**RESOLUTION NO. 3484-18**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF WINDSOR CONSENTING TO ASSIGNMENT OF THE COLLECTION SERVICE AGREEMENT AND AMENDMENT NO. 1 BETWEEN THE TOWN OF WINDSOR AND INDUSTRIAL WASTE & DEBRIS BOX RENTALS, INC., DBA: INDUSTRIAL CARTING FOR NON-EXCLUSIVE TEMPORARY CONSTRUCTION AND DEMOLITION DEBRIS COLLECTION TO N LEASING COMPANY, LLC DBA: REPUBLIC SERVICES AND APPROVE THE ASSIGNMENT AND ASSUMPTION AGREEMENT AND AUTHORIZE ITS EXECUTION BY THE TOWN MANAGER**

**WHEREAS,** on December 6, 2017, Town Council approved a 7-year franchise and Non-Exclusive Temporary Construction and Demolition Debris Collection Service Agreement ("Franchise Agreement") between the Town of Windsor ("Town") and Industrial Waste & Debris Box Rentals, Inc., dba: Industrial Carting ("Industrial Carting") effective January 1, 2018; and

**WHEREAS,** the Town Council approved a 7-year franchise for the period of January 1, 2018 through December 31, 2025; and

**WHEREAS,** on June 18, 2018, Industrial Carting informed the Town that Industrial Carting and N Leasing Company, LLC, a Delaware limited liability company, a wholly owned indirect subsidiary of Republic Services, Inc. ("Republic Services") entered into an asset purchase agreement and requested the Town's consent to the assignment; and

**WHEREAS,** pursuant to the Franchise Agreement, Article 25, no assignment of the Franchise Agreement or any right occurring under the Franchise Agreement shall be made in whole or in part by the Franchisee without the express written consent of the Town; and

**WHEREAS,** on August 13, 2018, the Town received a copy of the General Conveyance, Assignment and Bill of Sale between Global Materials Recovery Services, Inc., a California corporation, and Industrial Waste & Debris Box Rentals, Inc., a California corporation and N Leasing Company, LLC, a Delaware limited liability company, effective July 2, 2018; and

**WHEREAS,** Republic Services submitted the required documentation demonstrating the assignee's experience and acknowledging the assignee's commitment to the Town's requirements under the Town's Franchise Agreement; and

**WHEREAS,** the Asset Purchase Agreement between Industrial Carting and Republic Services provides that the Town will consent to the assignment of the Franchise Agreement on the terms and conditions set forth therein.

**NOW, THEREFORE BE IT RESOLVED** that the Town Council of the Town of Windsor hereby resolves as follows:

1. The Recitals above are true and correct and are incorporated herein by reference.

2. The aforesaid requests the consent to assignment of the Franchise Agreement to N Leasing Company, LLC dba; Republic Services on such terms as are set forth in the attached Assignment and Assumption Agreement.

3. The Town Council hereby finds that the activity taken by the Town Council is exempt from the California Environmental Quality Act (CEQA) under CEQA Guidelines section 15301(b)(3), as there is no possibility of a significant effect on the environment.

4. Each section, subsection, clause, sentence, phrase, and other portion of this Resolution is severable, and the Town Council declares that it would have adopted this Resolution and each section, subsection, clause, sentence, phrase or other portion hereof, irrespective of the fact that one or more sections, subsections, clauses, sentences, phrases, or other portions hereof may be held invalid or unconstitutional.

5. This Resolution shall take effect immediately upon its adoption.

**PASSED, APPROVED AND ADOPTED this 3rd day of October 2018, by the following vote:**

| | |
|---|---|
| **AYES:** | **COUNCILMEMBERS FUDGE, MILLAN, SALMON, VICE MAYOR FOPPOLI AND MAYOR OKREPKIE** |
| **NOES:** | **NONE** |
| **ABSTAIN:** | **NONE** |
| **ABSENT:** | **NONE** |

**BRUCE OKREPKIE, MAYOR**

**ATTEST:**

**MARIA DE LA O, TOWN CLERK**

**Attachment:**

- **Exhibit A** – Assignment and Assumption Agreement

**EXHIBIT A**

This Assignment and Assumption Agreement ("Agreement") is entered into as of 4th day of October, 2018, by and among the Town of Windsor ("Town"), Industrial Waste & Debris Box Rentals, Inc., ("Industrial Carting") and N Leasing Company, LLC dba: Republic Services ("Republic Services") (collectively "Parties").

**WHEREAS**, Town and Industrial Carting are parties to a First Amended and Restated Agreement for Non-Exclusive Temporary Construction and Demolition Debris Services dated as of December 6, 2017 ("Franchise Agreement"); and

**WHEREAS**, on June 18, 2018, the Town was notified by Industrial Waste & Debris Box Rentals, Inc. of an asset purchase agreement ("Purchase Agreement") with N Leasing Company, LLC dba: Republic Services; and

**WHEREAS**, Industrial Carting wishes to assign the Franchise Agreement to Republic Services, and Republic Services wishes to accept such assignment; and

**WHEREAS**, effective July 2, 2018, Global Materials Recovery Services, Inc., a California corporation, and Industrial Waste & Debris Box Rentals, Inc., a California corporation ("Grantors"), for good and valuable consideration and pursuant to that certain Asset Purchase Agreement, dated May 1, 2018 ("Purchase Agreement"), among Grantors, Curtis J. Michelini Sr. and Charles R. Hardin Sr., the sole shareholders of Grantors, and N Leasing Company, LLC, a Delaware limited liability company ("Grantee"), hereby sell, assign, transfer, convey and deliver to Grantee all of Grantors' right, title and interest in all of Assets; and

**WHEREAS**, the Parties acknowledge that the performance of the Franchise Agreement involves rendering a vital service to Town residents and businesses, and that Town previously selected Industrial Carting to perform the services specified therein based on (1) Industrial Carting's experience, skill and reputation for conducting its waste management operations in a safe, effective, and responsible fashion, at all times in keeping with applicable waste management laws, regulations and good waste management practices, and (2) Industrial Carting financial resources to maintain the required equipment and to support its indemnity obligations to Town under the Franchise Agreement; and

**WHEREAS**, in accordance with Section 25.1 of the Franchise Agreement, no assignment of the Franchise Agreement or any right occurring under the Franchise Agreement shall be made in whole or in part by the Franchisee without the express written consent of the Town; and

**WHEREAS**, Town wishes to ensure that payment obligations by Industrial Carting under the Franchise Agreement will be satisfied notwithstanding the transactions contemplated by the Purchase Agreement; and

**NOW, THERFORE**, in consideration of the mutual benefits accruing to the Parties and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Assignment by Industrial Carting. Subject to and effective as of the Closing, Industrial Carting will assign to Republic Services all of its right, title and interest in and to the Franchise Agreement.

2. Acceptance by Republic Services. Subject to and effective as of the Closing, Republic Services will accept such assignment and will assume all duties and obligations of Industrial Carting under the Franchise Agreement from and after the Closing.

3. Industrial Carting Representations and Warranties. Industrial Carting has full power and authority to execute and deliver this Agreement, and the other documents to be executed and delivered pursuant to this Agreement, and to perform and observe the terms and provisions of this Agreement. This Agreement and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement have been executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of Industrial Carting, and all actions required under the organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, have been duly taken.

4. Republic Services Representations and Warranties. As a material inducement to the Town's consent to assignment, Republic Services provides the following representations and warranties to Town as of the date Republic Services executes this Agreement:

    a. Republic Services is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware. It is qualified to transact business in the State of California and has the corporate power to own its property and carry on its business as now owned and operated and as may be required by the Franchise Agreement.

    b. Republic Services has full corporate power and corporate authority to execute and deliver this Agreement, and the other documents to be executed and delivered pursuant to this Agreement, and to perform and observe the terms and provisions of this Agreement and the Franchise Agreement. This Agreement and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement have been or will be executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of Republic Services, and all actions required under Republic Services organizational documents and the Delaware General Corporate Law for the authorization, execution, delivery and performance of this Agreement and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, have been or will be duly taken.

c. To the best of Republic Services' knowledge, after reasonable investigation, neither the execution or delivery of this Agreement, nor Republic Services' performance of this Agreement or the Franchise Agreement: (i) conflicts with, violates, or results in a breach of any applicable law; or (ii) conflicts with, violates or results in a breach of any term or condition of any judgment, order or decree of any court, administrative agency or other governmental authority, or any agreement or instrument to which Republic Services is a party or by which Republic Services or any of its properties or assets are bound, or constitutes a default thereunder.

d. To the best of Republic Services' knowledge, after reasonable investigation, there is no action, suit, proceeding or investigation, at law or in equity, before or by any court or governmental authority, commission, board, agency or instrumentality decided, pending or threatened against Republic Services wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would materially adversely affect the performance by Republic Services of its obligations under this Agreement or the Franchise Agreement or which, in any way, would adversely affect the validity or enforceability of this Agreement or the Franchise Agreement or which would have a material adverse effect on the financial condition of Republic Services or any surety guaranteeing Republic Services' performance under this Agreement and the Franchise Agreement, which has not been waived by the Town in writing.

e. Republic Services' management has at least ten (10) years of waste management experience on a scale equal to or exceeding the sale of operations conducted by Industrial Carting under the Franchise Agreement.

f. In the last five (5) years, Republic Services has not suffered any citations or other adverse action or decision from any federal, state, or local jurisdiction over its waste management operations due to any significant failure to comply with federal, state, or local waste management laws and that Republic Services has provided the Town with a complete list of any citations, adverse actions, and adverse decisions by any court or governmental authority.

g. Republic Services conducts its operations in an environmentally safe and conscientious fashion, in accordance with sound waste management practices, and in full compliance in all material respects with all applicable federal, state, and local laws regulating the collection and disposal of waste.

h. In accordance with Article 4 of the Franchise Agreement the initial maximum customer rates executed under Industrial Carting shall not increase for services provided under the Franchise Agreement.

5. Updated Vehicle Inventory. Republic Services shall provide Town with a Refuse Vehicle Permit from County of Sonoma Department of Health Services for the collection, hauling or transporting of solid waste assigned to Town's franchise, current vehicle registration, and other identifying details as may be requested by the Town, within thirty (30) days.

6. Insurance. Town has reviewed the insurance certificates and endorsements subject to and effective as of the Closing. Republic Services warrants to the Town that such insurance certificates and endorsements satisfy the requirements of the Franchise Agreement.

7. Notice. In accordance with Section 33.01, notices under the Franchise Agreement shall be provided to Republic Services at the following address:

   Republic Services, Inc.
   Rick Downey, Division Manager
   500 Meacham Road
   Petaluma, CA 94952
   Phone: (707) 795-1693
   Email: RDowney@republicservices.com

8. Release and Waiver of Town by Industrial Carting. In exchange for the consideration reflected in this Agreement, including but not limited to release from its obligations under the Franchise Agreement, Industrial Carting, on their own behalf as well as on behalf of their respective corporations, subsidiaries, predecessors, agents, officers, directors, employees, attorneys, representatives and agents, affiliates, policyholders and dbas and any persons acting on their behalf (collectively, "Releasing Parties"), hereby release and discharge the Town, the Town Council, and the Town's agents, officers, employees, attorneys, and representatives (collectively, "Released Parties") from any and all claims, actions, causes of action, rights or obligations, whether known or unknown, suspected or unsuspected, disclosed or undisclosed, whether contingent or liquidated, of every kind, nature and description that Releasing Parties now have or may have against the Released Parties arising from, related to or having any connection with the Franchise Agreement or the performance of services thereunder (all of the foregoing collectively, "Claims"), except claims to enforce the terms of this Agreement.

   In furtherance of this intention, Releasing Parties expressly waive any and all rights that might be claimed by reason of fraudulent inducement and any and all rights under Section 1542 of the California Civil Code with respect to the Released Matters, which provides as follows:

   > A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

   Industrial Carting acknowledges and agrees that this waiver is an essential and material term of this Agreement and without such waiver the Agreement would not have been entered into by Town or Republic Services.

9. Indemnification by Republic Services. Subject to and effective as of the Closing, Republic Services agrees to indemnify, protect, hold harmless and defend (by counsel reasonably

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satisfactory to the Town) the Released Parties, from all Claims made by the Releasing Parties in connection with Republic Services' breach of the Franchise Agreement, except to the extent caused by the Town's willful misconduct or gross negligence. The provisions of this section shall survive the expiration or termination of the Franchise Agreement and shall remain in full force and effect. As a material inducement to the foregoing agreement by Republic Services, each of Town and the Releasing Parties represents and warrants to Republic Services that, as of the date it executes this Agreement, it is not aware of any Claims.

10. Town Consent. Town hereby consents to the foregoing assignment and assumption of the Franchise Agreement on the terms and conditions set forth herein.

11. Multiple Originals; Counterparts. This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

**IN WITNESS WHEREOF**, this Assignment and Assumption Agreement is entered into as of the date first written above.

**TOWN OF WINDSOR**

John Jansons
Town Manager

**INDUSTRIAL WASTE & DEBRIS BOX RENTALS, INC., DBA INDUSTRIAL CARTING**

Curtis Michelini, Sr.
President, Industrial Waste &
Debris Box Rentals, Inc.,
dba Industrial Carting

**N LEASING COMPANY, LLC DBA; REPUBLIC SERVICES**

Rick Downey
Division Manager
Republic Services, Inc.