

CONTRACT PROVISIONS: A New Zero Waste Resource



National Zero Waste Business Conference

May 7, 2015



ATLANTA | CINCINNATI | CLEVELAND | COLUMBUS | DAYTON | NEW YORK | WASHINGTON, D.C.

THOMPSON
HINE

Thompson Hine Law Firm Profile

SERVICE
EXCELLENCE
100 YEARS

Established
1911

~400 Lawyers

~40
Paralegals

~330
Support Staff

Thompson Hine Offices





Contracts Equal Opportunity

- Contract terms and conditions can reinforce zero waste practices and principles



Buildings and Facilities

- Landlords are meeting sustainability goals by including zero waste provisions in 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
- **Example:** American Institute of Architects published AIA Document D503-2011 *Guide for Sustainable Projects* which includes advice on LEED certification and compliance with “green” codes
- ***What contract obligations does each party have to meet the goals?***
- ***How will damages and remedies for failure to achieve the goals be handled?***
- **Leases must balance the landlord’s sustainability goals with the tenant’s ability to meet the goals**

Janitorial Services

- Commercial and government contracts for janitorial cleaning and support services increasingly require 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 (e.g., Federal Acquisition Regulations include sustainability standards)
- **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 Standards
 - 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 source facility to the waste hauler
- Provisions may require tracking and auditing of recycled materials and waste removed to landfills
 - Can the waste hauler accept post-consumer food waste and post-consumer food service plastics?
 - Understand the rate structure for all waste streams, including contamination fines and surcharges
 - Beware of minimum number of pulls and minimum tonnage clauses
 - Watch out for “evergreen” auto renewal clauses that lock in unsatisfactory long term business relationships
- **Many companies overpay to remove waste and don't take the time to make the customized contract changes necessary to save money: **match the hauler to the needs of your facility****

RFP and Bid Specifications

- Waste generators and waste haulers should spell out specific RFP and bid requirements for the collection of solid waste and recyclable items
 - List the specific address of the institution or commercial establishment
 - Clearly state the start and end dates of the contract
 - List the specific locations for trash and recycling containers
 - Clearly describe the arrangements for containment of recyclable materials
 - Decide on the optimal size of containers
 - Identify the days/hours of collection and any exceptions (e.g., holidays)
 - Clearly state the provisions for discontinuing services
 - Clearly describe what happens if the contract is violated
 - Describe how and when the services will be billed and to where invoice payments should be sent



Sample Terms and Conditions

- **Proof of Sufficient Equipment and Personnel**

The vendor prior to the execution of the contract must be required to show proof that he has sufficient equipment and personnel to provide services required with necessary backup equipment to cover break down of scheduled maintenance activities

- **Containers**

Containers must have leak proof bodies of a type specifically designed for this service

- **Subcontracting**

No subcontracting of any part of this contract will be allowed without prior written approval

Zero Waste LA Franchise System

The City of Los Angeles is transitioning to a franchise based waste and recycling system for all businesses and large apartment complexes. The goals include:

- Higher Recycling (90% diversion from landfills by 2025)
- Fair Customer Rates
- Reduced Street Impacts and Cleaner Air
- Superior Customer Service
 - Proposal Evaluation and Negotiations (Early 2016)
 - Contract Recommendations (Early 2016)
 - Execution of Contracts (Late 2016)
 - Begin Customer Transition (Early 2017)



Colleges and Universities

- Colleges and universities are actively implementing zero waste programs on campus and at athletic facilities and stadiums

Example: The University of Oregon has a standard contract for office supply purchasing. Vendors have made voluntary changes to:

- Carry products made from recycled materials
- Reduce shipping from daily to weekly with reusable shipping containers
- Reduce overall packaging of all materials based upon a request and analysis/recommendations from Campus Recycling



Customize: One Size Does Not Fit All

- Waste hauling and recycling services needed for commercial, institutional, educational, residential and construction or demolition projects can vary
- Work with haulers and vendors to understand their flexibility to add new services and meet changing performance criteria
- Bid specifications and contract provisions for one customer may not work well for another customer
- Be sure to **customize** as you prepare RFPs, bids and contracts

Contracts are Key

- Contract provisions that incorporate sustainability practices into core business relationships create successful partnerships

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



- Foodservice operators have independent contracts in which each operator is responsible for its own waste



Zero Waste Success 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.

Gregory D. Chafee, Esq.

Thompson Hine LLP

Two Alliance Center
3560 Lenox Road, Suite 1600
Atlanta, GA 30326

gregory.chafee@thompsonhine.com

Phone: 404.407.3642

gary.freed@thompsonhine.com

Phone: 404.407.3613



ATLANTA | CINCINNATI | CLEVELAND | COLUMBUS | DAYTON | NEW YORK | WASHINGTON, D.C.

**THOMPSON
HINE**