



AMENDED CITY COUNCIL AGENDA

PUBLIC NOTICE is hereby given that the City Council of Spanish Fork, Utah, will hold a regular public meeting in the Council Chambers in the City Office Building, **40 South Main Street**, Spanish Fork, Utah, commencing at **6:00 p.m. on March 12, 2009**.

AGENDA ITEMS:

1. CALL TO ORDER, PLEDGE, OPENING CEREMONY, RECOGNITIONS:

- a. Pledge

2. PUBLIC COMMENTS:

Please note: In order to be considerate of everyone attending the meeting and to more closely follow the published agenda times, public comment will be limited to three minutes per person. A spokesperson who has been asked by a group to summarize their concerns will be allowed five minutes to speak. Comments which cannot be made within these limits should be submitted in writing. The Mayor or Council may restrict the comments beyond these guidelines.

3. COUNCIL COMMENTS:

4. NEW BUSINESS:

- a. *North Park Contract with Westfields
- b. *Recycling Contract with Allied Waste
- c. *Solid Waste Ordinance Change
- d. *Resolution from Utah League of Cities and Towns

5. EXECUTIVE SESSION:

- a. Potential Litigation
- b. Land Use

ADJOURN:

* Supporting documentation is available on the City's website www.spanishfork.org

Notice is hereby given that:

- In the event of an absence of a quorum, agenda items will be continued to the next regularly scheduled meeting.
- By motion of the Spanish Fork City Council, pursuant to Title 52, Chapter 4 of the Utah Code, the City Council may vote to hold a closed executive meeting for any of the purposes identified in that Chapter.
- This agenda is also available on the City's webpage at www.spanishfork.org

SPANISH FORK CITY does not discriminate on the basis of race, color, national origin, sex, religion, age or disability in the employment or the provision of services. The public is invited to participate in all Spanish Fork City Council Meetings located at 40 South Main St. If you need special accommodation to participate in the meeting, please contact the City Manager's Office at 798-5000.

SECOND AMENDED DEVELOPMENT AGREEMENT

This Second Amended Development Agreement is made and entered into on this _____ day of _____, 2009, by and between THE REDEVELOPMENT AGENCY OF SPANISH FORK CITY, an entity created and organized under the provisions of the former Utah Neighborhood Development Act, the former Utah Redevelopment Agencies Act, and current Utah Community Development and Renewal Agencies Act (Utah Code Ann. Title 17C, Chapters 1-4, 153 as amended) and any successor law or act (hereinafter "Agency"), whose address is 40 S. Main, Spanish Fork, UT 84660, SPANISH FORK CITY, a municipal corporation of the State of Utah (hereinafter "City"), whose address is 40 S. Main, Spanish Fork, UT 84660 and TENEDOR LLC, a Utah limited liability company (formed by principals of WOODBURY CORPORATION, a Utah corporation and WESTFIELD PROPERTIES, INC., a Utah corporation) and/or its assigns (hereinafter "Developer"), whose address is 2733 E. Parleys Way, Suite 300, Salt Lake City, UT 84109. Collectively the parties to this Agreement may be referred to herein as "the Parties."

RECITALS

WHEREAS, on or about the 19th day of January, 2007, Developer and City entered into a Development Agreement out of a mutual desire to commercially develop and improve certain parcels of real property (hereinafter "Project Area"), more specifically identified in Exhibit "A", attached hereto and by this reference incorporated herein, which Development Agreement has been assigned by City to Agency; and

WHEREAS, the terms of the January 17, 2007 agreement are largely fulfilled, with the determination that Developer owes to City eight hundred fifty thousand dollars (\$850,000.00) in additional funds to fully compensate City, pursuant to the National Parks guidelines, for the North Park property conveyed to Developer ; and

WHEREAS, on or about the 17th day of July, 2007, Developer and Agency entered into a Supplemental Development Agreement out of a mutual desire to further refine and set forth their respective responsibilities and obligations respecting the commercial development and impact of the Project Area (hereinafter the "Supplemental Agreement"); and

WHEREAS, on or about the 19th day of February, 2008, Developer and Agency entered into a First Amended and Restated Supplemental Development Agreement out of a mutual desire to further refine and set forth their respective responsibilities and obligations respecting the commercial development and impact of the Project Area (hereinafter the "First Amended Agreement:"); and

WHEREAS, the Project has been delayed due to wetland issues, which have recently been resolved with the U.S. Army Corps of Engineers, and due to the downturn in the economy on a national basis; and

WHEREAS, with the resolution of the wetlands issues the Project Area can better be developed, to the benefit of both parties, if the obligations of the parties, given the current economic climate, are re-defined; and

WHEREAS, Developer, Agency, and City now desire to enter into this Second Amended Development Agreement (hereinafter “Second Amended Agreement”) out of a mutual desire to further amend, refine and restate their respective responsibilities and obligations respecting the commercial development and improvement of the Project Area; and

WHEREAS, Developer has purchased and/or placed under contract the right to purchase certain parcels within the Project Area identified on Exhibit “A”; and

WHEREAS, the Parties agree that the Project Area is located within a primary commercial corridor of Spanish Fork City, and that recent changes in the highway system and master plan have made it so that the highest and best use of the Project Area is now commercial development; and

WHEREAS, within the Project Area there exists a former public park which shall now be reoriented and relocated as part of the development of the Project Area, which will then allow the further enhancement of the City’s tax base, and at the same time improve and enhance said park as a viable recreational property; and

WHEREAS, the current City plans, which were in place before development of the Project Area was initiated by the Developer, for accommodating future growth (commercial, recreational, and public safety) include the following public facility projects (the “Public Infrastructure Improvements”) which typically are constructed and/or installed by a developer on behalf of the City as part of the development of the Project Area:

- a. Improve traffic flows from Main Street to US Highway 6. This connects the traditional commercial and residential core of Spanish Fork City with future high growth residential areas, and creates a strong commercial hub to facilitate the development of tax base generating uses which serve the needs of the community.
- b. Remodel and Improve North Park to meet the needs of the broadest cross section of the community, and provide preferred modern park amenities.
- c. Extend 700 East Street to connect to US Highway 6 to relieve traffic problems at the intersections of US Highway 6 and Express Way Lane and US Highway 6 and Chappel Drive.
- d. Enclose the Open Storm Drainage Ditch extending the Main Street storm drain northeasterly across US Highway 6, reducing maintenance costs, eliminating safety hazards, and reducing potential liability.

- e. Redesign Chappel Drive / US Highway 6 traffic signal to allow better flow to the north, thus encouraging commercial development, job creation, and the development of commercial and/or industrial tax base.
- f. Establish pedestrian trail system along I-15 and US Highway 6, which integrates into the overall City trail system and regional trail systems; and

WHEREAS, the current economic climate makes it difficult for Developer to obtain financing at a reasonable cost. Therefore, City is willing to construct and/or install the Public Infrastructure Improvements and relocated North Park improvements, as identified herein, thereby releasing Agency from its obligations under the First Amended Agreement; and

WHEREAS, the financial obligations of the Agency, as outlined in the First Amended Agreement, took into account a one million dollar (\$1,000,000.00) request from Developer to provide construction inducements for Target Department Stores to locate to the Project Area upon its completion; and

WHEREAS, it is not known if Target Department Stores is still willing to locate to the Project Area, given its financial condition on a national scale; and

WHEREAS, on or about July 19, 2007 the City and the Agency entered into an Interlocal Agreement to aid in the facilitation of the financing of and payment for the Infrastructure Improvements, which agreement is no longer necessary, with City willing to undertake the construction of the Public Infrastructure Improvements, but which sources of funding will remain in place for City;

AGREEMENT

NOW THEREFORE, the parties hereunto agree as follows:

1. The Supplemental Agreement and the First Amended Agreement are hereby amended and replaced in their entirety by this Second Amended Agreement. The Interlocal Cooperation Agreement between Agency and City dated the 19th day of July, 2007 is hereby repealed and replaced by this Second Amended Agreement.
2. City agrees to assume responsibility for the design and construction of the relocated North Park Improvements, as well the construction of the Public Infrastructure Improvements identified herein. The anticipated cost of the North Park relocation is \$4,400,000.00. The anticipated cost of the Public Infrastructure Improvements is Five Million Three Hundred Fifty Thousand Dollars (\$5,350,000.00), for a total anticipated cost of Nine Million Seven Hundred Fifty Thousand Dollars (\$ 9,750,000.00). The breakdown of the estimated costs for the Infrastructure Improvements is depicted in Exhibit "B," attached hereto and by this reference incorporated herein. Developer shall be responsible to pay for the

Public Infrastructure Improvements costs in excess of Five Million three Hundred fifty Thousand Dollars (\$5,350,000.00). Cross parking easements are to be granted to each party from the other for all public parking areas.

3. City will be responsible for the financing of the improvements identified in paragraph 2 hereof.
4. Developer will pay to City the sum of Eight Hundred Fifty Thousand Dollars (\$850,000.00) to complete the North Park transaction. This sum shall be paid within 30 days of when funds from Developer's construction loan are available to draw upon, but in no event shall this be later than December 31, 2009. In addition thereto, if Developer is unsuccessful in obtaining Target Department Stores as a tenant or owner in the Project Area, it shall pay an additional One Million Dollars (\$1,000,000.00) to City. Developer shall have until the two year anniversary of the date of this Second Amended Agreement to obtain a firm commitment from Target Department Stores, with a building permit issued within one year thereafter. If a firm commitment is not timely received, or building permit not timely issued, Developer shall pay its million dollar commitment on or before the -three year anniversary of the date of this Second Amended Agreement.
5. As part of the park construction, City shall be obligated to perform the rough grading required for the park land. During that construction, other utilities and improvements necessary for the commercial development must also be installed. City will proceed to install the other improvements, including sewer line, water line, secondary water line, electrical conduit and lines, and curbing, in accordance with the drawings attached as Exhibit "D." Developer shall be responsible for the costs of the improvements listed on Exhibit D. Prior to issuing contracts for the work listed on Exhibit D, Developer shall have the right to review and approve the plans and scope of such work. City shall send an invoice to Developer as it performs the work and Developer shall pay such invoices within 30 days of their date. Invoices not timely paid will bear interest at the rate of 12% per annum.
6. Developer has heretofore commenced some of the Public Infrastructure Improvements which City has agreed to construct. Developer shall provide to City invoices for work already performed. City shall deliver joint checks to the Developer made out to the contractor and Developer in payment of the invoices. If Developer has already paid the invoices, City shall reimburse Developer directly. Developer shall notify City of any work in dispute and shall cooperate with City in resolving the dispute with such contractor. The work heretofore performed, or in the process of being performed, contractor, and amounts are identified in exhibit C. Any projects, contractors, or sums not identified in exhibit C shall remain the responsibility of Developer.
7. Developer shall use its best efforts to promote the Project Area. Developer agrees

that at least 65% of the finished retail square footage the Developer owns and controls will be completed before Developer, or its owners or principals, commences any other project in Springville, Leland, Benjamin, Salem, or Payson,, except for the Black Watch-Payson LLC project in Payson, located at approximately 1100 West and 800 South, in which the Developer already has an interest and any other project within the city limits of Spanish Fork City. Developer shall cooperate with City so that potential tenants/owners of the project understand the Project Area is in a CDA and subject to its provisions which provide the specific funding sources to pay for the Public Infrastructure Improvements, which are utility increment, property tax increment, and sales tax increment.

8. City shall construct the relocated North Park Improvements in a timely manner. City shall cooperate with Developer to complete any Public Infrastructure Improvements prior to the opening of any phase of the Project Area.
9. Developer shall be responsible for all of the development costs not identified herein to make the Project Area a feasible commercial area in Spanish Fork City.
10. City and Agency acknowledges that Developer is expending significant resources in working toward commercially developing the Public Infrastructure Improvements and that the ultimate development of the Project Area will result in economic gains for the City, as well as a significant improvement in the quality of life for its citizens, thus fulfilling the goals and purposes of the Agency. Accordingly, City and Agency agree to work exclusively and in good faith with Developer in this Project Area.
11. This document amends all prior agreements between the parties hereto concerning the subject matter hereof. All prior agreements are merged herein and superceded hereby.
12. In the event of breach of this Second Amended Development Agreement, the breaching party shall be liable for all costs incurred by the non-breaching party, including attorneys fees, expert witness fees, and court costs.

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, this Agreement has been executed on the day and year first above written.

TENEDOR L.L.C., A Utah limited liability company

By: WOODBURY CORPORATION, a Utah corporation, Its Manager

By: _____
Jeffrey K. Woodbury, Vice President

By: _____
O. Randall Woodbury, Secretary

By: _____
Richard L.K. Mendenhall
Its: Manager

THE REDEVELOPMENT AGENCY OF THE CITY OF SPANISH FORK,

By: _____
Joe L Thomas
Its: Chairman

Attest:

David A. Oyler, Executive Director

SPANISH FORK CITY,

By: _____
Joe L Thomas
Its: Mayor

Attest:

Kimberly Robinson, City Recorder

ACKNOWLEDGMENT

STATE OF UTAH)
 :SS.

COUNTY OF _____)

On this ____ day of _____, 2009, before me personally appeared JEFFREY K. WOODBURY and O. RANDALL WOODBURY, to me personally known to be the Vice President and Secretary of WOODBURY CORPORATION, the corporation that executed the within instrument, known to me to be the person who executed the within instrument on behalf of said corporation therein named, and acknowledged to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of its boards of directors.

Notary Public

ACKNOWLEDGMENT

STATE OF UTAH)

:ss.

COUNTY OF _____)

On this ____ day of _____, 2009, before me personally appeared RICHARD L.K. MENDENALL, to me personally known to be the Manager of TENEDOR LLC, the company that executed the within instrument, known to me to be the persons who executed the within instrument on behalf of said company therein named, and acknowledged to me that such company executed the within instrument pursuant to its articles of organization.

Notary Public

ACKNOWLEDGMENT

STATE OF UTAH)

:ss.

COUNTY OF UTAH)

On this ____ day of _____, 2009, before me, a Notary Public in and said County and State, personally appeared Joe L Thomas and David A. Oyler of The Redevelopment Agency of the City of Spanish Fork, known or identified to me to be the individuals whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the

(2)	City Park Improvements	\$4, 400,000.00
(3)	Public Infrastructure Improvements	\$5, 350,000.00
	Total	\$9,750,000.00

Notes

- (1) The cost of work to be performed includes the cost of design, supervision and construction.
- (2) Includes the improvements for City Parcels A, B, C, D on the North Park Subdivision Plat , excluding rough grading for City Parcel A
- (3) Consists of the following:

Improvements to the following right-of-way sections:

- 1000 North-Main Street to 600 East
- 200 East-1000 North to New City Park
- 400 East-1000 North to New City Park
- 600 East-800 North to 1000 North
- 700 East-800 North to 1000 North
- Chappel Drive-600 East to US6
- Chappel Drive-US6 to Kirby Lane
- US6-900 North to Chappel Drive
- Main Street-I15 Off-Ramp to 1000 North

Intersection Signals at:

- US6 and Chapple Drive
- 1000 North and 200 East
- 1000 North and 400 East
- 1000 North and 600 East
- 1000 North and Main Street

Storm Drainage Expansion

Electrical Transmission Pole Relocation

Electrical Line Construction, Phases 1 and 2, per the drawings Developer has provided to the Electrical Department

Rough grading for City Parcel A

Engineering design costs, quality control and inspection services, printing, survey and layout costs related thereto

**SECOND AMENDED DEVELOPMENT AGREEMENT
EXHIBIT "C"**

Infrastructure Improvements	Contractor	Cost	Reimbursed	Remaining Cost*
ROW Improvements	Sunroc	\$1,677,730.25		\$382,854.75
Storm Drain Expansion	Sunroc	581,382.08		26,436.85
Electrical Line Construction (Phase 1)	Spanish Fork City	867,587.37		0
Traffic Signals and Lights	Cache Valley Electric		0	563,670.00
Light Poles	Ryan to provide		0	Ryan to provide
Birch Easement	NA		0	9,700.00
Adams Easement	NA		0	5,000.00
Engineering Costs	Galloway, Horrocks, Dominion		0	Woodbury to provide

*Amounts for work still in progress are based on contractor bids or other agreements but are subject to change as circumstances dictate from time to time, (ie change orders).

SECOND AMENDED DEVELOPMENT AGREEMENT

EXHIBIT "D"

Attach drawing. Joe and Richard H. to cooperate to create.

Spanish Fork City Curbside Recycling Agreement

THIS CONTRACT, made and entered into this _____ day of _____, 20____, by and between Spanish Fork City (hereinafter called the “City”), represented herewith by its duly elected and acting Mayor, Joe L Thomas, and Allied Waste Services of N.A., LLC, a Delaware Limited Liability Company qualified to do and actually doing business in the State of Utah (hereinafter called “Contractor”), herein represented by Reece DeMille, its duly qualified and acting Agent.

WITNESSED, THAT in consideration of the covenants and agreements herein contained, to be performed by the parties hereto and of the payments hereinafter agreed to be made, it is mutually agreed as follows:

1. The Contractor is hereby granted the sole and exclusive franchise, license and privilege within the territorial jurisdiction of the City and shall furnish all personnel, labor, equipment, trucks, and all other items necessary to collect curbside recyclable materials during the term of this Contract for Residential and Municipal Facilities.
2. The Contract Documents shall include the following documents, and this Contract does hereby expressly incorporate the same herein as fully as if set forth verbatim in this Contract:
 - a. Exhibit A - General Specifications
 - b. Exhibit B - Insurance Requirements
 - c. Exhibit C - Contractor’s Rates
 - d. This Instrument
3. All provisions of the Contract Documents shall be strictly complied with and conformed to by the Contractor, and no amendment to this Contract shall be made except upon written consent of the parties. No amendment shall be construed to release either party from any obligation of the Contract Documents except as specifically provided for in such amendment.
4. The initial term of this Contract shall be from _____, 2009 (the “Effective Date”) until _____, 2014 .
5. This Contract may be extended for a five-year period upon mutual consent of both parties. City and Contractor may choose to extend the Contract after the expiration date of the five-year extension cited herein. Additional extensions will be negotiated, between the Contractor and City, as may be in the best interest of both parties. Terms and conditions as applicable to the initial term shall apply to the extended terms except for the pricing which shall be as provided

in the pricing Exhibit to this Contract, and, such other changes as may be mutually agreed upon by the City and the Contractor.

IN WITNESS HEREOF, Joe L Thomas, the Mayor of Spanish Fork City, hereunto subscribed his name, and Reece DeMille, Authorized Agent of Allied Waste Services of N.A., LLC, has also hereunto subscribed his name on the days and dates set forth after their various signatures.

WITNESSES: SPANISH FORK CITY

BY: JOE L THOMAS

_____, Mayor

ATTEST: _____
KIM ROBINSON, RECORDER

ON: _____, 20_____

WITNESSES: Contractor: ALLIED WASTE SERVICES of N.A., LLC

_____ BY: _____
_____, General Manager

_____ ON: _____, 20_____

THUS DONE AND SIGNED in the presences of witnesses whose names are inscribed opposite each respective signature on and as of the _____ day of _____, 2009.

WITNESS MY HAND AND SEAL OF OFFICE

NOTARY PUBLIC

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EXHIBIT A
GENERAL SPECIFICATIONS

1.0 DEFINITIONS OF ITEMS INCLUDED IN THIS CONTRACT

- 1.1 City – Spanish Fork City, Utah.
- 1.2 Container for Recycling – A receptacle with the capacities designated on the exhibits hereto that is designed for the purpose of curbside collection of Recyclable Materials and is constructed of plastic, metal or fiberglass, and having a tight fitting lid. The mouth of a container shall have a diameter greater than or equal to that of the base. The weight of a container and its contents shall be at an acceptable level for ease of service by Contractor. Resident will be responsible to reduce weight in container upon notice from Contractor of its inability to service. Overweight containers will be determined at the sole discretion of Contractor.
- 1.3 Disposal Site – A Waste Material depository designated by Contractor, including but not limited to sanitary landfills, transfer stations, incinerators, recycling facilities and waste processing/separation centers licensed, permitted or approved by all governmental bodies and agencies having jurisdiction and requiring such licenses, permits or approvals to receive for processing or final disposal of Waste Material and Small Dead Animals.
- 1.4 Multi-Family – The term multi-family shall refer to all residential dwelling units of more than one (1) unit considered to be condominiums, apartment houses or grouped housing.
- 1.5 Municipal Facilities – Means only those specific municipal locations where a recycle container will be picked up by contractor.
- 1.6 Producer – An operator or occupant of a commercial or industrial facility or a Residential Unit who generates Garbage, Rubbish, Yard Waste or Recyclable Materials.
- 1.7 Recycling – The collection of and the delivery of Recyclable Materials pursuant to the Contract Documents.
- 1.8 Recyclable Materials – The following items are classified as Recyclable Materials under this Contract: Plastics 1-7, paper back books, cardboard, newspaper, phone books, steel cans, all paper products, paperboard, aluminum cans, plastic bags. Markets for recycle materials can change from time-to-time. Recyclable items may increase or decrease as these markets evolve. Contractor will notify City at least 30 days prior to any material changes.
- 1.9 Residential Unit – A dwelling within the corporate limits of the City occupied by a person or group of persons comprising not more than four families.

2.0 SCOPE OF WORK

- 2.1 General. The work under this Contract shall consist of all the supervision, materials, equipment, labor and all other items necessary to collect, transport and process of the recyclable materials from all Residential Units and other specified locations in accordance with the Contract Documents.
- 2.2 Work Not Covered By Contract. The work under this Contract does not include:
- 2.2.1 the collection, transport and processing of any increased volume resulting from a flood, hurricane or similar or different Act of God over which the Contractor has no control. In the event of such a flood, hurricane or other Act of God, the Contractor and the City will negotiate the payment to be made to the Contractor. Further, if the City and the Contractor reach such agreement, then the City shall grant the Contractor variances in routes and schedules, as deemed necessary, by the Contractor; or,
 - 2.2.2 the collection or disposal of construction or demolition debris from either residential, municipal or commercial locations; or,
 - 2.2.3 the collection or disposal of non-recyclable materials; or,
 - 2.2.4 the collection or disposal of any waste materials or recyclable materials from Large Commercial and Industrial Units in the City.
- 2.3 Additional Work Separately Contracted at Contractor's Election with Large Commercial and Industrial Units. Contractor may provide recyclables collection services for Large Commercial and Industrial Units according to individual agreements negotiated between Contractor and such customers and under such terms and conditions as may be mutually agreed upon by Contractor and such customers. However, this Contract does not require such customers to use Contractor for such services.
- 2.4 Additional Work Separately Contracted at Contractor's Election with Residential Units and Municipal Facilities. Contractor may provide any other waste collection and disposal services and/or recyclable services to Municipal Facilities (e.g. collection and removal of construction debris, large dead animals, bulky items, etc.) that are not included within the scope of this Contract according to individual agreements negotiated between Contractor and such customers and under such terms and conditions as may be mutually agreed upon by Contractor and such customers. However, this Contract does not require such customers to use Contractor for such services.

3.0 COLLECTION OPERATIONS – GENERAL PROVISIONS

- 3.1 Location of Containers for Single-side of Street Collection. Each Container shall be placed curbside on one-side of the street as determined by Contractor for collection. Contractor will determine the side of street using several factors including, but not limited to, safety of both Contractor employees and City residents, efficiency of collection and density of Containers. Curbside refers to that portion of right-of-way adjacent to paved or traveled

City roadways (including alleys). Containers shall be placed as close to the roadway as practicable without interfering with or endangering the movement of vehicles or pedestrians. When construction work is being performed in the right-of-way, Containers shall be placed as close as practicable to an access point for the collection vehicle. Contractor may decline to collect any Container not so placed or any Recyclable Material not in a Container as specified in the Contract Documents.

3.2 Hours of Operation. Collection of Waste Material shall not start before 7:00 A.M. or continue after 8:00 P.M. on the same day. Exceptions to collection hours shall be effected only upon the mutual agreement of the City and Contractor, or when Contractor reasonably determines that an exception is necessary in order to complete collection on an existing collection route due to unusual circumstances.

3.3 Routes of Collection. The Contractor shall establish Residential Unit and Municipal Facilities collection routes. The Contractor may from time to time make changes in routes or days of collection affecting Residential Units or Municipal Facilities. City and Contractor will work together to notify impacted Residential and Municipal Facilities.

3.4 Holidays. The following shall be holidays for purposes of this Contract:

New Year's Day	President's Day	Good Friday
Memorial Day	Independence Day	Labor Day
Thanksgiving Day	Christmas Day	24 th of July

Contractor may decide to observe any or all of the above mentioned holidays by suspension of collection service on the holiday, but such decision in no manner relieves Contractor of his obligation to provide collection service at Residential Units at least every other week.

Contractor will observe the 24th of July Holiday and suspend any services related to this Contract unless prior approval has been granted from the City. Contractor will also notify City of all holidays that will be observed that will impact service days.

3.5 Complaints – All complaints shall be made directly to the Contractor and shall be given prompt and courteous attention. In the case of alleged missed scheduled collections, the Contractor shall investigate and, if such allegations are verified, shall arrange for the collection of Waste Material or Recyclable Materials not collected within 24 hours after the complaint is received.

3.6 Collection Equipment – The Contractor shall provide an adequate number of vehicles meeting standards and inspection requirements as set forth by the laws of the State for regular recycling collection services.

3.7 Office – The Contractor shall maintain an office or such other facilities through which it can be contacted by local call from anywhere in the City. 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.

3.8 Hauling – Recyclable Material hauled by the Contractor shall be so contained, tied or enclosed that leaking, spilling or blowing is minimized.

- 3.9 Delivery – All Recyclable Materials collected for delivery and sale by the Contractor shall be hauled to a commodity buyer selected by the Contractor pursuant to the Contract Documents. The charge for delivery to the commodity buyer shall be included in the rates set forth for the Residential Units and Municipal Facilities serviced by the Contractor. Any revenue obtained by Contractor from the sale of the Recyclable Materials shall belong to Contractor.
- 3.10 Subscription – This service is based upon a subscription basis. Residents must sign up to participate. The minimum subscription period will be six months. Resident will be liable for a minimum of 6 months charges regardless of when the recyclable container may be removed from the residence, unless the resident has moved from the City.

4.0 BASIS OF PRICES AND METHOD OF PAYMENT

4.1 Recyclable Materials Collection and Disposal Rates (Exhibit C)

- 4.1.1 The prices to be paid by the City for the collection and disposal of Recyclable Materials from all Residential Units and Municipal Facilities shall be as shown on Exhibit C, as adjusted in accordance with Section 4.3 herein, and shall be computed based upon the actual number of Residential Units and specific Municipal Facilities to which Contractor provided such services during each month of this Contract as shown by City's billing records. The City shall also pay Contractor the other costs and charges as specified in Section 4.2 herein.
- 4.1.2 In the event that any Recycled Material commodity collected by Contractor hereunder becomes no longer marketable and must therefore be disposed of at a Disposal Site, the City shall pay any such disposal cost to the Contractor and shall eliminate that commodity from the Recyclables Materials program and this Contract. Contractor does not guarantee the existence of a market or any commodity buyer at any time for Recyclable Material

4.2 Additional Costs and Charges

- 4.2.1 Pass Through Tax/Cost Increases. Contractor may pass through certain cost increases directly to the City to adjust for increases in cost to Contractor due to the disposal/processing facility being used, changes in local, state, or federal rules, ordinances or regulations, and changes in taxes, fees or other governmental charges (other than income or real property taxes). However, at no time will Contractor be allowed to charge City at a higher rate per ton than South Utah Valley Solid Waste District rate for disposal of municipal solid waste.
- 4.2.2 Except as provided expressly herein, the charges for Contractor's service with respect to this work shall include all taxes, transportation costs and disposal fees.

4.3 Modification to Rates

- 4.3.1 The fees in Exhibit C which may be charged by the Contractor for the second and subsequent years of the term hereof shall be adjusted upward or downward

to reflect changes in the cost of operations, as reflected by fluctuations in the Consumer Price Index for the Wasatch Front as currently provided by Wells Fargo Bank. If this, or another mutually agreeable Wasatch Front Index, is unavailable the Consumer Price Index for Urban Wage Earners and Clerical Workers (All Items) as published by the U. S. Department of Labor, Bureau of Labor Statistics will be used. Rates will be adjusted each July 1, beginning July 1, 2010.

4.3.2 In addition to the above, the Contractor may petition the City at any time for additional rate and price adjustments at reasonable times on the basis of unusual changes in its cost of operations, such as revised laws, ordinances, or regulations; changes in location of disposal / processing sites, an increase in the number of Residential Units such as City growth or annexation; and for other reasons. Such rate adjustments shall be subject to the review and consent of the City.

4.4 City to Act as Collector – The City shall submit statements to and collect from all Residential Units for services provided by the Contractor pursuant to this Contract.

4.5 Contractor Billings to City – The Contractor shall bill the City for Recyclable Material collection and disposal services rendered to Residential Units and Municipal Facilities, as shown by City's billing records, within ten (10) days following the end of the month and the City shall pay the Contractor on or before the 30th day following the end of such month. Such billing and payment shall be based on the price rates and schedules set forth in the Contract Documents. The Contractor shall be entitled to payment for service rendered to Residential Units irrespective of whether or not City collects from the customer for such service. Payments not made by the City on or before their due date shall be subject to late fees of: a) the greater of five dollars (\$5) or one and one-half percent (1.5%) per month or portion thereof; or, b) the maximum allowed by law, if less than a). In the event the City withholds payment of a portion or whole of an invoice and it is later determined that a portion or all of such withheld amount is owed to Contractor, such amount shall be subject to the late fees provided herein from the original due date until paid by City.

4.6 Account Set-up and Termination – City shall be responsible to account for all new customers signing up for service and for all customers terminating service. City shall notify Contractor within 5 business days of all new and terminating accounts. Contractor shall have 10 business days after notification to either deliver a container to a new account or pick up a container from a terminated account. All requests for new or terminating accounts made to the contractor shall be referred to the City.

5.0 COMPLIANCE WITH LAWS

The Contractor shall conduct operations under this Contract in compliance with all applicable laws; provided, however, that the Contract shall govern the obligations of the Contractor where there exist conflicting ordinances of the City on the subject.

6.0 NON-DISCRIMINATION

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

7.0 RISK ALLOCATION AND INDEMNITY

- 7.1 Contractor shall be responsible for any and all claims for personal injuries or death, or the loss of or damage to property to the extent caused by Contractor's negligence or acts of willful misconduct or those of its subcontractors or agents.
- 7.2 City shall be responsible for any and all claims for personal injuries or death, or the loss of or damage to property to the extent caused by the City's negligence or acts of willful misconduct or those of its contractors or agents.
- 7.3 If Non-Recyclable Material is discovered before it is collected by Contractor, Contractor may refuse to collect the entire Container. The City shall provide all reasonable assistance to Contractor in educating and enforcing the recycling requirements.

8.0 LICENSES AND TAXES

The Contractor shall obtain all licenses and permits (other than the license and permit granted by this Contract) and promptly pay all taxes required by the City and by the State.

9.0 FORCE MAJEURE

Except for City's obligation to pay amounts due to Contractor, any failure or delay in performance under this Contract due to contingencies beyond a party's reasonable control, including, but not limited to, strikes, riots, terrorist acts, compliance with applicable laws or governmental orders, fires, bad weather and acts of God, shall not constitute a breach of this Contract, but shall entitle the affected party to be relieved of performance under this Contract during the term of such event and for a reasonable time thereafter.

10.0 ASSIGNMENT OF CONTRACT

Neither party shall assign this Contract in its entirety without the other party's prior written consent, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Contractor may assign this Contract without the City's consent to its parent companies or any of their subsidiaries or as a collateral assignment to any lender to Contractor.

11.0 EXCLUSIVE CONTRACT

The Contractor shall have an exclusive franchise, license and privilege to provide Curbside Recyclable Material collection and processing services within the corporate limits for and on behalf of the City to the designated Residential Units and Municipal Facilities covered by this Agreement.

12.0 TITLE TO WASTE AND RECYCLABLE MATERIALS

Title to Recyclable Materials shall pass to the Contractor when placed in Contractor's collection vehicle. Title to and liability for any Non-Recyclable Materials shall remain with the generator or depositor of such waste and shall at no time pass to Contractor or City. Non-Recyclable Material for purposes of this Contract shall include, but not be limited to, radioactive, volatile, highly flammable, explosive, biomedical, infectious, toxic, or hazardous material. The term "hazardous material" shall include, but not be limited to, any amount of waste listed or characterized as hazardous waste by the United States Environmental Protection Agency or any state agency pursuant to the Resource Conservation and Recovery Act of 1976, as amended, or applicable state law.

13.0 TERMINATION OF CONTRACT

- 13.1 In the event of a failure by Contractor to perform any material provision of this Contract, the City shall give written notice of such breach to the Contractor along with at least thirty (30) days (the "cure period") to correct such breach. City may terminate this Contract after such cure period if Contractor has not adequately corrected such breach in accordance with this Contract and City so notifies Contractor in writing of such termination action.
- 13.2 In the event of a failure by City to perform any material provision of this Contract, the Contractor shall give written notice of such breach to the City along with at least thirty (30) days (the "cure period") to correct such breach. Contractor may terminate this Contract after such cure period if City has not adequately corrected such breach in accordance with this Contract and Contractor so notifies City in writing of such termination action. At such time, City shall pay Contractor for all charges and fees for the services performed on or before such termination date. Thereafter, following any such termination and the final payment from the City to the Contractor, neither party shall have any further obligation under this Contract other than for claims for personal injuries or property damage as expressly provided in these terms and arising prior to such termination date.
- 13.3 In the event participation falls below 1400 residents Contractor shall have the right to temporarily or permanently suspend service and/or terminate contract, with 30 day written notice to City, at its sole discretion.

14.0 CONTRACTOR'S PROPERTY

All bins, containers, trucks and any other equipment that Contractor furnishes under this Contract shall remain Contractor's property. Resident shall be liable for all loss or damage to such equipment (except for normal wear and tear and for loss or damage resulting from Contractor's handling of the equipment). Residents shall use the equipment only for its proper and intended purpose and shall not overload (by weight or volume), move or alter the equipment. Resident shall fully reimburse Contractor for any and all claims resulting from personal injuries or death, or the loss of or damage to property (including the equipment) arising out of the use, operation or possession of the equipment by the residents, employees, agents, suppliers, or guests.

Contractor shall have the authority to charge resident \$75.00, or portion thereof, plus applicable delivery fees for any Container for Recycling which is lost or damaged, as described in preceding paragraph. City shall not be the collector for such items, as that term is used in Section 4.4 of this agreement.

15.0 NEWLY DEVELOPED AREAS

At Contractor's sole discretion, Contractor may provide Recyclable Material collection and disposal services of the same frequency and quality required by the Contract to newly developed areas within the City's current territorial limits. Any areas that may be annexed by the City which contain Service Units which the City would like Contractor to service, shall be subject to Contractor's sole approval and acceptance of current rates and terms of this agreement.

16.0 MISCELANEOUS TERMS

- 16.1 Contractor shall not be responsible for any damages to City's property or equipment located adjacent to the collection receptacles (Bins, Containers, Bags or Bundles), nor to City's pavement, or other agreed upon driving surfaces resulting from Contractor's providing the services under this Contract.
- 16.2 Contractor will maintain equipment in order to minimize spillage and leaks. In the event that spillage or a leak occurs, contractor shall clean up and restore to as near prior condition as is reasonably possible. This includes, but is not limited to, hydraulic fluids and oils.
- 16.3 Recyclable Materials left in unapproved containers are not required to be collected by Contractor.
- 16.4 Contractor may provide any of the services covered by this Contract through any of its affiliates or subcontractors, provided that Contractor shall remain responsible for the performance of all such services and obligations in accordance with this Contract.
- 16.5 Contractor shall have no confidentiality obligation with respect to any Recyclable Materials collected pursuant to this Contract.
- 16.6 Contractor provides no guarantees or warranties with respect to the work performed, except as may be specifically provided herein. No liquidated damages or penalties may be assessed against Contractor by City.
- 16.7 No intellectual property (IP) rights in any of Contractor's IP are granted to City under this Contract.
- 16.8 This Contract shall be binding upon and inure solely to the benefit of the parties and their permitted assigns.
- 16.9 If any provision of this Contract shall be invalid, illegal or unenforceable, it shall be modified so as to be valid, legal and enforceable but so as most nearly to retain the intent

of the parties. If such modification is not possible, such provision shall be severed from this Contract. In either case, the validity, legality and enforceability of the remaining provisions of this Contract shall not in any way be affected thereby.

- 16.10 The failure or delay on the part of either party to exercise any right, power, privilege or remedy under this Contract shall not constitute a waiver thereof. No modification or waiver by either party of any provision shall be deemed to have been made unless made in writing. Any waiver by a party for one or more similar events shall not be construed to apply to any other events whether similar or not.
- 16.11 This Contract shall be interpreted and governed by the laws of the state where the work is performed.
- 16.12 This Contract sets forth the entire agreement of the parties and supersedes all prior agreements, whether written or oral, that exist between the parties regarding the subject matter of this Contract.
- 16.13 If any litigation is commenced under this Contract, the successful party shall be entitled to recover, in addition to such other relief as the court may award, its reasonable attorneys' fees, expert witness fees, litigation related expenses and court or other costs incurred in such litigation or proceeding.

EXHIBIT B
INSURANCE REQUIREMENTS

During the term of this Contract, Contractor shall maintain in force, at its expense, insurance coverage with minimum limits as follows:

Workers' Compensation

Coverage A	Statutory
Coverage B - Employers Liability	\$1,000,000 each Bodily Injury by Accident
	\$1,000,000 policy limit Bodily Injury by Disease
	\$1,000,000 each occurrence Bodily Injury by Disease

Automobile Liability

Bodily Injury/Property Damage Combined – Single Limit	\$3,000,000 Coverage is to apply to all owned, non-owned, hired and leased vehicles (including trailers).
Pollution Liability Endorsement	MCS-90 endorsement for pollution liability coverage

Commercial General Liability

Bodily Injury/Property Damage Combined – Single Limit	\$2,500,000 each occurrence \$5,000,000 general aggregate
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All such insurance policies will be primary without the right of contribution from any other insurance coverage maintained by City, only to the extent caused by the negligence of the Contractor. All policies required herein shall be written by insurance carriers with a rating of A.M. Bests of at least "A-" and a financial size category of at least VII. Upon City's request, Contractor shall furnish City with a certificate of insurance, evidencing that such coverages are in effect. Such certificate: (i) will also provide for 30 days prior written notice of cancellation to the City; (ii) shall show City as an additional insured under the Automobile and General Liability policies; and, (iii) shall contain waivers of subrogation in favor of City (excluding Worker's Compensation policy) except with respect to the negligence or willful misconduct of City. In addition, the following requirements apply:

- The Commercial General Liability policy must include Contractual Liability coverage specifically covering Contractor's Indemnification of City herein.
- Coverage must be provided for Products/Completed Operations.
- The policy shall also contain a cross Liability/Severability of Interests provision assuring that the acts of one insured do not affect the applicability of coverage to another insured.

EXHIBIT C
CONTRACTOR'S RATES

“Opt-In” Curbside Recycling

Every Other Week Service, Contractor Provides Containers

1,400-2,000	Subscribers	\$ 5.00 per Container per month**
Over 2,000	Subscribers	\$ 4.83 per Container per month**

** All containers will be serviced using single-side of street service where applicable as determined by Contractor.

** Rates will be adjusted upward or downward based upon Consumer Price Index beginning July 1, 2010.

** Fuel Surcharge as described below will be in addition to the monthly per Container price.

A fuel surcharge, using the same matrix and methodology, as is currently in place with the solid waste collection agreement will be added in addition to the above rates. See curbside fuel matrix below. The surcharge would follow the same pattern assuming fuel exceeds the monthly average of \$4.00 per gallon below.

Fuel Surcharge Table-Curbside Recycle

Monthly Avg. \$/Gallon	Monthly Rate per 1st Container
\$2.49 or less	\$ Proposed Rate
over \$2.50	\$.06
over \$2.75	\$.13
over \$3.00	\$.21
over \$3.25	\$.28
over \$3.50	\$.36
over \$3.75	\$.43
over \$4.00	\$.51

Rate is based upon an average of the weekly On-Highway Rocky Mountain Index as provided by the Energy Information Administration, see address below

http://tonto.eia.doe.gov/oog/info/wohdp/diesel_detail_report_combined.asp

ORDINANCE NO. _____

ROLL CALL

VOTING	YES	NO
MAYOR JOE L THOMAS <i>(votes only in case of tie)</i>		
G. WAYNE ANDERSEN <i>Councilmember</i>		
ROD DART <i>Councilmember</i>		
RICHARD M. DAVIS <i>Councilmember</i>		
STEVE LEIFSON <i>Councilmember</i>		
JENS P. NIELSON <i>Councilmember</i>		

I MOVE this ordinance be adopted: _____
I SECOND the foregoing motion _____

ORDINANCE No.

**AN ORDINANCE MAKING VARIOUS CHANGES TO THE
SPANISH FORK MUNICIPAL CODE TITLE 8, SOLID WASTE AND SANITATION**

WHEREAS, Spanish Fork City has adopted, as a Title in their Municipal Code, a section on solid waste and sanitation; and

WHEREAS, Spanish Fork City is exploring and about ready to enter into contract for recycling; and

WHEREAS, a recycling program will require minor changes to be made to Spanish Fork Municipal Code Title 8, Solid Waste and Sanitation; and

WHEREAS, recycling is an appropriate way to conserve natural resources and is a benefit to the residents of the City;

NOW THEREFORE, be it ordained and enacted by the Spanish Fork City Council as follows:

I.

Spanish Fork Municipal Code §8.04.030 is hereby amended to define recyclable material as follows:

8.04.030 Definitions

“**Recyclable Material**” shall mean material which may be reused in a valuable form following a remanufacturing process. Since specific items may change over time, specific items will be spelled out in contracts between the City and recyclable providers.

II.

Spanish Fork Municipal Code §8.08.010 is hereby amended as follows:

8.08.010. Type and Ownership of Receptacles.

Where premises are classified for receptacle service, all receptacles used shall be automated collection receptacles. Ownership of the receptacles shall be contractually determined between Spanish Fork City and the service providers.

III.

Spanish Fork Municipal Code §8.08.050 is hereby amended as follows:

8.08.050. Matters not to be Placed in Receptacles or Containers or Set Out for Collection.

A. [Unchanged]

Paragraph B shall be relettered as paragraph C, and a new paragraph B shall read as follows:

B. It shall be unlawful for any person to place materials excluded from the definition

of recyclable materials into receptacles or containers not identified for recyclable materials. Such items shall be disposed of as solid waste or as otherwise directed by the City, and at owners expense.

IV.

Spanish Fork Municipal Code §8.08.080 is hereby amended to read as follows:

8.08.080. Accumulation Prohibited

- A. It shall be unlawful for any person owning and/or occupying any premises or lot in the City to permit to collect or remain upon such premises or lot any garbage or refuse for a period of more than one week, or any approved recyclable material for a period of more than two weeks, unless written approval is granted by the City. Accumulations of leaves, grass, and other green materials used to produce mulch are excluded from the requirements of this section.
- B. [Unchanged]

V.

Spanish Fork Municipal Code §8.12.020 is hereby amended to read as follows:

8.12.020. Solid Waste Collection Schedule

The solid waste contractor and/or recyclable materials contractor shall collect solid waste and/or recyclable materials from each customer in accordance with the schedule established by the customer and the solid waste or recyclable material contractor. The solid waste or recyclable materials contractor shall supply the City with a copy of all such schedules, including names of the accounts, pickup schedules and routes, upon request.

VI.

Spanish Fork Municipal Code §8.12.050 is hereby amend as follows:

8.12.050. Frequency of Collection

To prevent any nuisance or health hazards, removal of solid waste shall be provided at least once a week and recyclable materials at least once every other week from all residential premises and as frequently as the City may order from all other premises.

VII.

This Ordinance shall become effective 20 days after passage and publication.

PASSED AND ORDERED PUBLISHED BY THE CITY COUNCIL OF SPANISH FORK, UTAH, this _____ day of January, 2009.

JOE L THOMAS, Mayor

ATTEST:

Kimberly Robinson, City Recorder

RESOLUTION NO. 09-04

A RESOLUTION OF THE CITY COUNCIL ENCOURAGING THE UTAH STATE LEGISLATURE TO UTILIZE THE CURRENT TRANSPORTATION FUNDING DISTRIBUTION FORMULA FOR ANY INCREASE TO THE STATEWIDE GAS TAX SO THAT THE ENTIRE TRANSPORTATION NETWORK MAY BENEFIT

WHEREAS, Utah's transportation network is comprised of federal, state, county and city roads; cities and towns own and maintain approximately 10,000 miles (23 percent) of this network which handles approximately 25 percent of total annual traffic generated in the state; and

WHEREAS, this road network is unquestionably interdependent and proper funding for the entire system-- regardless of jurisdictional ownership-- is critical for the safe and efficient movement of people, goods and services; and

WHEREAS, in 1923, a statewide gasoline tax was assessed to raise funds for the construction and maintenance of this road network and in 1937, the B & C funding system was established, providing direct funding sources for city and county roads; and

WHEREAS, the B & C road fund provides roughly 50 percent of the funds required to maintain and build roads, the balance of funds coming from local sales and property taxes; and

WHEREAS, this shared funding mechanism recognizes that all jurisdictions that build and maintain the transportation network should be proportionally compensated for such; and

WHEREAS, for a number of years, the costs associated with building and maintaining this vital transportation network have increased significantly for states, counties, cities and towns and all jurisdictions are in need of additional funds; and

WHEREAS, similar to the state, municipalities are suffering significant revenue shortfalls and road construction and maintenance is being canceled and deferred;

NOW THEREFORE be it resolved by the Cancel of Spanish Fork City that

Any increase to the statewide gas tax by the 2009 Utah Legislature should be distributed according to the current formula so that the entire transportation network will benefit.

DATED this 5 day of March, 2009.


MAYOR (OR CHAIR)

ATTEST:


CITY/COUNTY RECORDER

