	D19 - Enriquez	AYE
D2 - Euclide	AYE	D11 - Howard	AYE	D20 - Schellinger	AYE
D3 - Morris	AYE	D12 - Wolff	AYE	D21 - Gaughan	AYE
D4 - Batzko	AYE	D13 - Leisemann	AYE	D22 - Szpara	AYE
D5 - Dondlinger	M AYE	D14 - Mommaerts	AYE	D23 - Hammitt	AYE
D6 - Walz	AYE	D15 - Kolb	AYE	D24 - Schroeder	AYE
D7 - LaFontain	AYE	D16 - Crowley	AYE	D25 - Johnson	AYE
D8 - Koremenos	S AYE	D17 - Meier	AYE		
D9 - Heinrich	AYE	D18 - Nelson	AYE		

1st Meeting, 180th Year of the County Board of Supervisors - April 22 2025 07:12:48 PM

April 22, 2025

1 APPROVE SERVICE CONTRACT 2024034 FOR PROCESSING OF RECYCLABLE  
2 MATERIALS FOR WAUKESHA COUNTY AND TERMINATION OF  
3 INTERGOVERNMENTAL COOPERATION AGREEMENT BETWEEN WAUKESHA  
4 COUNTY AND THE CITY OF MILWAUKEE REGARDING A REGIONAL RECYCLING  
5 SYSTEM FOR PROCESSING AND MARKETING RECYCLABLES  
6

7 WHEREAS, Waukesha County serves as the Responsible Unit ("RU") for recycling under  
8 Chapter 287 of the Wisconsin Statutes for twenty-five (25) local participating municipalities; and  
9

10 WHEREAS, through Enrolled Resolution 168-3, the Waukesha County Board approved Capital  
11 Project 201409 for the construction of a joint recycling facility; and  
12

13 WHEREAS, the Waukesha County Board adopted Ordinance 168-117 approving of an  
14 intergovernmental agreement between Waukesha County and the City of Milwaukee regarding  
15 the construction of a joint recycling facility; and  
16

17 WHEREAS, in May of 2014, an Intergovernmental Cooperative Agreement Between Waukesha  
18 County and the City of Milwaukee Regarding a Regional Recycling System for Processing and  
19 Marketing Recyclables ("IGA") was executed; and  
20

21 WHEREAS, the Waukesha County Board adopted Ordinance 168-118 authorizing increased  
22 expenditures to acquire and install the equipment necessary to process recyclables at the new  
23 City/County single-stream materials recycling facility (Joint MRF) pursuant to an agreement  
24 with Resource Recovery Systems, LLC to design, build and operate the Joint MRF in a City-  
25 owned building located in Milwaukee dated May 5, 2014 ("Agreement"); and  
26

27 WHEREAS, the Joint MRF began operations in March 2015; and  
28

29 WHEREAS, on May 31, 2023, the Joint MRF experienced a fire which left the building and  
30 equipment significantly damaged, rendering it unable to accept recyclables for processing; and  
31

32 WHEREAS, after assessing the significant damage and losses suffered from the fire, a Notice of  
33 Termination was issued to Resource Recovery Systems, LLC d/b/a Republic Services on August  
34 18, 2023, pursuant to Section 13.01 of the Agreement; and  
35

36 WHEREAS, on August 21, 2023, citing provisions in Section III (d) 11 of the IGA with the City  
37 of Milwaukee, a processing contingency plan to coordinate alternative recycling material hauling  
38 and processing at other locations was agreed to; and  
39

40 WHEREAS, the City of Milwaukee has agreed to proceed with a mutual termination of the IGA;  
41 and  
42

43 WHEREAS, Department of Parks and Land Use staff coordinated with regional, third-party  
44 recycling companies to temporarily process recyclables for member communities; and  
45

46 WHEREAS, on November 13, 2024, Request for Proposal ("RFP") #2024034 Waukesha County  
47 Materials Recycling Processing and Marketing was released; and  
48

49 WHEREAS, following the scoring of proposals by the RFP committee, Waste Management of  
50 Wisconsin, Inc. ("Contractor") was selected to provide processing of all recyclable material at  
51 their existing privately-owned material recovery facility in Germantown, WI; and  
52

53 WHEREAS, on January 22, 2025, the Finance Committee of the Waukesha County Board  
54 approved the competitive procurement process followed to solicit proposals; and  
55

56 WHEREAS, Service Contract 2024034 for Processing of Recyclable Materials for Waukesha  
57 County was successfully negotiated between the Contractor and Waukesha County.  
58

59 THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA ORDAINS  
60 that Service Contract 2024034 for Processing of Recyclable Materials for Waukesha County  
61 with Waste Management of Wisconsin, Inc., which is on file in the Office of the County Clerk, is  
62 hereby approved.  
63

64 BE IT FURTHER ORDAINED that the County Executive or designee may execute the Service  
65 Contract on behalf of Waukesha County.  
66

67 BE IT FURTHER ORDAINED in accordance with Section VI(q) of the Intergovernmental  
68 Cooperation Agreement between Waukesha County and the City of Milwaukee Regarding a  
69 Regional Recycling System for Processing and Marketing Recyclables, the agreement shall be  
70 terminated.