

CONTRACT PROVISIONS: Teamwork for Zero Waste Success



Ei Partner Meeting

November 20, 2014



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The Challenge

- Zero waste practices are challenging for many organizations because of complex contractual requirements



Landlord-Tenant Leases

- Many landlords of “green” buildings try to obtain financial incentives and energy savings goals by incorporating sustainability and zero waste provisions into their tenant leases
 - Contractual requirements to participate in recycling programs
 - Contractual restrictions on materials brought into buildings
 - Rules and regulations on packaged foods and beverages and handling catered events
- How will damages and remedies for failure to achieve the goals be handled? What contractual obligations does each party have to meet the goals?
- American Institute of Architects published AIA Document D503-2011, *Guide for Sustainable Projects*, which includes guidance on LEED certification and compliance with “green” codes
- **The parties must balance the landlord’s sustainability goals and the tenant’s ability to meet those goals**

Janitorial Services

- Commercial and government contracts for janitorial cleaning and support services increasingly require janitorial staff to collect waste and recyclables according to facility recycling programs
 - Contract provisions may hold janitorial companies accountable for source separation
 - Contractual requirements for janitorial companies to adjust practices as waste management programs evolve
 - Federal Acquisition Regulations include sustainability standards and metrics
- *Example:* City of Portland (OR) RFP for Janitorial Cleaning Supplies and Support Services
 - “Use quality, effective, environmentally preferable janitorial cleaning chemicals that comply with the U.S. Green Building Council LEED for Existing Buildings: Operations & Maintenance Standard”
 - “Take a collaborative building-by-building approach to identify and implement opportunities to meet environmental goals while maintaining occupant satisfaction”

Waste Hauling and Recycling

- Contract terms and conditions address when ownership of waste material transfers from the facility to the hauler
- Contracts may require periodic waste and recycling audits
- Provisions may require tracking of recycled materials and waste removed to landfills
 - Can the waste hauler accept post-consumer food waste and post-consumer food service plastics, etc.?
- Facility operators and tenants need to beware of “evergreen” clauses in standard hauler contracts
- Many companies are overpaying to remove waste but don't take the time to make the customized contract changes necessary to save money: match the hauler to the needs of your facility

The Solution

- Contract provisions that incorporate sustainability practices into core business relationships, creating a partnership for successful results:

“Concessionaire shall use compostable serviceware along with consumer facing packaging and source separate all food service wastes for direct transport to off airport composting facilities.”



Zero Waste Requires Teamwork

“Contract language is a key element that sets the appropriate expectations of all parties involved in any zero waste initiative. Zero waste is a team effort that requires every party to be on the same page.”

Scott Jenkins

General Manager, New Atlanta Falcons Stadium





GREG CHAFEE

Greg Chafee is a Partner in the Thompson Hine Corporate Transactions & Securities Group and Energy Practice and Co-Chair of the Water Technology, Resources & Regulation Group. Greg's practice covers a wide range of international and domestic corporate, transactional, regulatory compliance and governance matters, with a focus on energy project development including conventional and renewable fuels, clean technology, and sustainability programs, policies and initiatives.

Greg provides strategic advice and counsel to developers, owners, operators, lenders, private equity and venture capital investors, suppliers and services providers on commercial and business matters, financing including debt and equity offerings, and mergers, acquisitions and divestitures. His accomplishments include structuring innovative utility scale solar, biomass and biofuels projects.

Greg is proud to be the general counsel of Elemental Impact.

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