

**SECOND AMENDMENT TO NON-EXCLUSIVE TEMPORARY DEBRIS BOX AND
ROLL OFF COLLECTION SERVICES AGREEMENT
BETWEEN THE TOWN OF WINDSOR AND
INDUSTRIAL WASTE AND DEBRIS BOX RENTAL INC. DBA INDUSTRIAL
CARTING**

This Second Amendment to Agreement is made and entered into effective the 19th day of November, 2013, by and between the Town of Windsor ("TOWN"), and Industrial Waste and Debris Box Rental Inc. dba Industrial Carting ("CONTRACTOR").

WHEREAS, TOWN and CONTRACTOR have entered into the Non-Exclusive Temporary Debris Box and Roll Off Collection Services Agreement ("Agreement") between the Town of Windsor and Industrial Waste and Debris Box Rental Inc. dba Industrial Carting dated December 11, 2007 (the "Agreement"), whereby CONTRACTOR began providing debris box and roll off collection services effective January 1, 2008; and

WHEREAS, TOWN and CONTRACTOR desire to undertake this second amendment to extend the term of the Agreement; and

WHEREAS, TOWN conducted an Audit of Industrial Waste and Debris Box Rental Inc. dba Industrial Carting dated April 5, 2012 and has determined that the CONTRACTOR has met all of the Diversion Standards set forth in Article 5 and the Record Keeping and Reporting Requirements set forth in Article 8 of the Agreement; and

WHEREAS, TOWN and CONTRACTOR commenced the First Amendment to the Agreement in order to adjust the Term of the Agreement and to revise the Town Designee to receive written notices on September 18, 2012; and

WHEREAS, TOWN and CONTRACTOR desire to amend Article 2 Section 2.01 and 2.02 of the Agreement in order to adjust the Term of the Agreement and remove the requirement for term extensions in 12 month increments; and

WHEREAS, TOWN and CONTRACTOR desire to amend Article 2 Section 2.01 of the Agreement as follows:

2.01 Term. The original term of this agreement shall be for a five year period beginning January 1, 2008 and terminating on December 31, 2012. Amendment No.1 extended the term of the agreement until December 31, 2013. The new term of the agreement shall be December 31, 2017.

WHEREAS, TOWN and CONTRACTOR desire to delete Article 2 Section 2.02 of the Agreement in its entirety including Article 2 Section 2.02.1 as follows:

~~2.02 Extensions. At the sole discretion of the Town, the Town may extend the term this Agreement in up to twelve (12) months increments for a maximum of five (5) additional years.~~

~~2.02.1 Beginning on or about April 20, 2012, and each April 20th thereafter, provided the Town Manager determines that the LICENSEE has met all the Diversion Standards set forth in Article 5 and the Record Keeping and Reporting Requirements set forth in Article 8, the TOWN may offer the LICENSEE in writing a twelve (12) month extension of this Agreement. LICENSEE shall provide written notice to the TOWN as to whether LICENSEE accepts or rejects the TOWN's offer within twenty (10) Work Days of the date of the offer. If LICENSEE fails to provide such notice to the TOWN within twenty (10) Work Days, the TOWN's offer of an extension shall be deemed withdrawn.~~

WHEREAS, TOWN and CONTRACTOR desire to revise Article 5 Section 5.03.1 of the Agreement as follows:

5.03.1 Failure to Meet Guaranteed Diversion Standard. LICENSEE'S failure to meet the Guaranteed Diversion Standard set forth above in Article 5.02 will result in the LICENSEE being required to pay a License Fee of 25% of gross revenue for all Non-Exclusive Temporary Debris Box and Roll-off Collection Services that are provided beginning on January 1st of the year following the year that the LICENSEE failed to meet the Guaranteed Diversion Standard. The License Fee of 25% of gross revenue will remain in effect until the LICENSEE provides two consecutive quarterly reports that demonstrate compliance with the Guaranteed Diversion Standard. In addition, for failure to meet the Guaranteed Diversion Standard, LICENSEE will also have to pay the TOWN the Administrative Fee's as specified in Article 11, ~~and LICENSEE will not be eligible to receive term extensions as specified in Article 2.~~

WHEREAS, TOWN and CONTRACTOR desire to revise Article 12 Section 12.0 of the Agreement as follows:

12.01 Selection and Cost. The TOWN may conduct billing audit and performance reviews ("review") of the LICENSEE'S performance during the term of this Agreement, including extensions. At the discretion of the Town, reviews may occur once within the final four years of the Agreement ~~every two years~~. The review(s) will be performed by a qualified firm under contract to the TOWN. The TOWN shall have the final responsibility for the selection of the firm but shall seek and accept comments and recommendations from the LICENSEE. The LICENSEE shall be responsible for the cost of the review up to a maximum of **Ten Thousand Dollars (\$10,000.00)** per review.

NOW, therefore, in consideration of the mutual covenants, agreements and consideration contained herein, TOWN and CONTRACTOR hereby agree as follows:

Section 2.01 of the Agreement shall be amended as follows:

2.01 Term. The new Term of the Agreement shall be December 31, 2017.

Section 2.02 of the Agreement shall be amended as follows:

2.02 Extensions. Section 2.02 of the Agreement is hereby deleted in its entirety.

Section 5.03.0 of the Agreement shall be amended as follows:

5.03.1 Failure to Meet Guaranteed Diversion Standard. The following text is deleted: ~~and LICENSEE will not be eligible to receive term extensions as specified in Article 2~~

Section 12.01 of the Agreement shall be amended as follows:

12.01 Selection and Cost. The following text is added: "once within the final four years of the Agreement." The following text is deleted: ~~every two years~~.

IN WITNESS WHEREOF, TOWN and CONTRACTOR have executed this Second Amendment to Agreement on the respective date(s) below each signature.

TOWN OF WINDSOR

INDUSTRIAL CARTING

Linda Kelly

Linda Kelly
Town Manager

11-19-13

Date

Curtis Michelini, Sr.

Curtis Michelini, Sr.,
President, Industrial Carting
Town of Windsor Business
License No.

10-31-2013

Date

The foregoing Agreement has been reviewed and approval is recommended:

Heather Ippoliti

Heather Ippoliti
Administrative Services Director

11/18/13

Date

2nd Amendment Between the Town of Windsor and Industrial Waste and Debris Box Rental Inc. dba Industrial Carting.

Approved as to Form:

Robin Paige Donoghue

Robin Donoghue
Town Attorney

11/19/13
Date