RESOLUTION NO. 2838-11

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF WINDSOR APPROVING AN AMENDMENT TO THE COLLECTION SERVICE AGREEMENT WITH WINDSOR REFUSE AND RECYCLING, INC. FOR THE COLLECTION OF SOLID WASTE, GREEN WASTE, AND RECYCLABLES EFFECTIVE OCTOBER 1, 2011

WHEREAS, on June 20, 2007 the Town Council approved a Collection Service Agreement with Windsor Refuse and Recycling, Inc. for the collection of solid waste, green waste, and recyclables for the period January 1, 2008 through September 30, 2017; and

WHEREAS, the collection service agreement requires an annual adjustment of the maximum compensation and rates and the amount of the annual adjustment is determined by using a Refuse Rate Index that is defined in Exhibit 2 of the collection service agreement; and

WHEREAS, on July 15, 2009 the Town Council approved the following modifications to the collection services agreement:

- Revised the definition of the Refuse Rate Index (RRI) and application period that lays out the method by which the annual maximum compensation rates are adjusted;
- Added several new fees to the Commercial and Multi-Family rate schedule and the process by which Windsor Refuse and Recycling, Inc. would apply them;
- Added language regarding the deadlines for Windsor Refuse and Recycling, Inc. to submit payments and reports to the Town;
- Added a requirement to reimburse the Town in 2009 for one time only a minimum of $3,000 for its expenses related to developing this first amendment and $1,500 each year starting in 2009 for Town expenses related to its review of the annual rate application;
- Adjusted the date for implementation of the annual rate adjustment so that it takes into account the County of Sonoma's annual disposal fee adjustment; and

WHEREAS, on June 28, 2010 the Town received a communication from Windsor Refuse and Recycling, Inc. transmitting their annual request for an adjustment to the maximum compensation and rates for the collection of solidwaste, green waste, and recyclables for the period October 1, 2010 – September 30, 2011; and

WHEREAS, on June 27, 2011 the Town received a letter from Windsor Refuse & Recycling requesting an increase to the maximum compensation and rates for the collection of solid waste, green waste, and recyclables for the period October 1, 2011 – September 30, 2012; and

WHEREAS, staff has identified the following modifications to the collection services agreement:

- Revising the date for RRI adjustment to the affected service rates to take place;
- Adding a requirement to submit diversion data along with financial information;

- Revising the language requiring reimbursement to the Town for its expenses related to developing amendments and review of the annual rate application; and
- Revising the Town Designee to receive written notices.

NOW, THEREFORE BE IT RESOLVED that the Town Council of the Town of Windsor approves the third amendment to the Collection Service Agreement with Windsor Refuse and Recycling, Inc. for the collection of solid waste, green waste, and recyclables effective October 1, 2011 attached here as Attachment A and authorizes the Town Manager to execute the agreement on behalf of the Town; and

NOW, THEREFORE BE IT FURTHER RESOLVED that the Town Council of the Town of Windsor approves the maximum compensation and rates as established in Exhibit 1a-f of the third amendment to the collection service agreement between the Town of Windsor and Windsor Refuse & Recycling, Inc.

PASSED, APPROVED AND ADOPTED this 7th day of September 2011, by the following vote:

AYES: **COUNCILMEMBERS GOBLE, SALMON, SCHOLAR AND VICE MAYOR FUDGE**
NOES: **NONE**
ABSTAIN: **NONE**
ABSENT: MAYOR ALLEN

Debora Fudge

DEBORA FUDGE, VICE MAYOR

ATTEST:

María De La O

MARIA DE LA O, TOWN CLERK

Attachment A:
Third Amendment to the Collection Service Agreement between the Town of Windsor and Windsor Refuse & Recycling, Inc.

THIRD AMENDMENT TO AGREEMENT BETWEEN THE TOWN OF WINDSOR AND WINDSOR REFUSE AND RECYCLING FOR SOLID WASTE, GREEN WASTE, AND RECYCLABLES COLLECTION SERIVCES

This Third Amendment to Agreement is made and entered into effective the _____ day of ____, 2011, by and between the Town of Windsor ("TOWN"), and Windsor Refuse and Recycling, Inc., a wholly owned subsidiary of the Ratto Group of Companies ("CONTRACTOR").

WHEREAS, TOWN and CONTRACTOR have entered into that certain agreement between the Town of Windsor and Windsor Refuse and Recycling, Inc. dated June 20, 2007 (the "Agreement"), whereby CONTRACTOR began providing solid waste management services effective January 1, 2008; and

WHEREAS, TOWN and CONTRACTOR first amendment to the Agreement on July 15, 2009 was in order to include several new services and reporting requirements, change the time period and dates for the rate adjustment process, adjust CONTRACTOR'S Maximum Rates, and require CONTRACTOR to make additional payments to the TOWN;

WHEREAS, TOWN and CONTRACTOR second amendment to the Agreement on September 15, 2010 was to adjust CONTRACTOR'S Maximum Rates;

WHEREAS, TOWN and CONTRACTOR desire to amend the Agreement a third time in order to adjust CONTRACOTR'S Maximum Rates and to make the following changes:

- Revise the date for RRI adjustment to the affected service rates to take place as follows:

  4.04.3 As of August 31, ~~2010~~2012, and annually thereafter during the term of this Agreement, the Town Representative shall notify CONTRACTOR of the RRI adjustment to the affected service rates to take place on the subsequent ~~July~~ October 1st.

- Add a requirement to submit diversion data along with financial information as follows:

  4.05 Diversion Data. On or before July 15, ~~2009~~2012, and annually thereafter during the term of this Agreement, CONTRACTOR shall deliver diversion data along with the financial information required in Section 4.04, and documentation as request by TOWN ~~to TOWN diversion data~~ for the specific services performed under this Agreement during the preceding full or partial year in a format approved by the TOWN. If CONTRACTOR fails to submit the diversion data in the required format by July 15th, it is agreed that CONTRACTOR shall be deemed to have waived the RRI rate adjustment for that year. CONTRACTOR'S failure to provide the diversion data shall not preclude TOWN from applying the RRI using the prior year's financial data, or pro forma data if no prior year financial data is available, if that application would result in a negative RRI.

- Revise the language requiring reimbursement to the Town for its expenses related to developing amendments and review of the annual rate application as follows:

  4.09.6 Maximum Collection Service Rate Review Fee. CONTRACTOR shall make payment ~~of One Thousand Five Hundred Dollars ($1,500.00)~~ to the TOWN to compensate the TOWN for reasonable costs for review of CONTRACTOR'S annual Refuse Rate Adjustment. CONTRACTOR'S payment to the TOWN shall be due ~~by July 1, 2009, and each July 15th of each year thereafter~~ thirty calendar days after receipt of invoice from TOWN. Failure by CONTRACTOR

ATTACHMENT 2

to make such payment ~~by July 15th~~ shall result in CONTRACTOR not receiving any increase in the Maximum Collection Service Rates for the subsequent October 1st – September 30th period.

- Revising the Town Designee to receive written notices:

42.01 Except as provided herein, whenever either party desires to give notice to the other, it must be given by written notice addressed to the party for whom it is intended, at the place last specified and to the place for giving of notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective persons and places for giving of notice:

As to the TOWN:

~~Christa Johnson,~~
~~Assistant Town Manager~~
Town Manager or his/her Designee
Windsor Town Hall
9291 Old Redwood Highway, Building 400
Windsor, CA 95492
Phone: (707) 838-5330
Facsimile: (707) 838-7349
~~E-mail: cljohnson@townofwindsor.com~~

As to the CONTRACTOR:

Richard Johnson
Municipal Affairs Director
Windsor Refuse and Recycling, Inc.
P.O. Box 1916
Santa Rosa, CA 95402-1916
Phone: (707) 765-9949
Facsimile: (707) 778-6792
E-mail: rmjohnson@callatg.com

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

EXHIBIT 1. EXHIBIT 1 of the Agreement is amended to read as set forth in EXHIBIT 1, "Maximum Compensation and Rates", which is attached to and incorporated in this Third Amendment.

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

TOWN OF WINDSOR		**WINDSOR REFUSE AND RECYCLING, INC.**	
J. Matthew Mullan Town Manager	Date	James Ratto, President, Ratto Group of Companies Town of Windsor Business License No. 980178	Date

The foregoing Agreement has been reviewed and approval is recommended:

_____ _____

David Kelley Date
Interim Assistant Town Manager

3rd Amendment Between the Town of Windsor and Windsor Refuse and Recycling, Inc.

_____ _____

James M. McAdler Date
Administrative Services Director

Resolution No. 2011 - _____

Approved by Town Council
Approved as to Form:

_____ _____

Richard Rudnansky Date
Town Attorney