

Resolution # 26-2009

**A RESOLUTION APPROVING
THE SOLID WASTE COLLECTION FRANCHISE AGREEMENT**

WHEREAS, the City has previously entered into a Franchise Agreement with Bob's Sanitation providing for the provision of residential and commercial solid waster collection services within the municipal limits of the City; and

WHEREAS, Section 5 of the original 1999 contract between the City and Bob's Sanitation authorizes extensions to the contract upon such terms as the parties deem appropriate; and

WHEREAS, the original 1999 contract has been extended through December 1, 2009; and

WHEREAS, the Solid Waste Collection Franchise Agreement authorizing an additional five year extension has been presented to this meeting of the Moab City Council, and is attached to this resolution.

NOW, THEREFORE, we, the Governing Body of the City of Moab do hereby approve the attached agreement and all exhibits in substantially the form presented to this meeting of the Moab City Council, and authorize the appropriate officials to sign and execute said agreement.

This resolution shall take effect immediately upon passage.

Passed and adopted by action of the Governing Body of the City of Moab in open session this 24th day of November, 2009.

CITY OF MOAB

By: _____

David L. Sakrison
Mayor

Attest:

Rachel Ellison
City Recorder

SOLID WASTE COLLECTION FRANCHISE AGREEMENT

THIS CONTRACT, is made and entered into this the 30th day of November, 2009, by and between the City of Moab, a municipal corporation of the State of Utah ("the City"), and Bob's Sanitation, Inc. ("Contractor").

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I. RECITALS.

- a. Contractor provides residential and commercial solid waste collection services within the municipal limits of the City pursuant to a contract with the City dated August 12, 1999. The 1999 contract has been extended by the parties through December 1, 2004, and then again through December 1, 2009.
- b. Section 5 of the 1999 contract between the City and the Contractor authorizes extensions to the contract upon such terms, as the parties deem appropriate. It is the intent of the parties to extend and clarify their existing contractual relationship as provided in this Contract.

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II. AGREEMENT.

In consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. The Contractor hereby agrees to provide residential and commercial automated solid waste collection and disposal services to all areas located within the City in accordance with the terms of this Contract, the General Specifications, updated November 24, 2009, which are attached hereto and which form a part of this Contract, and in accordance with Moab Municipal Code Chapter 8.04.
2. Contractor hereby agrees to furnish all materials, labor, equipment, vehicles, and other items necessary to provide automated residential and commercial solid waste collection and disposal services as provided in this Contract.
3. All provisions of this Contract and the attached specifications shall be strictly complied with by the Contractor. No promise, representation, modification, or amendment to this Contract shall be binding between the parties unless reduced to writing, lawfully approved, and signed by both parties.
4. The term of this Contract shall be for a period of five (5) years commencing upon execution by both parties. It shall be the duty of the Contractor to notify the City no later than three months prior to the expiration of the Contract that such Contract is approaching its termination date. Upon receiving such notice, the City and Contractor

may negotiate any modifications or extensions to the Contract upon such terms as the parties may deem appropriate.

5. This Contract, including all attachments, is a complete and integrated agreement terminating and superseding all prior negotiations, representations, promises, or agreements between the parties.
6. The parties each agree that should either party default in any of the covenants, performance or agreements contained herein, the defaulting party shall pay all costs and expenses, including reasonable attorneys' fees and court costs which may arise or accrue to the other party from enforcing this agreement or in pursuing any legal remedies.
7. The City agrees to pay, and Contractor agrees to accept, the sums for solid waste collection services as stated in Section 15 of the General Specifications. Contractor agrees that it shall not negotiate separate rates with individual customers, or otherwise modify the price or terms of service without the express written agreement of the City.
 - a) Solid waste customers shall be billed by the City for solid waste collection services at the rates set by the City Council by resolution. The Council may from time to time alter or amend the rates charged to City residents without altering the compensation due to the Contractor or the other terms of this Contract.
8. Contractor may apply to the City in writing for consideration of a special rate review should an unforeseen event or circumstance arise which jeopardizes the economic operations of the Contractor. A special rate review application may be considered at the option of the City if one or more of the following applies:
 - a) An event or circumstance (including changes in law) occurs which is beyond the control of the contractor.
 - b) Landfill tip fees change by more than 10 percent.
 - c) Operating costs over which Contractor has no control change by more than 10 percent.
9. A change in Contractor rates pursuant to Section 8, above, shall be vested in the discretion of the City Council following a public hearing. At least 15 days prior to the public hearing, the Contractor shall submit to City staff complete and accurate financial data showing its operating costs, revenues, and rate of return for operations under this Contract. City staff may request, and Contractor agrees to provide, other or additional records as may be necessary to fully review Contractor's operations and rate requests. All such financial information submitted to the City shall be kept confidential.
 - a) The City Council may grant a special rate request, reject it, or grant the request in part. Any change in customer rates shall be in the form of a rate resolution, which shall take effect no sooner than 30 days from the date of the public hearing.

10. If any provision or part of this Contract shall be declared illegal, void or unenforceable for any reason, the other provisions and parts shall not be affected but shall remain in full force and effect.
11. This Contract shall be governed by the laws of the State of Utah. The place of performance is Grand County, Utah, and any action to enforce or construe the agreement shall be commenced in the Seventh Judicial District Court of Grand County.
12. The parties to this Contract are the City of Moab and Bob's Sanitation, Inc. It is agreed that the City and the Contractor are now, and have always been, the sole and only parties to the Contract. The Contract is entered into for the purpose of providing a service for the use and benefit of the City. There are no known or intended third party beneficiaries to the Contract, and the parties specifically disavow any intent to confer rights of enforcement or review of this Contract upon any third parties.
13. This Contract is the product of mutual bargaining, and shall be construed in accordance with its plain meaning, regardless of the extent to which either party contributed to the drafting.
15. The following attachments and addenda comprise the entirety of this Contract:
 - Exhibit A General Specifications, [Updated November 24, 2009](#);
 - Exhibit B Municipal Code Sections 8.04.010 through 8.04.160 (for informational purposes only).

CITY of MOAB

 Mayor David Sakrison Date: _____

ATTEST:

 City Recorder Rachel Ellison Date: _____

Bob's Sanitation, Inc.

By: _____ Date: _____
 Title: _____

State of Utah)
 §
County of Grand)

On the _____ day of _____, personally appeared before me _____
_____, who duly acknowledged to me that they executed
the same.

My Commission Expires:

Notary Public
Residing in: Grand County

EXHIBIT A

**RESIDENTIAL AND COMMERCIAL
SOLID WASTE COLLECTION AND DISPOSAL
GENERAL SPECIFICATIONS**
Updated November 24, 2009

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1.00 DEFINITIONS

The following words and terms when used herein shall be defined as follows:

- 1.01 Approved Commercial Garbage Containers: Contractor furnished commercial bins (two-yard minimum capacity). These containers are designed for automated collection. All containers have permanently attached, tight-fitting lids, and will meet all State of Utah Department of Health regulations.
- 1.02 Approved Container: Containers approved by the City in its solid waste rate resolution, which are designed and suitable for automated solid waste collection.
- 1.03 Approved Residential Garbage Containers: 95-gallon containers provided by the City. These containers are designed specifically for automated collection, and are equipped with wheels for easy movement by residents and other City users. All containers have

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permanently attached, tight-fitting lids. Such containers may be referred to as “Standard”.

- 1.04 Automated Collection: ~~Solid waste collection using specialized trucks capable of lifting and emptying specially designed solid waste receptacles.~~ Deleted: means
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- 1.05 Bob’s Transfer Station: Transfer station operated by Bob’s Sanitation located at 2295 South Hwy 191.
- 1.06 Bulky Wastes: Wastes that are not capable of being stored in the approved containers and cannot be picked up by automated collection vehicles, including items such as appliances, furniture, large tree branches, lawn sod, Christmas trees, etc.
- 1.07 Business: ~~Location or structure used or occupied on a temporary or permanent basis for purposes of carrying on a trade or profession for a profit.~~ Deleted: Shall be defined to mean a
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- 1.08 Centralized Collection: Shall be defined to mean a group of residences, as defined in Chapter 8.04 of the Moab Municipal Code, receiving solid waste collection at a single point utilizing a dumpster or other approved container, rather than individual cans kept by each dwelling.
- 1.09 City: The City of Moab and all lands within its municipal limits, as same may change from time to time.
- 1.10 Commercial: All classes of customers receiving solid waste collection services which, however denominated, are not classified as a residence, including, without limitation, offices, restaurants, hotels, resorts, motels, campgrounds, inns, government buildings, churches, hospitals, schools, meeting facilities, retail establishments, industrial facilities, workshops, warehouses, garages, businesses, or any other type of non-residential land use.
- 1.11 Commercial Users: Solid waste customers meeting the definition of “Commercial” in Section 1.10, supra.
- 1.12 Contractor: The person or legal entity performing residential and commercial solid waste collection and disposal under contract with the City.
- 1.13 Construction Waste: Waste defined as a Special Waste under City ordinances which includes building materials and rubble resulting from construction, remodeling, repair or demolition operations on houses, buildings, structures, or pavements.
- 1.14 Klondike Landfill Landfill operated by the Grand County Solid Waste District located at 15350 N. Highway 191 (approximately 19 miles north of City limits).
- 1.15 Moab Landfill - Class IV Landfill operated by the Grand County Solid Waste Management District, located on Sandflats Road.

1.16 Residence or Residential: Solid waste customers consisting of a house, apartment, town home, condominium, mobile home, or other structure which is lawfully occupied as a human dwelling, but excluding hotels, motels, inns, campgrounds, or other dwellings lawfully operated as overnight accommodations.

1.17 Solid Waste: Commercial or residential garbage, refuse, trash, or other discarded material, including solids, liquids, and semi-solid materials such as food scraps, rags, cardboard, yard waste, glass, paper, plastics, cans, or wood, but excluding the types of waste defined as Special Wastes.

1.18 Special Waste: shall be defined to mean the following materials:

1. medical or infectious waste;
2. animal carcasses;
3. discarded appliances;
4. construction debris, including drywall;
5. motor vehicles;
6. sewage, sludge, or septage;
7. explosives;
8. toxic or hazardous wastes as defined by Utah or federal law;
9. materials collected for recycling;
10. used motor oil;
11. mining slag, drilling mud, or other wastes from mineral extraction or industrial operations;
12. ashes or other material which is combusting; and
13. materials which cannot be collected by the Contractor pursuant to the terms of the franchise agreement.
14. restaurant grease
15. large metal objects

1.19 Sundown: The time established by the National Weather Service for sundown in the Southeastern Utah area.

2.00 SCOPE OF WORK

The work shall consist of all items contained in this document, including all necessary supervision, materials, equipment, labor and all other items necessary to complete the work in accordance with the Contract Documents. The Contractor is free, subject to any agreement privately entered into between the Contractor and others, to provide solid waste collection outside of the City. Work under this contract includes collection of solid waste from all City facilities, participation in cleanup campaigns and annual Christmas tree collection at established drop-offs, in coordination with the City.

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3.00 WORKING CONDITIONS

- 3.01 Continuance of Service in Inclement Weather: The Contractor understands the City is subject to inclement weather conditions including but not limited to snow, high winds, rain, heat and flooding. In such situations involving inclement weather, Contractor will continue collection services. Where inclement weather causes interruption in service the Contractor shall promptly notify affected customers and make arrangements for resumption of service and collection of solid waste within twenty-four (24) hours of the cessation of any inclement weather event.
- 3.02 Excuse from Performance: The parties shall be excused from performance in the event of war, civil insurrection, seismic event, geological catastrophe, wildfire, sustained flooding, acts of God, or other similar events which are beyond the control of the parties and which render performance impossible.
- 3.03 Labor Disputes: Contractor shall not be excused from performance as a result of strike or labor unrest by its employees or subcontractors (if any), including work stoppage or slowdown, picketing, wildcat strike, or other similar organized job action. Contractor agrees that it shall provide suitable alternate employees and equipment for uninterrupted service in the event of any strike or job action.
- 3.04 Notice: Any party claiming excuse from performance shall provide notice to the other party not later than forty-eight (48) hours from the time that party has notice of any such event. Should any event described in Section 3.02 prevent performance for a period of ten (10) consecutive days, the parties stipulate that this contract shall terminate, each party to have no further liability to the other.
- 3.05 Collection Outside the Scope of Agreement: Solid waste or other excess material generated as a result of any of the events described in Section 3.02 shall not be regarded as within the scope of the work defined by this contract. Should such an unforeseen event described in Section 3.02 generate waste materials in excess of average solid waste volumes, under circumstances where the parties elect not to terminate this Contract, the parties agree to negotiate reasonable additional compensation to be paid the Contractor for collection of same.

4.00 COLLECTION FROM PUBLIC SITES

4.01 City Facilities: Work under this contract includes collection and disposal of all solid waste from all City facilities. Solid waste shall be collected at the following locations at the following rates. Additional facilities may be added and the container size and collection schedule may be modified over the term of the contract. Prices for said additional services and changes shall be negotiated and approved in writing between the City Manager and the Contractor.

City Facilities:

Pick Up Site	Address	Container Size	Collection Schedule	Monthly Charge through June 30, 2010	Monthly Charge Effective July 1, 2010	
Old City Park	Old City Park Road	2 2yds	2 times a week	\$48	\$86	Formatted: Font: Bold Deleted: 0
Swanny City Park	181 W 4th N	20 green cans	2 times a week	no charge	\$12/can	Deleted: 17
Rotary Park	680 Millcreek Dr.	2 2yds	2 times a week	\$48	\$86	Deleted: 0
Swimming Pool <u>(when facility is in operation)</u>	181 W 4th N	1 2yd	2 times a week	\$40	\$86	
City Gym	203 East Center St	no service at this time	n/a	no charge	no charge	Deleted: N Deleted: S
City Hall	115 W 200 S	1 2yd	2 times a week	\$48	\$48	Deleted: A Deleted: T
City Shop	470 Kane Creek	1 2yd	4 times a week	\$86	\$86	Deleted: T Deleted: 0
Wstwr Trtmt Plnt	1070 W 400 N	1 2yd	1 time a week	no charge	no charge	Deleted: 72
MARC	111 E. 100 N	1 2yd	2 times a week	\$40	\$48	
City Ball Park	200 E Center	8 green cans	on call/as needed	no charge	\$12/can	Deleted: to 10 Deleted: 2 times a week
City <u>Animal Shelter</u>	203 East Center St.	1 green can	1 time a week	no charge	\$12/can	Deleted: Kennel
<u>Moab Street Cans</u>	<u>Main St. & Off Main</u>	<u>41 street cans</u>	<u>2 times a week</u>	<u>\$12/can</u>	<u>\$12/can</u>	Deleted: Moab Street Cans Deleted: Main St. & Off Main Deleted: 31 Street Cans Deleted: 2 times a week Deleted: \$11 per can per month

5.00 MATERIALS COLLECTED

5.01 Materials Collected: The Contractor shall collect all residential and commercial solid

waste as generated within the City.

5.02 Special Waste: The Contractor shall not be required to provide collection service for materials defined as Special Waste under this Contract. Bulky waste, which cannot be accommodated by Contractor's equipment, shall also be excluded from this Contract.

6.00 VEHICLES AND CONTAINERS

6.01 Vehicles:

- A. General. Contractor shall provide a fleet of collection vehicles sufficient in number and capacity to efficiently perform the work required by the Agreement in strict accordance with its terms and related City Ordinances (esp. Moab Municipal Code, *Chapter 17. 76-Noise Ordinance*). Contractor agrees to maintain each piece of equipment used by it in the performance of this Agreement in good order and repair. Contractor shall have sufficient back-up vehicles and qualified operators for each type of collection vehicle used to respond to complaints and emergencies available on collection days.
- B. Specifications. All vehicles used by the Contractor in providing solid waste collection services shall be registered with the Utah State Department of Motor Vehicles and shall meet or exceed all legal standards. The Contractor agrees to maintain all of its collection vehicles in compliance with the provisions of the Utah State Vehicle Code.
- C. Vehicle Identification. The Contractor's name, local telephone number, and a unique vehicle identification number designed by the Contractor for each vehicle shall be prominently displayed on all vehicles, in letters and numbers no less than two and one-half (2 1/2) inches high. The Contractor shall not place the City's logo on its vehicles.

D. Cleaning and Maintenance.

- 1. General The Contractor shall maintain all of its properties, facilities, and equipment used in providing service under this Agreement in a safe, neat, clean and operable condition at all times, and uniformly painted, to the satisfaction of the City Manager or his/her designee.
- 2. Cleaning Vehicles used in the collection of solid waste shall be thoroughly washed and thoroughly steam cleaned on a regular basis so as to present a clean appearance and minimize odors. The City may require the painting of any vehicle that does not present a satisfactory appearance, as deemed by the City Manager or his/her designee, at any time. All graffiti shall be removed immediately. The City may inspect vehicles at any time to determine compliance with sanitation requirements. The Contractor shall make vehicles available to the Southeastern Utah District Health Department for inspection at any frequency it requests.

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3. Maintenance The Contractor shall inspect each vehicle on a regular basis to ensure that all equipment is operating properly. Vehicles which are not operating properly shall be taken out of service until they are repaired and do operate properly. Contractor shall also perform all scheduled maintenance functions in accordance with the manufacturer's specifications and schedule. The Contractor shall keep accurate records of all vehicle maintenance, recorded according to date and mileage and shall make such records available to the City upon request.

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4. Repairs The Contractor shall repair, or arrange for the repair of, all of its vehicles and equipment, including dents or other body damage, for which repairs are needed because of accident, breakdown or any other cause so as to maintain all equipment in a neat, safe and operable condition. If an item of repair is covered by a warranty, the Contractor shall obtain warranty performance. The Contractor shall maintain accurate records of repair, which shall include date/mileage, nature of repair and the signature of a maintenance supervisor that the repair has been properly performed.

Deleted: 3. Maintenance The Contractor shall (a) inspect each vehicle daily to ensure that all equipment is operating properly. Vehicles which are not operating properly shall be taken out of service until they are repaired and do operate properly; and (b) perform all scheduled maintenance functions in accordance with the manufacturer's specifications and schedule. The Contractor shall keep accurate records of all vehicle maintenance, recorded according to date and mileage and shall make such records available to the City upon request
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5. Inventory The Contractor shall furnish sufficient equipment to provide all service required under this Agreement, including backup collection vehicles. The Contractor shall furnish the City a written inventory of all vehicles ("Vehicle Inventory List"), including collection vehicles used in providing service, and shall update the inventory annually. The inventory shall list all vehicles by manufacturer, ID number, date of acquisition, type, capacity and decibel rating.

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6. Storage Contractor shall arrange to store all vehicles and other equipment in safe and secure location(s) in accordance with City's applicable zoning regulations.

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7. Operation. Vehicles shall be operated in compliance with the Utah State Vehicle Code and all applicable safety and local ordinances. The Contractor shall not load vehicles in excess of the manufacturer's recommendations or limitations imposed by state or local weight restrictions on vehicles. The Contractor shall use all reasonable means to minimize any backing of collection vehicles while on their routes.

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6.02 Solid Waste Storage Containers

- A. Residential. The City shall provide sufficient approved containers for residential use. The City shall assist Contractor with delivery and assembly of residential containers as needed during the term of this agreement, and the Contractor shall provide personnel as necessary to record serial numbers of containers and the residences or locations to which they are delivered. Contractor shall assist the City with maintenance of containers. Contractor may take cans onto Contractor's

premises for the purposes of minor repair and limited storage, as provided for in this section. City-provided containers will be stored at the City of Moab Public Works Yard, located on Kane Creek Blvd. Contractor shall make arrangements with the City to obtain cans for use pursuant to this Contract, and shall maintain records of cans in Contractor's possession. Within 72 hours of notification of damage, the Contractor shall repair or replace all containers damaged by the Contractor during the term of this Agreement, normal wear and tear excepted. It is further agreed that all 95-gallon residential containers are the property of the City. The City will provide replacement 95-gallon residential containers as needed as a result of ordinary wear and tear.

B. Commercial. Commercial containers shall be provided by the Contractor. All containers with a capacity of one cubic yard or more shall meet applicable federal regulations on solid waste bin safety. Contractor shall provide rectangular commercial bins (two-yard minimum capacity) to commercial customers upon request. All containers provided by the Contractor shall be painted the Contractor's standard color and shall prominently display the name and telephone number of the Contractor. All non-residential bins and containers are to be maintained and cleaned by the Contractor at no charge to the customer. Provisions to lock containers shall be provided at customer request, at a rate to be determined between the Contractor and the customer.

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C. Repair and Replacement. Contractor shall repair or replace commercial containers damaged by collection operations or as a result of ordinary wear and tear at no cost to the City or customers, and shall replace residential containers damaged by collection operations.

6.03 Unapproved Containers: The Contractor shall not be required to collect solid waste unless it is in an approved container, as defined in Paragraph 1, except as otherwise provided for in this Agreement.

6.04 Special Services and Containers: The Contractor will provide, at no additional cost, special service for handicapped persons or senior citizens not able to handle the 95-gallon approved garbage container.

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6.05 Container Location: Contractor shall not be required to pick-up containers that are not within two feet of the blacktop.

7.00 COLLECTION OPERATION

7.01 Collection Point: Normal collection points are established in Moab Municipal Code Chapter 8.04. Commercial collection points shall be at a point negotiated between the Contractor and each Commercial user.

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7.02 Hauling: All solid waste hauled by the Contractor shall be contained or enclosed

so that leaking, spilling, or blowing of the material is prevented. In the event of any spillage by the Contractor, the Contractor shall immediately clean up the litter. The Contractor shall immediately clean up any fluid leaks emanating from the Contractor's collecting equipment, including but not limited to hydraulic fluids and oil.

7.03 Litter: The Contractor shall not litter premises in the process of making collections. The Contractor shall not be required to collect or clean up material that has not been placed in an approved container.

7.04 Disposal Only at Authorized Facilities: All residential and commercial solid waste collected shall be hauled by the Contractor to the landfill facilities as required by regulations, and as designated by the City. Contractor shall ensure that all waste collected by the contractor within City limits, is deposited at a facility operated by or franchised by the Grand County Solid Waste Management District. Approved facilities at present are the Klondike Landfill, the Moab Landfill, and Bob's Transfer Station. The Contractor shall become familiar with and abide by all rules, regulations, laws, contracts, provisions, etc., related to the use of such disposal facilities.

7.05 Collection Schedule: The Contractor shall prepare a collection schedule which shall ensure regular weekly collection service for residential customers, and daily or as needed service for commercial customers. Adequate equipment, forces and materials shall be made available by the Contractor to start work on the date ordered by the City and to comply with the collection schedule. The Collection schedule shall show the days of the week on which collection will be made at each residential unit in the collection zone. All regular residential collection shall be made Monday through Saturday. The Contractor shall coordinate with each commercial customer to determine the collection schedule for that customer. Commercial collection shall be made Monday through Saturday. The schedule should include accommodations for holidays as specified in Section 7.06. Adjustments may be made for holidays or emergencies upon prior written approval by the City. Maps and schedules of collection routes shall be made available to the City upon request.

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7.06 Holidays: The following may be considered by the Contractor to be holidays for purposes of this contract:

New Years Day
Thanksgiving Day
Christmas Day

Contractor may observe some all of the above-mentioned holidays by suspension of collection service on that holiday. Should the Contractor elect to observe any of said holidays, the Contractor shall notify each and every residential customer in the City of the holiday collection schedule by newspaper notice, which the

Deleted: (b) . Maps and schedules of collection routes shall show the day(s) for regularly scheduled pickup for each route and area.¶

(c) . The City shall give prior written approval to all routes and schedules when established.¶

(d) Changes in regular residential collection routes or schedules shall not be made more often than once during any six-month period without the written consent of the City.¶

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contractor shall cause to be published in a newspaper of general circulation. Notice shall be published at least two days prior but not more than seven days prior to the interruption of regular collection. The notice shall clearly state the new collection date and the area affected by the new collection date. If the collection is made the day immediately following the holiday, no published notice shall be necessary.

7.07 Time of Collection: The Contractor shall not commence collection of solid waste in residential areas prior to 7:00 A.M. or continue after 9:00 P.M., and prior to 6:30 am or after 9:00 P.M. in commercial areas, without approval of the City. The Contractor shall complete all regularly scheduled routes before sundown.

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7.08 City Not Liable for Delay: In no event shall the City be liable or responsible to the Contractor or to any other person for or on account of any stoppage or delay in the work herein provided for or by any injunction or other legal equitable proceedings, or as a result of any delay for any cause over which the City has no control.

7.09 Books, Records, and Contract Confidentiality: The Contractor shall keep records of the volumes of waste collected and delivered to the landfill and of the charges therefore and agrees to furnish to the City said records upon request. The City shall have the right to review any records.

Deleted: coincident with and as a condition of processing monthly payment, requests, a monthly record showing amounts of wastes so delivered and the days of delivery of the same, with truck identification.

7.10 Tipping Fees: The Contractor shall pay all tipping fees owing to the landfill or other solid waste facility. In the event that the Contractor does not pay tipping fees in a timely manner, as agreed upon between the Contractor and the solid waste facility, the City shall have the right to deduct the amount of tipping fees from the monthly payment from the City to the Contractor and pay same to the applicable facility.

7.11 Notification of Violations: The Contractor's employees shall notify property owners of violations of the City's solid waste collection and disposal regulations. Notification shall be given by filling out and attaching to the solid waste can handle a violation notification form detailing the violation and remedy. The Contractor's employee shall keep a written record of all such notices distributed and shall furnish to the City said records upon request.

Deleted: to furnish the City coincident with and as a condition of processing monthly invoice requests, a monthly written summary of all such notices given.

7.12 Contingency Plan: Contractor shall submit to City within 30 days of the Effective Date of this Agreement a written "Contingency Plan" demonstrating Contractor's arrangements to provide vehicles and personnel and to maintain uninterrupted service during mechanical breakdowns, and in case of natural disaster, strikes or other emergency, including events described above. The contingency plan shall identify specific personnel (e.g., management, contract labor, etc.) and equipment to be used, and the manner in which it will be used (e.g., double shifts, 7 days per week collection) to provide uninterrupted service during the mechanical breakdowns, and in case of natural disaster, strikes or other emergency, including events described above.

8.00 EMPLOYEES

The Contractor agrees to prohibit any employee from working while under the influence of alcohol, drugs or while otherwise impaired. Employees who normally and regularly come into direct contact with the public shall bear some means of individual identification such as a nametag, hat or identification card. Employees driving the Contractor's vehicles shall at all times possess and carry a valid commercial driver's license issued by the State of Utah having a class required to operate the collection vehicle being operated. Contractor's employees, officers, agents and sub-contractors shall not, under any circumstances, be allowed to identify themselves or in any way represent themselves as being employees or agents of the City.

Deleted: Contractor's employees shall be required to wear a clean uniform bearing the Contractor's name.

9.00 COMPLAINTS

It is of the utmost importance that the services required under this contract be provided in a reasonable and responsive manner sufficient to develop and sustain adequate public acceptance and support of Contractor's services. As a condition of accepting this Contract, Contractor assures that service will be performed in this manner and to adhere to the following:

- 9.01 Office: The Contractor shall maintain a local telephone number and such other office facilities through which he/she can be contacted. It shall be equipped with sufficient telephones and shall have a responsible person in charge from 8:00 A.M. to 5:00 P.M. on regular business days. The office shall be within 10 miles of the City limits. The Contractor shall maintain the capability to receive service complaints by telephone (in person) during all normal working hours; and by telephone, in person, or by recorder at all other times. The Contractor shall furnish the City with after-hours telephone numbers for emergency response.
- 9.02 Response and Resolution: The Contractor shall resolve all complaints regarding services in a prompt, courteous and expeditious manner. Whenever the Contractor receives notification of locations which have not received scheduled service, the Contractor shall provide collection before 9:00 P.M. the same day, if notice is received before 1:00 P.M. If notice is received after 1:00 P.M. collection shall be provided before 10:00 A.M. the following day.
- 9.03 Documentation: The Contractor shall maintain a permanent log of all significant service complaints. The Contractor shall submit a summary of this log to the City upon request.
- 9.04 Performance Standards and Liquidated Damages: Should the daily average or verified missed residential services exceed 2% of the residential units during any month, liquidated damages equal to \$10.00 times the number of missed services shall be deducted from the Contractor's payment. Should the daily average of verified missed commercial services exceed 1% of the total number of

Deleted: Contractor shall report the disposition of all complaints by telephone to the designated City representative in a timely manner.

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- (1) . The name, address and phone number of complainant.¶
 - (2) . The date and time (hour) the complaint was received.¶
 - (3) . The specific nature of the complaint.¶
 - (4) . The date and time (hour) the complainant was responded to.¶
 - (5) . The date and time the complaint was resolved.¶
- ¶

commercial accounts during any month, liquidated damages equal to \$20.00 times the number of missed services shall be deducted from the Contractor's payment.

On the second notice of any verified uncorrected complaint, the City may, at its option, remedy the complaint and assess \$50.00 liquidated damages, to be deducted from that month's payment. The Contractor and the City recognize that the City will suffer damage if the Contractor fails to comply with the aforesaid provisions, that such damages would be difficult to ascertain, and that the aforesaid sum is a reasonable and agreed estimate of the City's actual damages for each such failure of the Contractor.

10.00 LAWS, LICENSES, AND TAXES

The Contractor shall conduct operations under this Contract in compliance with all applicable laws. The Contractor shall obtain all licenses and permits, and promptly pay all taxes required by governmental agencies.

11.00 NONDISCRIMINATION

The Contractor shall not discriminate against any person because of race, sex, age, creed, color, religion, or national origin.

12.00 INDEMNITY

The Contractor shall indemnify, save harmless, and exempt the City, its officers, agents, servants, and employees from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs and expenses, and attorneys' fees incident to any work done in the performance of this Contract arising out of a willful or negligent act or omission of the Contractor, its officers, agents, servants and employees; provided however, that the Contractor shall not be liable for any suits, actions legal proceedings, claims, demands, damages, cost, expenses and attorneys' fees arising out of a willful or negligent act or omission of the City, its officers, agents, servants, and employees.

13.00 INSURANCE

The Contractor shall at all times during the Contract maintain in full force and effect Worker's Compensation, Public Liability, and Property Damage Insurance as provided herein. All insurance shall be by insurers and for policy limits acceptable to the City and shall name the City as an additional insured entity. Before commencement of work the Contractor agrees to furnish the City certificates of insurance or other evidence satisfactory to the City to the effect that such insurance has been procured and is in force. The certificates shall contain

the following express obligation:

“This is to certify that the policies of insurance described herein have been issued to the insured for whom this certificate is executed and are in force at this time. In the event of cancellation or material change in a policy affecting the certificate holder, thirty (30) days prior written notice shall be given the certificate holder.”

13.01 Coverage Amounts For the purpose of Contract, the Contractor shall carry the following types of insurance in at least the limits specified below:

<u>Coverage</u>	<u>Limits of Liability</u>
Worker’s Compensation	Statutory
Bodily Injury Liability Except Automobile	\$2,000,000 each occurrence \$2,000,000 aggregate
Automobile Bodily Injury Liability	\$2,000,000 \$2,000,000 each occurrence
Automobile Property Damage Liability	\$2,000,000 each occurrence

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14.00 BOND

14.01 Performance Bond: For the duration of the contract Contractor shall execute, deliver, and maintain at its own expense a financial guarantee in a form acceptable to the City for the purpose of securing the satisfactory performance of the obligations contained in this agreement. The performance guarantee shall be in the form of a surety bond, letter of credit, or certificate of deposit issued by a bank, insurance company, or other reputable financial institution. In the event of default, as defined in the contract, the City shall be entitle to draw upon the financial guarantee up to its stated limits for the purpose of reimbursing or obtaining payment for any and all direct, incidental, and consequential damages resulting from breach, including costs incurred collecting or contracting for the collection of solid waste.

The amount of the financial guarantee shall not be less than one hundred thousand dollars (\$100,000.00). Contractor shall satisfy this Section by providing a certificate of deposit or letter of credit in the amount of one hundred thousand dollars or a combination of a certificate of deposit or letter of credit in the amount of \$50,000.00 and a surety bond in the amount of \$50,000 to meet the required amount. The parties agree that any certificate of deposit or letter of credit

provided the Contractor under this Section shall be the Primary Guarantee of performance. In the event of default, the Primary Guarantee shall be drawn upon first by the City, until such time as all funds are exhausted. Upon exhaustion of the Primary Guarantee, the City shall be entitled to draw upon the surety bond, which shall be regarded as the Secondary Guarantee. Any change in the instrument(s) used to satisfy the financial guarantee shall be approved in advance in writing by the City Manager.

The surety on the performance bond shall be a licensed corporate surety authorized to transact business in the state of Utah. A current power of attorney authorizing the signatory to sign for and bind the surety shall accompany each surety bond posted under this Section.

15.00 BASIS AND METHOD OF PAYMENT

15.01 Rates and Charges Contractor shall be paid for solid waste collection services actually performed as specified below:

Residential Rate

\$16.00 per residence per month (single approved container, 95 gallons);

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\$ 6.00 per month each additional 95 gallon container per residence;

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Residential Rate, Centralized Collection

\$15.00 per residence per month (regardless of container type or number);

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Commercial Rate

Two Cubic Yard Automated Bin (rates are per bin)

pickup frequency: rate per month:

once a week \$48.00

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twice a week \$86.00

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three times a week \$122.00

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four times a week \$156.00

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five times a week \$187.00

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six times a week \$201.00

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seven times a week \$223.00

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15.02 Collection and Billing Charges: The City shall prepare for the Contractor's approval a billing summary that shows the total amount billed to customers as provided for herein. Said billing summary shall be presented by the City Treasurer to the Contractor for review and approval by the last day of each month. Contractor shall review and approve the billing summary within two business days of presentation to the Contractor by the City Treasurer. Within three calendar days after Contractor approves the billing summary, City shall pay Contractor the amount shown on the approved billing summary. The approved billing summary shall constitute a written request for payment by the Contractor. The Contract Revenue payable to the Contractor shall be the amount billed to customers pursuant to the approved request for payment, less the sum of five

Deleted: approved by the first Thursday of each month.

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percent which shall be retained by the City as payment for performing billing services. Adjustments to any month's billing summary may be made in subsequent months if approved in writing by the City Treasurer and the Contractor. In its discretion, the City may deduct from Contract Revenue any refund owing a customer due to a billing error, retroactive to a maximum of three months (without pro-ration) from the date the correction is made. In the event that the City determines from time to time that a customer account is deemed uncollectible, as provided for in subsection A below, then the parties agree that the Contractor's 50% share of the uncollected sums shall be deducted from the Contract Revenue payable on the next succeeding month. Review of uncollectible accounts shall take place at least annually.

Deleted: Payment shall be due to the Contractor within 30 days of each month that services are performed.

- A. The City shall promptly pursue collection of unpaid accounts, whether by issuing shut-off notices or by other collection means, and sums collected shall be included in the Contract revenue owing the Contractor, as defined above. In the event that the City determines, in its discretion, that delinquent accounts are uncollectible, then the parties agree that fifty percent (50%) of the sums owing and deemed uncollectible shall be excluded from the Contract revenue.
- B. Where solid waste and culinary water service is suspended by the City due to non-payment by the customer, the City shall promptly notify the Contractor and solid waste service shall be suspended until the sums owing are either paid by the customer or the City is otherwise obligated to restore service.
- C. This Section 15.02 shall not apply to accounts which are delinquent and unpaid prior to the execution by both parties of the Solid Waste Franchise Agreement renewal.

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15.03 Unoccupied Residential Units. Residential units, which are unoccupied for periods in excess of thirty days, as determined by the City Treasurer, shall not receive solid waste collection service and shall not be counted toward the total revenue payable to the Contractor under this Section. Contractor shall be notified when residential units are unoccupied and shall be allowed to suspend service and remove the approved containers.

15.04 Type of Use Controls Rates The solid waste collection rate applicable to a given property shall be based upon the type of land use, whether commercial or residential, regardless of the type of can used by the customer. Properties with more than one land use shall be charged the higher applicable rate.

16.00 ASSIGNMENT

No assignment of the Contract or any right accruing under this Contract shall be made in whole or in part by the Contractor without the express written consent of the City, which consent shall not be unreasonably withheld. In the event of any assignment, the assignee shall assume the liabilities and obligations of the

Contractor under this Contract.

17.00 OWNERSHIP

17.01 Title to Solid Waste: Title to all solid waste that Contractor has agreed to accept shall pass to the Contractor when placed in Contractor's collection vehicle, is removed by Contractor from a container, or is removed by Contractor from the Residential or Commercial Unit, whichever last occurs. Contractor does not agree to collect or accept Special Waste as defined herein and does not agree to accept title to such Special Waste. Contractor will use their best efforts to recover any items which a resident or business may have inadvertently or unintentionally deposited in a container, and if located, will relinquish possession and title to such resident.

18.00 DEFAULT AND TERMINATION

All terms and conditions contained in this agreement shall be regarded as material, including collection standards, and the failure to perform any part of this contract shall constitute a breach of contract. In addition, the following events shall constitute breach:

- a. Failure by act or omission to perform any provision of this Contract agreement, when such failure is not cured within two (2) business days of delivery of written notice of same to the Contractor. Nothing in this section shall be construed to excuse breaches which are not subject to notice under this section. Likewise, subsequent or repeat notices of breach shall not be required where additional or similar violations of the same contract provision occur.
 - b. The filing by Contractor or other interested party of a petition in bankruptcy or receivership, however denominated, or other similar pleading or court process seeking relief from debt or debt reorganization.
 - c. Assignment of all or substantially all of the Contractor's assets, equipment, corporate stock, or other indicia of ownership without prior approval of the City.
 - d. Failure generally by the Contractor to pay debts incurred in the performance of this contract as they become due.
 - e. The seizure by a creditor, whether by pre- or post-judgment process, of equipment, inventory, or funds used or necessary for the performance of this contract.
 - f. The service upon the City of writs of garnishment or other process or demands of financial guarantee encumbering contract funds by a creditor of the Contractor.
 - g. Failure to provide adequate assurances of performance upon demand by the City.
- 18.1 Termination: The City shall be entitled to terminate the agreement for cause upon delivery of written notice to the Contractor, which termination shall take effect not less than five (5) days from delivery of notice. The City shall not be required to seek or provide a pre-termination administrative or judicial hearing.

19.00 SUPPLEMENTARY INFORMATION

This section is intentionally left blank.

APPROVED AND ACCEPTED AS SET FORTH BELOW.

Bob's Sanitation, Inc.

By: _____
Title: _____ Date _____

State of Utah)
 §
County of Grand)

On the _____ day of _____, personally appeared before me _____
_____, who duly acknowledged to me that they executed
the same.

My Commission Expires: _____
Notary Public
Residing in: Grand County

City of Moab

By: _____
David Sakrison, Mayor Date _____

Attest:

By: _____
Rachel Ellison, City Recorder Date _____

EXHIBIT B

Chapter 8.04

SOLID WASTE

ARTICLE I. SOLID WASTE COLLECTION

- 8.04.010 Definitions.
- 8.04.020 Mandatory collection.
- 8.04.030 Rates and charges.
- 8.04.040 Automated collection and point of collection.
- 8.04.050 Collection schedule; time of placement.
- 8.04.060 Rules and regulations.

ARTICLE II. HEALTH AND SAFETY

- 8.04.070 Accumulations and disposal on property prohibited.
- 8.04.080 Burning prohibited.
- 8.04.090 Dumping prohibited.
- 8.04.100 Pre-enforcement notice.
- 8.04.110 Abatement.
- 8.04.120 Collection.
- 8.04.130 Criminal enforcement.
- 8.04.140 Successive violations.

ARTICLE I.

SOLID WASTE COLLECTION

8.04.010 Definitions.

The following definitions shall apply to this chapter:

"Approved commercial garbage containers" means contractor-furnished commercial bins (two-yard minimum capacity). These containers are designed for automated collection. All containers have permanently attached, tight-fitting lids, and will meet all state of Utah Department of Health regulations.

"Approved container" means containers approved by the city in its solid waste rate resolution, which are designed and suitable for automated solid waste collection.

"Approved residential garbage containers" means ninety-five-gallon containers provided by the city. These containers are designed specifically for automated collection, and are equipped with wheels for easy movement by residents and other city users. All containers have permanently attached, tight-fitting lids. Such containers may be referred to as "Standard."

"Automated collection" means solid waste collection using specialized trucks capable of lifting and emptying specially designed solid waste receptacles.

"Business" means a location or structure lawfully used or occupied, on either a

temporary or permanent basis, for purposes of carrying on a trade or profession for a profit.

"Centralized collection" means a group of residences, as defined in this chapter, receiving solid waste collection at a single point utilizing a dumpster or other approved container, rather than individual cans kept by each dwelling.

"City" means the city of Moab and all territory within its municipal limits as same may change from time to time.

"Commercial" means all classes of customers receiving solid waste collection service which, however denominated, are not classified as a residence, including, without limitation, offices, restaurants, hotels, resorts, motels, campgrounds, inns, government buildings, churches, hospitals, schools, meeting facilities, retail establishments, industrial facilities, workshops, warehouses, garages, businesses or any other type of nonresidential land use.

"Contractor" means the person authorized by contract with the city to collect and dispose of solid waste generated within the city limits.

"Residence" or "residential," as applied in this chapter, means those solid waste customers consisting of a house, apartment, town home, condominium, mobile home, or other structure which is lawfully occupied as a human dwelling, but excluding hotels, motels, inns, or other dwellings lawfully operated as overnight accommodations.

"Solid waste" means commercial or residential garbage, refuse, trash, or other discarded material, including liquids and semisolid materials such as food scraps, rags, cardboard, yard waste, glass, paper, plastics, or wood, but excluding the types of waste described in "special waste."

"Special waste" means the following materials:

1. Medical or infectious waste;
2. Animal carcasses;
3. Discarded appliances;
4. Construction debris;
5. Motor vehicles;
6. Sewage, sludge, or septage;
7. Explosives;

8. Toxic or hazardous wastes as defined by Utah or federal law;
 9. Materials collected for recycling;
 10. Used motor oil;
 11. Mining slag, drilling mud, or other wastes from mineral extraction or industrial operations;
 12. Ashes or other material which is combusting;
 13. Bulky materials which cannot be collected by the contractor using automated collection pursuant to the terms of the franchise agreement;
 14. Restaurant grease; and
 15. Large metal objects.
- (Ord. 04-06 (part), 2004)

8.04.020 Mandatory collection.

Solid waste shall only be collected within the city limits by the approved contractor pursuant to the terms of a solid waste collection franchise agreement with the city. As defined in this chapter, every residence or commercial establishment shall be required to receive and pay for solid waste collection services from the city. Nothing in this chapter shall be construed to prohibit a person from hauling residential or commercial solid waste or special waste generated from a location owned by that person to an authorized disposal facility, provided that the owner shall at all times remain liable for solid waste collection service charges assessed by the city pursuant to this chapter. (Ord. 04-06 (part), 2004)

8.04.030 Rates and charges.

Rates for solid waste collection shall be established and modified from time to time by the city council. Every solid waste customer within city limits, whether residential or commercial, receiving culinary water or sewer service from the city, shall be billed for solid waste service together with water or sewer service charges. As provided for water and sewer service charges, the owner of every property required to receive solid waste collection services shall be required to execute an application agreeing to be liable for all charges for service. In the event that a property owner fails or refuses to pay for solid waste service, the city shall be authorized to discontinue providing solid waste service and to disconnect the culinary water service connection to the property until all accrued charges have been paid in full. Prior to terminating service, the city shall deliver a written notice of default to the owner advising that if payment is not made in full by a date specified, the city will discontinue solid waste and culinary water service to the property. Any person wishing to contest a notice issued under this

section may request a hearing before the city council pursuant to Section 8.04.100 of this chapter.

- A. Solid waste charges may be suspended for residential customers for periods of time in excess of thirty days when the residence is unoccupied, provided that the property owner provides written notice to the city treasurer of same. During the period the residence is unoccupied, culinary water service and solid waste service shall be suspended. In no case shall solid waste service be suspended pursuant to this subsection during a time in which the residence also receives culinary water service.
- B. Each residential unit shall be billed separately for solid waste service, unless centralized collection is authorized pursuant to Section 8.04.040 of this chapter. Rates assessed on residential customers shall be assessed on a per unit basis.
- C. In its discretion, the city may issue a refund to a customer due to a billing error, retroactive to a maximum of three months (without proration) from the date the correction is made.
- D. The solid waste collection rate applicable to a given property shall be based upon the type of land use, whether commercial or residential, regardless of the type of container used by the customer. Properties with more than one land use shall be charged the higher applicable rate.

(Ord. 04-06 (part), 2004)

8.04.040 Automated collection and point of collection.

All solid waste shall be deposited into approved containers for automated collection by the contractor. The point of collection shall be at the curb of a public street or alley. In the event that the property of the customer is not adjacent to a public street or alley, the customer shall place the container in the next most accessible location acceptable to the contractor, which may be on private property. Property owners shall allow the contractor reasonable access to their property for purposes of collection.

- A. Centralized collection may be authorized by the city for residential customers where site constraints make individual can service impracticable, and where there is an individual property owner or entity that assumes liability for payment of all solid waste collection services. The city shall provide such authorization in writing. The rate owing for such service shall be based upon the centralized collection rate multiplied by the number of residential units. Residential customers utilizing centralized collection not authorized by the city shall pay the standard residential rate.

(Ord. 04-06 (part), 2004)

8.04.050 Collection schedule; time of placement.

Collection of solid waste shall be pursuant to schedules established by the city and contractor, except that customers can request and pay for additional pickups in accordance with approved rates as needed. Solid waste shall not be placed out for pickup more than twenty-four hours before a scheduled pickup. Empty cans shall be promptly removed from the curb within twenty-four hours of pickup.

(Ord. 04-06 (part), 2004)

8.04.060 Rules and regulations.

City staff may promulgate additional rules and regulations as are necessary or appropriate to implement this chapter. All such regulations shall be written and made available to the public.

(Ord. 04-06 (part), 2004)

ARTICLE II.

HEALTH AND SAFETY

8.04.070 Accumulations and disposal on property prohibited.

No owner or lessee of real property shall knowingly allow or cause solid waste or special waste to be deposited, disposed, or otherwise allowed to accumulate upon property which is not zoned and licensed as a storage or disposal site.

- A. Accumulations of solid waste or special waste as a result of ordinary commercial or residential activities is permitted in advance of regularly scheduled pickups, provided that all solid waste is housed in approved containers, and any special waste is properly contained so as to prevent odors, fumes, leaks, dust, insects, unsightly debris, animal infestations, or other hazardous conditions or nuisances.

(Ord. 04-06 (part), 2004)

8.04.080 Burning prohibited.

No person shall knowingly cause or allow solid waste or special waste to be burned or incinerated within the city.

(Ord. 04-06 (part), 2004)

8.04.090 Dumping prohibited.

No person shall knowingly dump, leave, deposit, or release solid waste or special waste upon any real property within the city, except in conformity with local zoning requirements and applicable state and federal regulations.
(Ord. 04-06 (part), 2004)

8.04.100 Pre-enforcement notice.

Prior to commencing any civil enforcement or collection proceedings for a default or other violations of this chapter, the city shall first deliver written notice to the affected person advising of the nature of the violation and allowing a reasonable opportunity to cure or abate the violation, or request a hearing before the city council. A person wishing to contest a notice issued under this section may request a hearing by delivering written notice to the city prior to the expiration of the cure period. A timely notice shall stay enforcement proceedings until a hearing can be held. The city council's decision shall be final for purposes of seeking judicial review or enforcement. The exhaustion of this administrative remedy shall be a jurisdictional prerequisite to a judicial action by any person challenging the validity of any enforcement or administrative action by the city.
(Ord. 04-06 (part), 2004)

8.04.110 Abatement.

In the event that a party fails to cure or abate a violation, the city may, in its discretion, elect to remove or dispose of the offending solid waste or special waste. The city, or its designee, shall be authorized to enter upon private property for the purpose of removing or abating the violation. The owner of the real property shall be liable to the city for all actual costs incurred in cleaning up or abating the violation.
(Ord. 04-06 (part), 2004)

8.04.120 Collection.

In addition to all other remedies, the city may commence a civil action to collect any sums owing pursuant to this chapter, or to obtain mandatory injunctive relief. In any injunctive proceeding, the city need only prove the violation of the ordinance to obtain injunctive relief.

- A. In no instance shall an owner or real property be held liable for solid waste, water, or sewer service charges incurred by a prior owner of the property.
- B. In its discretion, the city may elect to commence a civil action to collect any debt owing under this chapter. In any civil proceeding where liability is imposed, the city shall be entitled to recover its reasonable attorney fees and court costs, in addition to the relief authorized by this chapter.

(Ord. 04-06 (part), 2004)

8.04.130 Criminal enforcement.

In addition to all other remedies, any violation of this chapter shall be punishable as a criminal Class B misdemeanor, as provided under U.C.A. 76-3-204 and 76-3-301. In any criminal enforcement proceeding, the court shall have jurisdiction to assess costs, order restitution to victims, or require abatement of violations, as provided by law. (Ord. 04-06 (part), 2004)

8.04.140 Successive violations.

Each day of a continuing or ongoing violation of this chapter may be prosecuted as a separate offense for purposes of all remedies authorized by this chapter. (Ord. 04-06 (part), 2004)