



Is Your Waste Contract Putting Your Municipality At Risk?

Best Practices in Municipal
Waste Contracting

In the Public Interest

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Introduction

Across the United States, 78 percent of municipalities contract with private companies to provide solid waste collection to their residents.¹ This has resulted in a multitude of diverse contracts between these parties. While some of these contracts have been carefully crafted to contain clauses and provisions that protect city and community interests in the case of issues with private company performance, others have left cities at the mercy of private contractors — from disputes over pricing and billing, to prolonged labor disruptions and uncollected garbage — financially costing the city and its residents.

When cities act as procurement authorities, requesting bids and awarding contracts for waste services, they have the right and responsibility to require contractors to meet particular standards and criteria that protect the city's community, environment, and budget. When municipal waste contracts are written without such considerations uncertainty can ensue. In Lowndes County, Ga., for example, after the City of Valdosta's Recycling Center refused to accept Advanced Disposal trucks after allegedly receiving contaminated loads of recycling from the company, Advanced Disposal and residents were caught off guard.² Advanced Disposal was left storing the collected recyclables at a landfill, constrained by costs, until another company could supposedly ship the recycling to a different location for processing. Meanwhile, residents were left wondering what was really happening to the recyclables. This situation could have been prevented if the County's contract with Advanced Disposal had clearly spelled out specific disposal facilities requirements, acceptable levels of recycling contamination, recycling education requirements for residents, and a dispute resolution process.

On the other hand, when residents of Jacksonville, Fla. submitted more than 15,000 complaints about their haulers' failures to pick up trash, Jacksonville's waste contract allowed the city to take action and fine the waste companies. One resident complained of being stuck with her trash for an additional week when the garbage company would "drive right by it."³ A Jacksonville council member noted that if trash is not picked up within 24 hours of its scheduled collection, a fine can be issued.

Another juxtaposition can be seen in contract language which prevents service interruptions. When Waste Management locked out 480 trash haulers from work in Oakland, Calif. in 2007, affecting 200,000 customers, trash piled up for 21 days.⁴ Oakland's mayor and city attorney admitted the city had to wait to take action because its contract with Waste Management restricted the city's ability to take immediate action and instead required the city to give the company a series of notices before it could take legal steps to remedy the situation.⁵ On the contrary, when Waste Management workers in Seattle went on an eight-day unfair labor practice strike in 2012, the city was able to recover \$1.24 million from Waste Management for missed collections. Seattle's

then-mayor Michael McGinn noted that although it was the “longest garbage strike in the city’s history... [the city’s] contract with Waste Management provided for substantial payment penalties for strikes lasting more than seven days – and [the city was] able to use that provision to help bring an end to the strike.”⁶

What is Municipal Waste Contracting?

The management of waste is a vital responsibility of any municipality. The community’s health and safety depend on a well-functioning waste management system. While there are numerous examples of municipalities providing high-quality waste management services themselves with city resources and employees,⁹ many local governments have contracted out this important function to private companies, with varying degrees of success. The contract between the city and the private contractor is a foundational legal document that sets binding rules, policies, and procedures that dictate each party’s responsibilities in providing the service and lays out how the parties will engage with each other when problems arise. As this report shows, the contract can have a significant impact on the city’s ability to manage and retain public control over waste management functions.

The private solid waste industry was estimated to be worth \$55 billion in 2011 and projected to grow to \$60 billion in 2016.¹⁰ The industry is consolidating rapidly, as large, national companies, such as Waste Management and Republic Services, continue to acquire smaller, regional companies.¹¹ Other large players holding significant municipal collection contracts include Progressive Waste Solutions, Advanced Disposal, and Recology.

It’s important for municipal contracts with waste companies to not only cover the basic services that will be provided, but to also carefully address issues that will affect service, the community, and the city’s financials. Waste collection, transfer, and processing are crucial city services that require protections and forethought to ensure the continuance of service, the health and safety of the community, and the protection of the environment.

Furthermore, to ensure that contractors are in compliance with their agreements, municipalities should have measures, like audits, in place to monitor performance. When the city of Santa Rosa, Calif. audited its contracted waste hauler, it found a number of issues that allegedly violated the service agreement between the city and the hauler, including old trucks, low recycling rates, and a failure to properly replace trash cans.⁷ The waste company faced potential fines ranging from \$100 per day for failing to file required reports, to \$500 per day for each truck out of compliance, to \$100,000 in annual penalties for allow-

ing recycling rates to drop below 43 percent.⁸ Without the audit, the city may have never uncovered these problems.

This report will not evaluate arguments for or against municipal waste privatization. Instead, with the understanding that municipalities face complex budgetary and managerial decisions, the report will examine a variety of municipal contracts with private waste companies in order to compare and contrast significant contract language, or the absence thereof, and develop a set of best practices that cities can use to protect their interests when contracting waste services from private companies.

Methodology

In the Public Interest (ITPI) examined contracts between city governments and private waste companies in 10 cities across the United States to gain a better understanding of current policies and practices in outsourced municipal waste provision. We focused on cities that utilize exclusive franchise contracts, an approach that gives cities the flexibility to tailor their procurement process and contract requirements to meet city and community needs.¹²

In order to assess if and how cities used their contracts to protect public interests and meet the needs of their communities, we analyzed a sample of contracts from across the country. We sought a diverse sample of contracts that represented a variety of geographic regions, city population size, and population demographics. In 2015, ITPI requested contracts from municipalities through cities' open records processes, as specified by their state's open records laws. Consequently, in order to be included in our sample, cities had to respond to our open records request and provide the requested contracts within a reasonable time frame. The following cities comprise our sample:

- Oakland, Calif.
- Jacksonville, Fla.
- Conyers, Ga.
- Meridian, Idaho
- Evansville, Ind.
- Flint, Mich.
- Minneapolis, Minn.
- Henderson, Nev.
- Toledo, Ohio
- Seattle, Wash.

We evaluated and assessed each of the contracts based on criteria derived from established government contracting best practices and ITPI's own research on responsible contracting policies.¹³ ITPI has developed a set of best contracting practices, called the Taxpayer Empowerment Agenda, and some of these recommendations have been adapted to the solid waste contracting context. Other criteria were developed from our examination of solid waste contracting case studies across the country and from the written guidance of organizations such as the Solid Waste Association of North America and the National State Auditors Association.¹⁴ The criteria fall into four main categories: municipal control, good management, workforce stability, and environmental protection, each of which is discussed in greater detail in the Findings and Analysis section.

It's important to note that this study is only based on documents received from municipalities via open records requests and on review of explicit references within those documents to municipal code. (See Appendix for information on the specific contract version reviewed). Since ITPI did not perform an analysis of municipal code outside of what was referenced in each document, there may be other requirements that apply

to the contractual relationship that are contained in code, but not specified in the contract. However, ITPI recommends that any municipal or state code that will impact the contract be referenced directly in the contract where applicable to ensure mutual understanding between the city and the contractor regarding all contract requirements.

This report is divided into two main sections. The first section describes findings from our contract analysis. For each identified criterion, we determined whether each contract contained relevant language, and analyzed the language to determine how well it conformed with contracting best practices.

The second section discusses best practices and recommendations for municipal solid waste contracting. Based on the findings from our contract analysis and a literature review of best contracting practices described on the previous page, we have developed a checklist of provisions that municipal solid waste contracts should contain to ensure quality service, and protect the city, community, and workers, as well as the environment.

FINDINGS AND ANALYSIS

This contract analysis is broken down into four key categories which have a broad range of impacts on a municipality: municipal control, good management, workforce stability, and environmental protections. In each of these four categories, a number of specific contract provisions are examined. (See Appendix A for full results). Where contract language among the reviewed contracts varied or provided municipalities with certain advantages or protections, examples of contract language from the analyzed contracts are displayed in a gradient from weaker to stronger language, followed by a brief discussion of the key differences and of how certain contract language is more effective at protecting the public interest.

In some cases, however, the contracts in our sample did not provide a variety of provisions that adequately demonstrated the differences between weaker to stronger language. Some contract provisions are only accompanied by weaker language examples, while some only have stronger language examples. Others may only have a mediocre example since the language addressed some components of the provision we considered important, but omitted others. In cases where a clear gradient did not emerge, we have included only one language example without classifying its strengths or weaknesses.

In a few cases, all contracts reviewed failed to address the identified contract provision. Regardless of what our analysis revealed about how cities are currently addressing these important issues, we have included best practices for each contract provision in the concluding Best Practices section.

MUNICIPAL CONTROL

The “municipal control” category includes contract language that dictates the general terms of operation, such as the pricing schedule and the frequency and hours of pickup. This category of contract language is by far the most common, as it outlines the exact service to be performed and the required conditions of services. Key contract components to address municipal control issues are:

- A) A defined scope of work
- B) A clear and detailed pricing schedule
- C) Explicit rights and conditions to terminate contract
- D) Detailed force majeure events (specific circumstances for which nonperformance of contractual obligations is excused)
- E) Specific disposal facilities requirements
- F) Specified frequency and hours of collection

- G) Designated fleet requirements
- H) The process for tonnage reporting
- I) A city’s use of equipment to perform services when the contractor is unable or unwilling to
- J) A city’s right of first refusal to purchase equipment or lease from vendor if contract is terminated

A. A defined scope of work: The contract specifically outlines type of collections, processing, and disposal that are required.

A detailed scope of work that includes a detailed description of the work to be completed, items to be collected (i.e. refuse, recyclables, compost), and the expectations of that work and the company doing the work ensures that all parties understand the terms of the agreement. A detailed scope of work should be included in every contract and serve as a foundation for the description of work that the contractor will be expected to perform.¹⁵

SAMPLE: *The work to be provided by Contractor hereunder shall be as set forth in the Scope of Work, including the furnishing of all labor, tools, equipment and materials, supplies and services, and landfill capacity, either through ownership, license or contract, which may be necessary to collect all trash, Bulk Waste, Refuse, Recyclable Materials and Commercial and Industrial Waste generated from all Residential Units and Commercial and Industrial Units within the Service Area and to transport such material to the MRF and/or MSW Transfer Station, as applicable. Contractor shall perform other services detailed herein incidental to such Work... [The Scope of Work section continues to detail “Residential Waste Collection,” including “Quantity of Residential Units to be serviced,” “Containers,” “Special Carts,” “Location of Carts for Collection,” etc.]*

(Conyers, Ga.)

B. A clear and detailed pricing schedule: The contract includes a pricing schedule, which establishes the rate of payment to the waste company for each line of service provided, often based on the number of housing units serviced and/or tonnage collected, and outlines any changes to the pricing schedule.

SAMPLE: *Contractor shall perform all services required by this Agreement in consideration of the right to charge and collect from Customers from whom Solid Waste and Yard Waste are collected the Rates established by*

the City Council pursuant to this Agreement. City does not guarantee collection of such rates. Rates which Contractor may charge as of the Effective Date are those established by the City Council, a schedule of which is attached as [an Exhibit]... The rates will be adjusted in each succeeding year by multiplying each such Rate by one hundred percent plus the sum of (i) one and one-half percent and (ii) eighty percent of the percentage change in the Consumer Price Index between the Annual Average (January-December) index in the year immediately preceding the year in which Rates are being changed and Annual Average index twelve months earlier.

Maximum CPI-Based Annual Increase or Decrease. Notwithstanding the foregoing, the maximum increase or decrease in Rates in any year... will be five percent (5%), regardless of the amount by which the CPI has increased or decreased during the twelve (12) month period described above..

Design of Rate Schedule. City Council reserves its legislative discretion to adjust particular components of the Rate schedule by amounts greater or less than the applicable percentage adjustment required by [previous Section], in order to accomplish social, economic, and/or environmental goals, so long as the aggregate adjustment is substantially equivalent to the amount of revenue generated by the single percentage required by [previous Section]...

Rates are Comprehensive Compensation. The Rates established by this Agreement... shall be the full, entire, and complete compensation due to Contractor for furnishing all labor, materials, equipment, supplies, and other things necessary to perform all the services required by this Agreement in the manner and at the times prescribed...

(Oakland, Calif.)

The pricing schedule is an essential component of the contract and should, as the National State Auditors Association recommends, “describe the methods of payment, payment schedules, and escalation factors if applicable.”¹⁶ The Oakland contract language excerpted above is part of a lengthy contract section titled “Contractor’s Compensation, Collection Rates.” This section details the initial rates paid to the contractor in the first year of the contract, followed by how rate increases will be calculated in year two, years three through six, and years seven through the term of the contract. The Compensation section continues with “Adjustments in Rates for Extraordinary Changes in Disposal Costs,” “Changes in Base Costs Component due to Changes in Law,” “Disposal Facility Regulatory Fees and Taxes,” “Transfer Station Fees and Taxes,” “Closure/Post-Closure Maintenance, Escrow Account for Provisional Payments,” “Extraordinary Events,” and “Service Discounts.”

Explicitly detailing the compensation issues listed above ensures that all parties understand the compensation structure, how compensation is determined, and how compensation can be increased or decreased. Greater detail can prevent or clarify disputes around compensation during the contract term.

C. Explicit rights and conditions to terminate contract: This contract item establishes the conditions and grounds on which the city may terminate the contract with the waste company, detailing what constitutes default of the contract and a specific notification period.

STRONGER LANGUAGE

The City shall provide to [Vendor] written notice of the default and shall have the right to terminate this Agreement if the default has not been cured after ten (10) days from the date written notice has been provided to cure the default.

The City shall pay [Vendor] all compensation earned prior to the date of termination minus any damages and costs incurred by the City as a result of the breach.

[Vendor] shall not be relieved of liability to the City for damages sustained by the City as a result of any breach of the Agreement by [Vendor]. The City may withhold payments due to [Vendor] for the purpose of set-off until such time as the exact amount of damages due to the City is determined.

(Minneapolis, Minn.)

LESS STRONG LANGUAGE

The City may serve written notice upon the Contractor and his surety of the City's intention to terminate the Contract. Unless within thirty (30) days after the serving of such notice, a satisfactory arrangement is made for continuance, the Contractor shall be deemed in default and the Contract shall be automatically terminated and the City may take over and prosecute the work to completion, by Contract or otherwise.

If at fault, the Contractor and its surety shall be liable for all damages as well as excess cost sustained by the City by reason of such prosecution and completion by the City.

Time shall be of the essences as to any action performed by the Contractor to correct conditions as set forth in this provision.

(Evansville, Ind.)

WEAKER LANGUAGE

City shall have the right to cancel this agreement upon first giving [Vendor] sixty days written notice, which shall specify both the nature and manner in which [Vendor] is in default, and upon [Vendor]'s failure to correct or remove said default within said period of sixty (60) days, the City shall have the right to declare this agreement forfeited.

Upon such declaration of forfeiture, City shall account for, and pay to, [Vendor] for all monies due on the date of forfeiture.

In the event of any failure of violation, the City may sue in its own name in the manner provided by law for the forfeiture of the franchise without the necessity of resorting to procedures in quo warranto. The exercise of the remedy of forfeiture shall not preclude exercise of any other right or remedy given to the City by law, whether exercised concurrently or subsequently.

(Meridian, Idaho)

When the contractor defaults on its responsibilities as detailed in the contract, it is important that the municipality has remedies available to it, including the right to terminate the contract.¹⁷ The weaker contract language above has the longest notice period of 60 days, compared to 10 days in the stronger contract language example. A shorter termination notice period may provoke the contractor to remedy its default sooner, as well as allow the city to pursue other collection options in a more timely manner. Additionally, the stronger contract provisions include explicit language that the contractor shall be liable for damages, and that the damages and costs can be deducted from the total due to the contractor for services performed prior to the termination.

D. Detailed force majeure events: The contract details what qualifies as a force majeure event. Force majeure events are specific circumstances for which nonperformance of contractual obligations is excused, such as acts of God, war, rebellion, or acts of terrorism. They may also be referred to as “uncontrollable circumstances.”

STRONGER LANGUAGE

For the purposes of this Agreement, Vendor shall not be deemed to be in default where its inability to perform any of all of the conditions of the Agreement is the result of conditions beyond the control of the Vendor, including but not limited to, civil disorder, acts of God, or inclement weather severe enough that City trucks do not make collections. In the event that the Vendor fails to provide service to a Dwelling Unit because of any of the

above conditions, then the Vendor shall have five (5) days (excluding Saturdays, Sundays and Major Holidays) to provide such service. In the event of a continuing failure beyond said period, the Vendor shall not be entitled to payment for any Dwelling Unit not serviced.

(Minneapolis, Minn.)

LESS STRONG LANGUAGE

Neither party shall be responsible for damages or delays caused by Force Majeure or other events beyond the control of the other party and which could not reasonably have been anticipated or prevented. For purposes of this Agreement, Force Majeure includes, but is not limited to, adverse weather conditions, floods, epidemics, war, riot, strikes, lockouts, and other industrial disturbances; unknown site conditions, accidents, sabotage, fire, and acts of God. Should Force Majeure occur, the parties shall mutually agree on the terms and conditions upon which the services may continue.

(Flint, Mich.)

WEAKER LANGUAGE

Failure... to perform the work in the manner required... shall constitute a breach of agreement, provided such failure is not due to war, insurrection, riots, or acts of God (including, without limitation, earthquakes, tornadoes, hurricanes, and severe weather events), impassable roadways, labor disputes, strikes, lockouts, or industrial dispute or disturbances, civil disturbances, interruptions by government or court orders, necessity for compliance with any court order, law, statute, ordinance, or regulation promulgated by a governmental authority having jurisdiction, acts of the public enemy, events affecting facilities or services of non-affiliated third parties, or any other circumstances beyond [the Contractor's] reasonable control (each a "Force Majeure Event").

(Toledo, Ohio)

The force majeure provision is a fundamental part of the contract.¹⁸ Each of the above force majeure examples contains a list of events in which nonperformance of contractual obligations is excused. The weaker language fails to incorporate several important components: 1) the exclusion of preventable circumstances, discussed in greater detail on the next page, 2) the application of the force majeure provision not only to contractor responsibilities, but also to city obligations, and 3) the establishment of a timeline to resume service after a force majeure event, and limiting of payment if service is not restored within that timeline.

The inclusion of preventable circumstances in a force majeure clause limits the city's rights and violates the spirit and intention of this type of contract provision. Specifically, labor disputes, strikes, and lockouts are all preventable through the contracting process. Inclusion of a labor peace agreement requirement in the contract prevents strikes and lockouts and thereby allows the city to protect its interests (with regard to financials, health, and safety). Another example is problems with the contractor's vendors or subcontractors. The contractor should be expected to manage these relationships and to have contingency plans to prevent disruption to services.

E. Specific disposal facilities requirements: The contract includes specific disposal facilities requirements, which detail where the company should transfer and dispose of waste and recycling, such as the county landfill or the city's recycling center, and which party is responsible for any associated fees.

STRONGER LANGUAGE

Contractor shall dispose of all Residential Solid and Heavy Wastes at the Laub-scher Meadows Landfill located at 2121 Wimberg Rd, Evansville, IN 47720.

In the event that the Contractor chooses to dispose of Residential Solid and Heavy wastes in a different location, the Contractor shall be required to pay a fee of \$2 per ton to the City of Evansville Solid Waste District. Contractor shall provide all necessary documentation (including weigh tickets) on a monthly basis to Utility Deputy Director of Operations in order to prove that City of Evansville Solid Waste District is being properly paid.

(Evansville, Ind.)

LESS STRONG LANGUAGE

The Contractor shall transport, to the facilities designated by the City, all Residential Waste, Bulky Waste, Recyclable Materials, White Goods and Tires and Yard Waste collected pursuant to this Agreement. The addresses of the facilities are as follows...

(Jacksonville, Fla.)

WEAKER LANGUAGE

All solid waste so collected shall be transported to authorized and permitted transfer stations, landfills, recycling facilities, or such other facilities as permitted by the Southern Nevada Health District or any successor solid waste management agency (the "Solid Waste Management Authority")...

All recyclable material so collected shall be transported to Contractor's designated facility.

(Henderson, Nev.)

Cities may elect to designate specific disposal sites that the contractor must use if the city owns or otherwise has arrangements with any processing and disposal facilities. The stronger contract language, above, explicitly details where waste should be disposed of and the fee associated with disposing waste elsewhere. The weaker contract language notes that waste shall be transported to a permitted waste facility (a worthwhile clause to prevent illegal dumping) but does not specify or put any other requirements on the disposal facility.

Contracts should state clearly where waste will be collected, routed, transferred, processed, and disposed of, as well as which party is responsible for any and all costs including tipping fees. Additionally, as Evansville includes in its contract, language that specifies fees for failure to comply with disposal requirements gives the city the ability to hold the contractor accountable by levying fees for non-compliance.

F. Specified frequency and hours: The contract includes regulations that state how often refuse must be picked up (which may vary for waste, recycling, yard waste, and special collection services) and how early and late collections may happen.

STRONGER LANGUAGE

Contractor shall provide at least once per week (i) a separate collection service for Residential Waste, including Bulky Waste, (ii) a separate collection for Yard Waste, and (iii) a separate collection for Recyclable Materials... Each separate collection shall be on the same regularly scheduled day each week as determined by the Contractor... The Contractor shall perform Residential Waste collection services Monday through Friday, between 6:00AM and 6:00PM... The Contractor shall not perform these services outside of the scheduled hours, or on Saturday or Sunday. The hours of collection may be temporarily extended due to extraordinary circumstances or other conditions, such as increased waste during the holidays, with the Director's prior approval...

(Jacksonville, Fla.)

WEAKER LANGUAGE

All refuse will be collected once per week with collections being performed between the hours of 7:00AM and 7:00PM Monday through Friday (or Saturday during holiday weeks or inclement weather).

(Flint, Mich.)

Contracts should specify the type of customer being serviced, service days and hours, and collection method.¹⁹ The stronger contract language is notable because it specifies that collections for residential wastes, yard wastes, and recycling must occur on the same day at each collection site and details when and how collections outside the specified collection hours may be approved. It also directs what types of waste must be collected separately, which helps prevent improper commingling of waste streams. With more specificity regarding collection frequency and hours, the contract better communicates the city's needs to the contractor and allows the city to more accurately evaluate whether the company is meeting those needs.

G. Designates fleet requirements: The contract specifies count and conditions of the vendor's fleet of vehicles; in the case of a new contract, it requires the contractor to purchase the municipality's fleet of waste collection vehicles.

STRONGER LANGUAGE

Standards: The Contractor shall have on hand at all times and in good working order sufficient vehicles and equipment as shall permit the Contractor to adequately and efficiently perform the contractual duties specified in this Agreement.

All vehicles shall be licensed in the state of Florida and shall be operated in compliance with all applicable state, federal, and local regulations. Solid Waste collection equipment shall be of the enclosed loader packer type, or other equipment that meets industry standards pursuant to the American National Standards Institute (ANSI) and is approved by the Director....

Condition: All equipment shall be kept in good repair, appearance and in a sanitary, clean condition at all times.

Fleet Age: The City views that the operating fleet age relates to the Contractor's performance and customer satisfaction therefore the Contractor shall be required to maintain the average age of the operating fleet at six years of age or less. Annually and as requested the contractor shall submit a schedule of their operating fleet calculating the fleet's average age to the City. The City... shall have the right to inspect the vehicles and the purchase invoices/records of the Contractor's operating fleet.

Reserve vehicle: The Contractor shall have available reserve equipment which can be put into service within two (2) hours of any breakdown. Such

reserve equipment shall correspond in size and capacity to the equipment used by the Contractor to perform the contractual duties.

Properly equipped: Each vehicle shall carry appropriate tools and supplies to clean up litter and spillage that may occur during collection and delivery. All vehicles shall be sufficiently secure so as to prevent littering of material and spillage of fluids. No vehicle shall be overloaded.

Vehicle inventory: The Contractor shall provide to the City an inventory of vehicles and equipment designated to provide the services specified in this Agreement. This inventory shall... include, at a minimum, the inventory identification number, the make and model, the date of purchase, and the age of each piece of equipment and vehicle. The City reserves the right... to inspect the Contractor's service facility and the equipment and vehicles used by the Contractor to perform under this Agreement.

(Jacksonville, Fla.)

LESS STRONG LANGUAGE

Contractor shall use equipment to collect and dispose of residential refuse under this contract that is totally automated and enclosed (or provided with suitable covers) to prevent spillage, leaking and/or littering of solid wastes.

All collection equipment shall be maintained in appearance, proper operating condition and meet American National Standard Institute (ANSI 245.2) Safety Standards for Refuse Collection Equipment.

Each vehicle shall be properly licensed in the State of Indiana and shall operate in compliance with all applicable local, state, and federal regulations.

Each vehicle shall have available at least one broom and shovel to clean up any refuse that may be spilled or otherwise scattered during collection.

When alley collection is required, Contractor shall not operate equipment in alleys which cause undue stress to pavements...

Contractor shall have access to or possess enough additional equipment so that no delays in collection or disposal are experienced due to breakdowns of equipment.

(Evansville, Ind.)

WEAKER LANGUAGE

Allied Waste shall purchase 40 refuse collection trucks (the “Equipment”) currently owned by the City for a price of at least Eight Million dollars (\$8,000,000.00). It is understood that this sale shall be completed prior to September 1, 2011, and is a condition precedent to the transition of services contemplated by the Solid Waste Collection and Recycling Services agreement between the District and the City. The City represents that the Equipment is fully and accurately identified on Exhibit “C” and attached hereto, Exhibit C shall include, at a minimum, the year, make, model, VIN and purchase price of each piece of Equipment... In connection with each transfer of the Equipment pursuant to a Purchase Order, Allied Waste shall deliver the purchase price for the transferred Equipment, and in exchange the City shall deliver to Allied Waste fully executed, and notarized, if applicable, original titles for each of the pieces of Equipment. The City shall execute and deliver, at the request of Allied Waste, such further instruments of transfer, and shall take or cause to be taken such other or further actions, as shall reasonably be requested to transfer title of the Equipment. Allied Waste shall be entitled to operate the Equipment and use the Equipment to perform the services required pursuant to this Agreement while simultaneously pursuing title in Allied Waste’s name.

All trucks and any other equipment that Allied Waste purchases or furnishes for services under this Agreement shall remain Allied Waste’s property unless otherwise noted in this Agreement. The City’s 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.

(Flint, Mich.)

The weaker sample language from Flint’s contract with Republic Services only details the terms of the city’s sale of its existing waste collection fleet to the contractor, which should be equivalent to the fair market value. The stronger contract language covers several items related to the contractor’s fleet, including the condition in which vehicles must be maintained, requirements for reserve (back-up) vehicles, what equipment must be aboard each vehicle, and the contractor’s reporting requirements to the city. It is important that the city have the right to inspect the repair and maintenance records for all of the contractor’s vehicles.²⁰

Using the municipal contract to place requirements on the contractor’s fleet can:

- improve health and safety by ensuring that trucks are in good repair, and are outfitted with recent safety design features;

- protect the environment with improved emissions controls and anti-idling technologies;
- ensure continuity of service when breakdowns and repairs occur if reserve vehicles are required; and
- increase the city’s oversight of the contract, as equipment inventories and maintenance logs are transparent.

H. Details the process for tonnage reporting: The contract requires vendors to record and submit tonnage data (the net weight of a truck’s collected load) and allows the municipality to conduct audits.

STRONGER LANGUAGE

In addition to other record keeping requirements, Contractor shall provide (i) collection and disposal records; (ii) character, weight, and volume of Solid Waste, especially as related to reducing and diverting Solid Waste in information to be separated by kind of account; (iii) special cleanup results; (iv) Yard Waste participation, especially as related to determining participation rates and implementing programs to increase existing participation and to expand diversion (names, addresses, contact made, etc.); and (v) any other records required by the terms of this Agreement...

(Oakland, Calif.)

LESS STRONG LANGUAGE

The Contractor shall supply... weekly listing of the previous week’s weight receipts... for all materials collected each day by the Contractor in the Collection Area. Information must include gross and net weights, contractor code, truck number, route number, waste type, date, time in, time out, and other fields specified by the City. The Contractor shall keep as back-up a paper copy of each weight transaction. False or altered weight slips shall be cause for Contract termination.

(Seattle, Wash.)

WEAKER LANGUAGE

Prior to processing or disposing of any Refuse received at the MRF and prior to processing or disposing of any Refuse received at the MSW Transfer Station (other than Recyclable Materials) Contractor shall cause all such Refuse to be weighed in conformity with industry standards and shall maintain detailed and accurate records of all such measurements. Beginning on the

Commencement Date and continuing thereafter for the duration of the term of this Contract (including any extensions thereof), on or before the 10th of each calendar month, Contractor shall provide to the City a tonnage report and corresponding payment for the Refuse that was received by the MRF and a tonnage report and corresponding payment for the Refuse that was received by the MSW Transfer Station the preceding calendar month.

(Conyers, Ga).

Good record keeping and reporting requirements are fundamental contract provisions.²¹ Additionally, reports that would typically be public record if a local government were providing waste service may be subject to a state's Public Records Act. The above tonnage

Zero Waste: As the City of San Francisco succinctly explains, "Zero Waste is sending nothing to landfill or incineration."²² Zero waste entails a wide variety of approaches, from minimizing consumption to reengineering products to reduce waste and increase reuse, recycling, and composting.

audit language examples are written with varying intention, from ensuring proper payment for using a city's recycling center or transfer station, to advancing a city's zero waste goals. Tonnage audit contract language should include 1) the required frequency of tonnage reports, 2) proper procedure for weighing wastes, and 3) a city's right to perform a tonnage audit.

I. A city's use of equipment to perform service: The contract includes provisions that allow the municipality to use the contractor's equipment to provide collections when the contractor fails to provide the service obligations detailed in the contract.

The two samples provided below do not fall on a clear gradient of weaker to stronger; we include both as adequate examples of this contract provision.

SAMPLE 1: *In the event the surety on the Contractor's performance Bond fails to assume or continue performances... the Contractor shall lease, sublease, or otherwise license the City to use all, or whatever portion is desired by the City... for collection purposes for a period of up to six months following the date of the declaration of default by the City without requiring the City to execute any other document whatsoever to accomplish such lease, sublease, or license and without requiring the City to post any bond, pledge, deposit or other security for such equipment and materials, but upon the condition that the City pay for the equipment and materials actually used for such collection a market rental that is no greater than (i) the monthly lease, in the event such property is leased by the Contractor, (ii) the periodic installment, in the event such property is being acquired under*

a purchase contract, (iii) the periodic financing interest and principal, in the event such property is being acquired under a purchase contract, or (iv) the periodic interest and principal, in the event such property is being acquired under a financing arrangement...

(Seattle, Wash.)

SAMPLE 2: *In the event of Contractor's default, the City shall have the right to take possession of any and all of Contractor's land, equipment, facilities, and other property reasonably necessary for the provision of services hereunder and the billing and collection of fees for those services. The City shall have the right to retain the possession of such property until other suitable arrangements can be made for the provision of services, which may include the award of an agreement to another service provider...*

Contractor agrees that it will fully cooperate with the City to effect the transfer of possession of property for the City's use. If the City so requests, Contractor shall keep in good repair all such property, provide all motor vehicles with fuel, oil, and other service, and provide such other service as may be necessary to maintain property in operational condition. The City may immediately engage all or any personnel necessary for the provision of services, including if the City so desires employees previously employed by the Contractor whose skills are reasonably necessary for the continuation of services...

(Oakland, Calif.)

By allowing the municipality to use the contractor's equipment to perform service, this contract provision ensures the continuance of service in the event of default by the contractor. The most significant difference in the two samples above is that the Oakland language allows the city to engage the Contractor's workforce for the continuation of services, if necessary.

If the contractor defaults, the burden of continuing services falls on the municipality. If the contractor cannot perform the contracted service, the contractor should at a minimum provide the necessary equipment to the city at no cost. It must be noted, however, that contracts should contain other provisions that disincentivize contract problems (i.e., strong liquidated damages and termination language), which preempt the contractor's default and ultimately help prevent the need to utilize the contractor's equipment. It would likely be a difficult task for the municipality to quickly take over waste collection, transfer, and disposal operations that have been contracted out to a private company.

J. A city’s right of first refusal to purchase equipment or lease from vendor if contract is terminated due to default: This contract item specifies that the city must be offered the first chance to buy the contractor’s assets in the event that the contractor’s assets are to be sold as the result of its contract termination with the city. The city must refuse to purchase the assets before the assets may then be sold to another buyer.

STRONGER LANGUAGE

“If the City terminates this Contract... due to an abandonment by the Contractor... Contractor fails to properly cure or provide proper notice to the City of its intent to cure, the City, at its sole election and in addition to any additional remedies that may exist under the terms of this Contract or under applicable law, shall have the right to demand an immediate return of the equipment listed on Exhibit B hereto, or its equivalent replacement that is being used by the Contractor at such time, as a means to mitigate any damage incurred by the City due to the Contractor’s Abandonment...”

(Conyers, Ga.)

WEAKER LANGUAGE

In the event of termination, the City retains the right to purchase at fair market value the Contractor’s equipment and/or vehicles.

(Evansville, Ind.)

While we found right of first refusal language to be relatively rare, it may be important to include in order to protect the city if it is unable to procure another waste collection vendor and/or wants to bring the service back in-house. A variation on this language is seen in the Conyers example above: If a contract is initially contingent on the contractor purchasing the city’s waste collection fleet, the city may request the return of the vehicles if the contractor defaults and the contract is terminated.

GOOD MANAGEMENT

The good management contract language category outlines the actions the city can take to ensure consistent, quality services. “Good management” contract language is relatively common based on this review, though to considerably variable degrees. For example, Evansville’s contract includes almost every issue of “good management” on our checklist, while Meridian’s contract only covers one issue (the required insurance a contractor must have to perform service, no doubt a restated legal obligation from other statutes). Key contract components to address “good management” issues are:

- A) Complaint resolution
- B) Schedule of fines (liquidated damages)

- C) Missed collections
- D) Insurance
- E) Oversight provisions

A. Complaint resolution: The contract requires a method for customers to submit service complaints, details the allotted time the vendor has to reply and resolve complaints, and outlines vendor fines if complaints are not resolved or responded to within the allotted timeframe.

SAMPLE: *Failure to address a customer service complaint by close of business the next regular working day: \$25 per residential premise; \$150 maximum per route per day for each waste stream.*

(Jacksonville, Fla.)

Including contract provisions that specify how customer complaints will be processed, tracked, and resolved and clearly assigning this responsibility ensures that residents know where complaints should be sent and that a fair process exists to address them. In most cases, a municipality will give the contractor responsibility for handling customer complaints.

A clear and documented complaint process also gives the city data about potential contractor deficiencies, providing them another way to monitor contract compliance. The National Association of State Auditors recommends that contract monitoring “ensure that contractors comply with contract terms, performance expectations are achieved, and any problems are identified and resolved.”²³ Having a clear, detailed process for customers to initiate complaints means the city potentially has [thousands] of its own residents monitoring waste service every day.

B. Schedule of fines (liquidated damages): The contract outlines vendor fines for performance issues or failures.

STRONGER LANGUAGE

Oakland’s *Liquidated Damages* section includes the following sections:

- **General**
- **Service Performance Standards; Liquidated Damages for Failure to Meet Standards**
- **Notice to Contractor**

Prior to assessing liquidated damages, the City shall give Contractor notice of its intention to do so...

- **Amount**

The City may assess liquidated damages for each business day or event, as appropriate, that Contractor is determined to be liable in accordance with this Agreement.

- **Timing of Payment**

If [liquidated damages] are not paid within thirty days following the due date, the City may (i) deduct the amount from amounts owed to Contractor...; (ii) proceed against the performance bond...; or (iii) if the non-performance leading to assessment of liquidated damages has been persistent and not corrected despite previous notices and assessment of liquidated damages, terminate this agreement.

- **City Right to Set Off**

- **Specific Performance**

The City shall be entitled to injunctive relief compelling the specific performance of Contractor's obligation hereunder

- **Right to Demand Assurances of Performance**

If the City "believes in good faith that Contractor's ability to perform has been placed in substantial jeopardy, the City may at its option, in addition to all of the remedies that it may have, demand from Contractor reasonable assurances of timely and proper performance of this Agreement, in such form and substance that the City believes is reasonably necessary in the circumstances.

- **City's Remedies Cumulative**

WEAKER LANGUAGE

Failure to address a customer service complaint by close of business the next regular working day: \$25 per residential premise; \$150 maximum per route per day for each waste stream.

*Failure of employees to conduct themselves in appropriate manner:
\$50 per incident*

Commingling residential waste with yard waste, recyclable materials, tires, white goods, etc.: \$500 per incident

Failure to clean spillage: \$200 per incident

Failure to report incomplete routes: \$1,000 per incident

Failure to deliver to the facility designated by the City any material collected by the Contractor: \$500 per truck load

Failure to comply with any other term or provision of this Agreement: \$100 per incident or \$100 per day of continued non-compliance.

(Jacksonville, Fla., edited)

Another important aspect of contract management is the ability of the city to penalize the contractor for performance deficiencies. Contracts should include explicit consequences for non-compliance, such as liquidated damages.²⁴ Indeed, fines and liquidated damages are contract management tools that can be used to signal to the contractor that they need to correct a problem without the city's resorting to full contract cancellation.²⁵ Fines and liquidated damages should be high enough to provide a strong disincentive for acts of non-compliance. Furthermore, to provide the contractor an incentive to quickly address more serious contract violations, fines or liquidated damages should accrue until the issue is resolved.

Oakland's liquidated damages language is a strong example that clearly outlines 1) the city's right to assess damages and the philosophical grounds for doing so: "the parties further acknowledge that consistent, reliable... collection, processing, and disposal services are of utmost importance to the City and that the City has considered and relied on Contractor's representations as to its quality of service commitment in awarding the franchise to [the Contractor]." As such, if the Contractor "fails to achieve the performance standards...the parties agree that the liquidated damage amounts set for in [an exhibit to the Contract are] reasonable...", 2) the process of assessing and collecting damages, 3) the city's remedies if the assessed damages are not paid by the contractor, and 4) the city's right to demand assurances of performance.

C. Missed collections: The contract details the procedure to be followed when a collection is missed.

STRONGER LANGUAGE

To assure "day-certain" services and a satisfactory level of service, [VENDOR] will provide a means for call-back service on any customer call or dwelling unit missed on the schedule day of collection service. In the event that this call-back service is not performed by [VENDOR] within the next working day after [VENDOR] has received notice from the City that it has received a complaint that a dwelling unit has been missed, a collection by

the City may be made and [VENDOR] will pay the City liquidated damages of one hundred dollars (\$100) per dwelling unit not serviced. Notice by the City to [VENDOR] shall include the address, name and telephone number, as available, of the complaining party and the date of the complaint and shall be by mutually agreeable methods such as remote printing of complaints at the [VENDOR] office, fax transmissions, or telephone transmissions. [VENDOR] shall inform the City within twenty-four (24) hours by e-mail, fax, or delivery of the written resolution of the complaint. In the event the City has not received notice of the resolution of the complaint, [VENDOR] will pay liquidated damages of \$75.00 per complaint.

(Minneapolis, Minn.)

WEAKER LANGUAGE

Should Contractor fail or neglect to make any solid waste collections as required by this Agreement within the time herein provided, the City shall, after two working days, have the right to make collection thereof and charge Contractor with the cost thereof.

(Henderson, Nev.)

When the contractor fails to make a collection, the contractor should be responsible for remedying the failure. The weaker contract language states that the city may make up missed collections and bill the contractor for the collection, while the stronger language assesses fines for each missed collection and still requires the contractor to perform the missed collections within a specified time period (24 hours), assessing additional fines if the complaint remains unresolved.

D. Insurance: The contract details the specific types and amounts of insurance the vendor must carry.

STRONGER LANGUAGE

Contractor's Agreement to Provide Insurance. On or before the Effective Date, Contractor shall procure and keep in force for the Term... the insurance coverages set forth below, with insurers with a Best rating of "A", or better, and class eight or larger and under forms of policies satisfactory in all respects to the City. Contractor shall furnish the City with certificates of insurance and with original endorsements effecting coverage required by this Article...

- **Comprehensive General Liability Insurance**

- **Automobile Liability Insurance**
- **Workers' Compensation Insurance**
- **Environmental Impairment Liability Insurance**

Additional Insured. The City, its officers, employees, appointed and elected officials, agents and volunteers (collectively "Insured Parties") shall be named as additional insureds for all liability arising out of: activities performed by or on behalf of Contractor; products and completed operations of Contractor; premises owned, occupied or used by Contractor; and vehicles and equipment owned, occupied, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations on the scope or protection afforded to the Insured Parties. Any failure to comply with reporting or other provisions of the policies including breaches of warranties by Contractor, shall not affect coverage provided to the Insured Parties...

(Oakland, Calif.)

WEAKER LANGUAGE

For the purposes of this agreement, the Contractor shall carry the following types of insurance in at least the limits specified below:

- **Workman's Compensation**
- **Employer's Liability**
- **General Liability**
- **Automobile bodily injury and/or property damage liability, combined single limit**

At all times during the term of this franchise the Contractor will, at its own expense, maintain in force general comprehensive liability insurance with an insurance company approved by the City. The coverage represented by the policy or policies shall be for the protection of the City, members of its Mayor, Council, and Commissions, and its officers, agents, and employees against liability for loss or damages for bodily injury, death, and property damage occasioned by the activities of the Contractor under the franchise...

(Meridian, Idaho)

The contractor should carry a variety of insurance coverages, as required by the language in the example above. The city and its affiliated parties should also be named as additional insureds.

E. Oversight provisions: The contract requires the municipality as well as the vendor to have plans and personnel to monitor and assess contract compliance.

SAMPLE: *A schedule of activities and detailed procedures related to the effective implementation and operation of the Contract will be developed by the Contractor and the City after the Contract is signed and prior to beginning collections under the Contract. This shall be known as the “Operations Plan.” This plan shall include the procedures and activities listed below and shall include completion dates for each activity: [in particular]*

- 5) Procedures for City monitoring of Contractor collection activities;*
- 6) Procedures for measuring and applying rewards/penalties for Contractor activities;*
- 7) Process for customer and Contractor appeals to billings, services and/or payments;*
- 10) Designation of implementation leads by both City and Contractor;*
- 11) Procedures for orientation of collection staff including route coordination/cooperation with City staff*

(Seattle, Wash.)

The above contract language explicitly requires the city and the contractor to develop an operations plan that includes several oversight provisions. Robust oversight provisions are critical to ensure that the government can hold contractors accountable for their performance and that the public receives quality services at a reasonable cost.²⁶

Since many municipalities and states do not address contract oversight in their laws or policies,²⁷ it is crucial that city contracts clearly outline how the city will monitor the contractor and what the contractor’s related responsibilities are. Specifically, municipalities that enter into contract should ensure that:

- Contracts include clear performance standards and penalties for non-compliance;
- Contracts establish formal contract monitoring and oversight procedures;
- The city provides adequate resources, including staff, training, and funding to oversee the contract; and
- The city maintains control over contract oversight. Governmental entities should not outsource contract oversight functions.

For more information about contract oversight, please see In the Public Interest’s publication, “Standing Guard” available at: https://www.inthepublicinterest.org/wp-content/uploads/Standing-Guard_web.f.pdf.

WORKFORCE STABILITY

The “workforce stability” category addresses labor stoppages, local labor requirements, prevailing wage requirements, and other issues affecting waste workers. Contract requirements that promote and ensure a stable workforce will also promote stable and reliable service. All contracts we reviewed but one contained contract language addressing “workforce stability.” Of seven workforce stability contract provisions, only one provision, a nondiscrimination clause, is found in a majority of the contracts. The contract provisions prohibiting strikes, slowdowns, and lockouts, which offer the city the most protection from service disruption, were only present in two contracts. Key contract components to address workforce stability issues are:

- A) Strikes, slowdowns, and lockouts
- B) Staffing levels
- C) Local labor requirements
- D) Prevailing wage
- E) Non-discrimination
- F) Domestic partner benefits
- G) Payment of labor and set-off rights

A. Strikes, slowdowns, and lockouts: The contract contains language that stipulates labor peace — strikes, slowdowns, and lockouts may not disrupt service.

STRONGER LANGUAGE

Labor Peace Agreement:

The Contractor agrees to satisfy the following labor conditions:

Labor Peace Agreement – *The Contractor, for itself, its shareholders, members, officers, directors, successors and assigns shall become a signatory to a valid collective bargaining agreement or other contract as provided in 29 USC Section 185 with any labor organization seeking to represent employees employed to perform Refuse Collection under the Contractor’s contract with the City as a condition precedent to its contract with the City. Contractor agrees that it shall require that any work under its contract with the City to be done by the Contractor’s employees, subcontractors or any entity substantially under the control of the Contractor or employer, shall be done under collective bargaining agreements or other contracts under 29 USC Section 185 which contain the same provisions as contained in this Section 2.*

No Work Stoppages – *Any collective bargaining agreement, or if no collective bargaining agreement exists, any other contract under 29 USC*

Section 185 , must contain a provision prohibiting the labor organization and its members, in the case of a collective bargaining agreement, all employees covered by the agreement, from engaging in any strike, picketing, work stoppages, boycotts, or any other economic interference with the operations with Refuse Collection for the duration of the contract to be entered into by the City and Contractor (“No-strike pledge”).

Arbitration – Any collective bargaining agreement, the collective bargaining agreement, or if no collective bargaining agreement exists, any other contract under 29 USC Section 185 shall provide that for the duration of the contract for Refuse Collection services that all disputes relating to the contract’s application or interpretation shall be subject to final and binding arbitration.

(Minneapolis, Minn.)

WEAKER LANGUAGE

The Contractor shall not be paid for non-collections due to labor disruptions. The City shall deduct \$250 from the Contractor’s regular monthly payment for each individual collection route which is not 90% collected by the end of the day following the scheduled collection day. The City has the option to require the Contractor to collect Compostables and Recyclables the week following non-collection instead of deducting funds for non-collections.

(Seattle, Wash.)

Since waste management is a vital municipal service that promotes and ensures the health, safety, and wellbeing of city residents, the city and the contractor should take all possible steps to prevent any service disruptions. As previously noted in the discussion regarding force majeure contract language above, labor strikes, slowdowns, and lockouts are preventable circumstances that should be managed in the contracting process, so these labor issues do not affect waste service.

While municipalities may not regulate labor-management relations (which are under federal jurisdiction), they may act to preserve their financial interests as a proprietor, which includes requiring labor peace as a condition to contracting.²⁸

B. Staffing levels: The contract indicates the staffing levels required to perform service.²⁹

SAMPLE: There shall be no limitation upon the size of [the Contractor], its subcontractor’s or its agent’s collection crews, so long as they are sufficient to fulfill the requirements of the Agreement.

(Minneapolis, Minn.)

Specifying staffing levels in the contract is an additional metric by which cities can hold contractors accountable. Unlike the relatively vague language in the Minneapolis example on the previous page, contracts should include greater specificity regarding staffing levels, which can increase service quality and allow the city to require and enforce particular quantitative metrics.

C. Local labor requirements: The contract requires the vendor to employ local labor.

STRONGER LANGUAGE

On or before the Commencement Date, Contractor shall hire all sanitation workers whose jobs are made obsolete by virtue of this contractual arrangement... Contractor shall be allowed to subject each such employee to a physical, a background check and a drug test before hiring such employee. However, Contractor shall act in good faith in conformity with its standard hiring practices and shall not use the result of any background checks or drug tests as a pretense for denying any employee an opportunity to become employed by Contractor. Likewise, Contractor shall provide each such employee, once hired, with every possible opportunity to be and become a long standing employee of Contractor, and Contractor shall not treat any such employee disparately in any negative or adverse way than it treats the remainder of its employee base. All employees hired by Contractor hereunder shall be provided salaries and benefits that are equal to or greater than the salary and benefits which each employee enjoyed with the City at the time that their jobs became obsolete, unless the employee chooses to participate in Contractor's incentive compensation program.

(Conyers, Ga.)

LESS STRONG LANGUAGE

For initial hiring under this Contract the Contractor and subcontractors shall give hiring preference to any... workers who have been displaced as a result of the City awarding this Contract. All displaced collection workers that meet basic hiring requirements... shall be hired for a minimum 90 days trial period.

(Seattle, Wash.)

WEAKER LANGUAGE

Whenever possible, the Contractor, its subcontractors, or others who employ labor, shall employ such labor locally.

(Flint, Mich.)

Contracts can stipulate the hiring of local labor, as in the example from Flint. Including such “local hire” provisions may revitalize and sustain a strong local economy.³⁰ Research by Daphne Greenwood, an economist at the University of Colorado, shows that where workers reside can have a large impact on the local economy. In a medium sized American city, dollars spent in the local economy fall from 49% of total payroll to 9.5% or less when workers live elsewhere. When contractors do not hire from the local labor pool, the resulting lower spending in the local economy can have a significant negative impact on tax revenues, the housing market, and local businesses.³¹ Local hiring requirements are subject to some constitutional constraints, however, and should be considered where there is an absence of interstate employee commuting.

Furthermore, the first private contract that the city signs for waste service should require the contractor to hire any city worker who will be made redundant by the outsourcing. The strongest contract language reviewed requires the contractor to provide “salaries and benefits that are equal to or greater than the salary and benefits” that the city provided the employees, a crucial measure to protect living and wage standards of the city’s residents. Efficiencies and cost savings associated with private contracting should never be attained by driving down wages and benefits for city residents.

D. Prevailing wage: The contract requires vendor to pay the local prevailing wage, or otherwise requires adherence to local living wage provisions.

STRONGER LANGUAGE

The Contractor shall ensure that all Contractor and subcontractor collectors performing work under this Contract are paid not less than the prevailing rate of wage for the same trade or occupation as set by the City. The term “collectors” include drivers, swampers, and other working on Garbage, Compostables, and Recyclables collection; it excludes office workers and management. If a collector, during the same pick-up, is collecting both garbage and recyclables, or compostables and recyclables (co-collection), [they] must be paid the highest prevailing rate of wage for collection.

The term, “prevailing rate of wage” includes the hourly wage, usual benefits and overtime paid in the locality as defined in RCW 39.12.010(b). The Contractor’s duty to pay the prevailing rate of wage and to ensure that subcontractors pay the prevailing rate of wage is absolute and mandatory. No worker may waive full compliance or accept a lesser sum.

...

Within 30 days of starting collections on this Contract and thereafter on a yearly basis, the Contractor shall supply to each collector (including employees of the

subcontractor) a copy of the prevailing wage. The Contractor shall also supply a copy to each new employee or temporary employee. The information shall be in both Spanish and English.

Should an employee prevail in suit against the Contractor for wages or benefits due and establish that his or her wages paid were less than the prevailing rate of wage set forth... the Contractor shall pay to the employee, in addition to the wages or benefits due and accrued interest, a

Prevailing Wage and Living Wage

Prevailing wage laws require city contractors to pay the local prevailing wage for a particular occupation. Prevailing wage is the hourly wage, benefits, and overtime that the majority of workers in a given geographic area are paid and varies by occupation. Prevailing wage has numerous benefits, from higher wages and better workplace safety to increased government revenues and overall workforce skill levels.³² While prevailing wage laws in most jurisdictions generally offer a higher standard of living for workers, some jurisdictions that do not have local prevailing wage laws, do have living wage laws, which require city contractors (and, in some cases, businesses within city limits) to pay employees higher wages and benefits. Living wages are higher than the minimum wage and have been shown to raise productivity and reduce employee turnover.³³

Living and prevailing wage provisions can have a “significant impact on the lives of workers who are employed by contractors... and help raise wage standards throughout the local economy.”³⁴ Some municipalities, however, explicitly exclude waste contracts from prevailing wage laws. Flint, MI’s solid waste bid, for example, states that “the successful bidder... must comply with all requirements and pay prevailing wages and fringe benefits on this project per the City’s Resolution...” Yet the final clause negates this commitment with, “This condition is not applicable to this project.”

Cities that use contractors to perform public work using public dollars should ensure that the resulting jobs fulfill the goal of using public money to strengthen our economy and build the middle class. Workers should be paid the prevailing wage, or at least a living wage and reasonable benefits. The growing body of evidence from research analyzing local living wages laws shows that raising workers’ wages does not impart a significant increase in costs to taxpayers.³⁵ In fact, raising wages can reduce the demand for public assistance, such as food stamps and Medicaid, thus creating savings in other parts of the budget. By attracting a higher-quality workforce, companies, in turn, experience productivity gains and a reduction in turnover.

For more information on this issue, see In the Public Interest’s publication, *Race to the Bottom*, available at <https://www.inthepublicinterest.org/wp-content/uploads/Race-to-the-bottom.pdf>.

reasonable attorney's fee, expert witness' fee, and court costs, as well as any other damages that may be awarded.

Under-payment of prevailing wages shall be a material default of the Contract.
(Seattle, Wash.)

WEAKER LANGUAGE

[Contractor] is required to comply with the "Minneapolis Living Wage and Responsible Public Spending Ordinance,"... [Contractor] and its shareholders, subcontractors, or casual haulers shall pay their employees a "living wage" as defined and provided for in Chapter 38 of the Minneapolis Code of Ordinances.

(Minneapolis, Minn.)

E. Nondiscrimination clause: The contract contains nondiscrimination language detailing the groups that are protected under municipal law.

STRONGER LANGUAGE

Contractor shall not discriminate or permit discrimination against any person or group of persons in any manner prohibited by federal, state, or local laws. Contractor has provided a Statement on its Affirmative Action Program, a copy of which is attached...

Contractor and any permitted subcontractors shall not discriminate against any employee or applicant for employment because of age, marital status, religion, gender, sexual preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability. Contractor and Contractor's subcontractors shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to [the aforementioned conditions]. Such action shall include, but not be limited to, the following: employment, upgrading, failure to promote, demotion or transfer, recruitment, advertising, layoffs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post, in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

...

Contractor shall make its goods, services, and facilities accessible to people with disabilities and shall verify compliance with the Americans with Disabilities Act...

In performing this Agreement, Contractor shall not discriminate against Customers or potential customers because of age, marital status, religion, gender, sexual preference, race, creed, color, national origin, AIDS, ARC, or disability.

(Oakland, Calif.)

LESS STRONG LANGUAGE

Contractor shall not discriminate against any employee or applicant for employment with respect to hiring or tenure; terms, conditions, or privileges of employment; or any matter directly or indirectly related to employment, because of race, color, creed, religion, ancestry, national origin, age, sex, height, weight, disability or other physical impairment, marital status, or status with respect to public assistance.

(Flint, Mich.)

WEAKER LANGUAGE

The Contractor shall adopt and maintain, throughout the term of this Agreement, a policy of non-discrimination as defined by the City of Jacksonville Ordinance Code. These requirements shall be incorporated into and made a part of any Contractor's subcontracts.

(Jacksonville, Fla.)

Nondiscrimination clauses vary by jurisdiction. They not only make a city's values regarding inclusion explicit to the contractor, but also ensure that the contractor cannot circumvent these values through exclusionary or discriminatory hiring practices. In the stronger language above, Oakland does not just ensure nondiscrimination protection for a wide variety of groups; it also extends the nondiscrimination clause to all job applicants, employees, and customers.

F. Domestic partner benefits: The contract requires the vendor to provide employees domestic partner benefits.

SAMPLE: *The Contractor shall comply with the requirements of SMC Ch.20.45 and Equal Benefits Program Rules implementing such requirements, under which the Contractor is obligated to provide the same or equivalent benefits ("equal benefits") to its employees with domestic partners as*

the Contractor provides to its employees with spouses... Failure to cooperate with such a request shall constitute a material breach of the Contract.

(Seattle, Wash.)

By ensuring that all workers are treated equitably, domestic partner benefits may help to recruit talented employees and to increase the percentage of city residents covered by private health insurance.

G. Payment of labor and set-off rights: The contract allows the city to pay wage claims against the vendor and deduct that money from the payments due to the vendor.

SAMPLE 1: *If any worker doing collection work for the Contractor (or any subcontractor) shall be paid by a postdated check, a check presented and dishonored for insufficient funds on account, or other negotiable instrument or promissory note that is not payable on the worker's regular payroll date or paid when presented, the worker may present the unpaid document to the City and request payment directly from the City. The City shall contact the Contractor, and if payment is not made within 24 hours, the City may issue a warrant drawn on the City for the amount of the unpaid wages and the City shall deduct the amount paid, together with a service charge of \$50.00 per warrant from the next succeeding payment to be made to the Contractor.*

(Seattle, Wash.)

SAMPLE 2: *MRI will pay persons furnishing services and/or labor and/or materials incident to the performance of this Agreement, unless engaged in a bona fide dispute regarding such payment, and will furnish, upon request by the City, satisfactory evidence that all of said persons have been fully paid. Upon default or delinquency of MRI in making such payment, said persons may, at the option of the City, and upon demonstrating, after serving written notice upon MRI, that said payment has been wrongfully withheld by MRI, be first paid out of amounts due to MRI, and the City may deduct this from any remaining balance due MRI.*

(Minneapolis, Minn.)

Set-off rights ensure that workers are paid for the work they have done. The city must have legal recourse to recoup wages due if the contractor defaults. The contractor should be expected to uphold its financial obligations to its workers and creditors to ensure consistent performance and execution of the contract.

ENVIRONMENTAL PROTECTIONS

Solid waste collection, transfer, and disposal can play an important role in keeping our communities clean and safe, but without proper safeguards and contract requirements, the process can harm the local environment. For example, according to the Alliance for a Greater New York, inefficient routing of trucks can cause unnecessary pavement damage and subject city residents to excess air and noise pollution and traffic congestion, while failure to properly sort and deal with contaminated loads can contribute to excess greenhouse gas emissions,³⁶ landfilled recyclables, and decreased value in recycling markets.³⁷

“Environmental protections” includes contract language that requires the contractor to take specific steps to protect the environment, including rejecting contaminated loads (unseparated waste, recyclables, compostables, etc.), educating customers on how and why to recycle, and getting city approval of the specific routes trucks will take. The education provision is the most common environmental contract provision; only two contracts reviewed (Oakland and Seattle) contain provisions for waste auditing to determine the composition of each waste stream and assess diversion rates and goals.

In our review of contracts, most municipalities include single-stream recycling services, in which recyclables are commingled by residents in one bin. Single-stream recycling can boost participation rates in a recycling program, although commingling can degrade the quality of the recyclables. Multi-stream recycling, where recyclables are sorted by residents into multiple bins (i.e. cardboard/paper, plastics, and glass), can result in higher quality output, but also requires more effort by residents. While this report doesn’t intend to analyze service types or levels, any recycling and composting program should include an educational component which should be included in the contract.

It should be noted, however, that one type of recycling that goes against best practices is the so-called dirty MRF (materials recovery facility). According to the “Sustainable and Safe Recycling” report by the National Council for Occupational Safety and Health, “in facilities called ‘dirty MRFs,’ workers sort through mixed waste - including garbage, food waste, and mixed recyclables - that is all thrown together in the same bins by the public... In order to protect worker safety, cities should not pursue Dirty MRF schemes...”³⁸ Furthermore, recovery rates of recyclables in “dirty MRFs” are typically low.³⁹

Key contract components to address environmental issues are:

- A) Routing
- B) Education component
- C) Contaminated loads
- D) Content audits

A. Routing: The contract contains language requiring the contractor to inform the city of its routes and/or submit routes to the city for approval.

STRONGER LANGUAGE

The Contractor shall supply the City with a map of the Collection Area showing the day of the week Residential Garbage, Compostables, and Recyclables will be collected in Cans from each sector. This map shall be generated electronically and shall also include route boundaries, route numbers, and the truck number for the truck which will normally collect the route.

(Seattle, Wash.)

WEAKER LANGUAGE

Contractor shall provide the City with new route maps and route sheets at least 30 days prior to the implementation of curbside Solid Waste collection... Minor route adjustments may be made with less than 30 days notice if mutually agreed upon by the City and Contractor. Contractor shall make a reasonable effort to minimize changes in the pickup day for residential Customers and to minimize the disruption to existing service and to the City's Recycling Agreements...

(Oakland, Calif.)

Routing provisions allow the city to control truck traffic. Effective routing can send trucks down alternative paths that decrease their idling time in traffic, thus reducing pollution to help spread traffic out equitably throughout the city.

B. Education Component: The contract requires the contractor to develop and implement education initiatives for residents, on such topics as recycling composting, waste reduction, and proper sorting of refuse.

STRONGER LANGUAGE

Contractor shall be required to allocate or spend \$30,000 each calendar year... on program-related public education activities, which have received prior written approval from the City. In each subsequent year this amount shall be increased by the same percentage, if any, that Rates are...

The City and Contractor may mutually agree to perform joint public education activities using all or some of the annual public education budget. Any unspent funds at year-end shall be deducted from Contractor's monthly payment... Upon request by Contractor, the City may... authorize Contractor to

carry forward up to \$15,000 of unspent funds to the following calendar year.

By September 1st of each year, Contractor must supply a public education plan for the following year. The City shall review and respond to the proposal within 45 days...

Contractor shall not perform any work on public education without prior written approval from the City. All materials shall be submitted in writing for review and approval...

All public education materials must be printed on 100% recycled paper with at least 50% post-consumer recycled content with soy based inks.

All public education materials must include the City's Oakland Recycles logo and the City's recycling hotline telephone number...

All public education materials must include four languages whenever possible and/or needed... and materials must be made accessible to those with disabilities... at Contractor's sole cost and expense.

...

Public relations activities cannot be applied to the public education budget.

(Oakland, Calif.)

LESS STRONG LANGUAGE

Educating the public concerning both waste and recycling collections and promoting both waste reduction and recycling are critical to the success of the City's solid waste management program. The City accepts primary responsibility for developing a citywide public education and promotion program, and the Contractor shall participate in implementing a public education program.

At the City's request, but no more than once per year, Contractor shall distribute to Residential Premises informational, promotional, and educational materials in the form of flyers or other forms of media, as agreed upon by the parties, to provide general information about the City's waste management services and recycling events and to increase awareness of hazardous materials.

Contractor shall provide information about the service standards for collection of Residential Waste, Bulky Waste, Yard Waste, White Goods, Tires, and Recyclable Materials with the delivery of a Recyclable Material container.

Contractor shall not distribute to Residential Premises any collection information or promotional or educational materials relating to Residential Premises collection services pursuant to this Agreement without the City's prior review and written authorization.

(Jacksonville, Fla.)

WEAKER LANGUAGE

Two (2) times per year, the Contractor shall produce and distribute educational materials, brochures, advertisements and other materials to City residents and businesses, specifying acceptable and unacceptable materials for collection and recycling and otherwise educating the residents as to the collection services to be provided by the Contractor.

(Conyers, Ga.)

The contractor, with approval and oversight of the city, should fund and implement a robust public education program that informs the public about 1) the community's solid waste program, 2) waste reduction initiatives, and 3) the positive environmental, economic, and community impacts of such initiatives. According to best practices from North Carolina State University, a public education component should "inform the public of program requirements and solicit their support," while addressing "the why, what, how, where, and when." Furthermore, educational communications should "provide easy-to-understand instructions on how to participate," be "positive,"⁴⁰ and be available to all populations within a community, including non-English speakers.⁴¹

Additionally, the Massachusetts Office of Energy and Environmental Affairs suggests that education programs and activities, such as those in schools or in the form of public mailings, be included in the contract, "even if it increases the cost, because it makes these services less vulnerable to budget cuts."⁴²

C. Contaminated loads: The contract contains language that addresses contaminated loads, i.e., improperly sorted or commingled recyclables or compostable material.

SAMPLE: The Contractor is responsible for sorting Recyclable Materials, separating and taking all materials acceptable and leaving only those materials that are inappropriate or contaminated. The Contractor is responsible,

whenever possible, for separating improperly commingled waste materials, collecting those that are in compliance with the [City code], and leaving only those that cannot be reasonably sorted or separated. The Contractor may decline to collect materials or to collect containers not in compliance with [City code], and may decline to collect materials improperly commingled or materials which are inappropriate pursuant to the [code]...

The Contractor shall not commingle within the same vehicle for transportation to the City's designated facility, Residential Waste with Yard Waste, Recyclable Materials and/or Tires, White Goods or other inappropriate materials. Additionally, Contractor shall not commingle within the same vehicle, for transportation to the City's designated facility, waste materials collected from Residential Premises pursuant to this Agreement and other waste materials collected by Contractor pursuant to other agreements or arrangements, regardless of whether other waste materials are collected inside or outside the boundaries of the Contractor's Service Area.

(Jacksonville, Fla.)

Contractors should neither be allowed nor required to collect contaminated loads. The contract should also stipulate that loads be examined upon arrival at the transfer station and rejected should a preset threshold of contamination be met. This provision prevents contamination of the city's waste streams by 1) keeping compostables out of landfills where they produce excess greenhouse gases, 2) keeping garbage out of the recycling stream where it can sully and degrade the recyclables, decreasing the price the processed materials can fetch in the international market, and harm workers at the recycling processing facility,⁴³ and 3) reminding waste producers of their responsibilities to properly sort waste if the contaminated load is denied collection or returned.

D. Content audits: The contract contains provisions for the auditing of waste streams to determine the makeup and contamination of each and assess actual diversion rates vs. goals.

While no contract reviewed contains provisions for a content audit, this provision would enable the city to 1) verify that the contractor is not accepting contaminated loads, and 2) verify the accuracy of the contractor's tonnage reports. Audits may be conducted at a transfer or disposal site, with or without notice. The contract should account for both the time and costs of conducting audits. Content audits are particularly important if the city must comply with state regulations on waste diversion (the utilization of waste processing other than landfilling) or if the contractor receives incentive-based compensation for increasing waste diversion.

Best Practices and Recommendations

Best Practices in the Procurement Process

Cities that contract out waste services should implement contract selection processes that are not just fair and transparent, but also embody the cities' values. First, cities should utilize a best value contracting approach, in which contractor bids are evaluated by awarding points based on a contractor's compliance with specified criteria. In addition to including price, bids should also prioritize other important factors such as demonstrating good performance and safety records, meeting set wage and benefits standards, meeting specified worker health and safety standards, and more. Such stipulations allow cities to evaluate bids based on factors other than lowest price and thereby select "high-road" contractors that will provide quality service. Second, in their competitive bidding processes, cities should design and use a comprehensive Request for Proposal that embodies many of the contracting best practices described in this report so contractors understand up-front the city's expectations. Lastly, cities should ensure that contracts are regularly re-bid to ensure sufficient competition. In particular, they should avoid evergreen contracts that allow for automatic renewals and thus give one company a monopoly over the public service. Competitive bidding allows cities to examine their options and ensure that they are still receiving the best deal.

This section discusses best practices and recommendations for municipal solid waste contracting. Based on the findings from our contract analysis above and a literature review of best contracting practices,⁴⁴ we have developed a checklist of provisions that municipal solid waste contracts should contain. This list is intended to help policymakers and other stakeholders negotiate contracts that ensure quality service, and protect the city, community, workers, and environment.

While this checklist contains major recommended components for each identified contract provision, it is not meant to be exhaustive, as a municipality may wish to add other local concerns to the contract. Furthermore, users of this checklist can refer back to examples of strong contract language in our Findings and Analysis section for additional ideas and context, although sample contract language should be carefully adapted for a municipality's specific circumstances.

CONTRACT MUST-HAVES CHECKLIST

CONTRACT ITEM KEY COMPONENTS	
MUNICIPAL CONTROL	
Scope of work	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> Contains detailed outline of city's expectations of Contractor's work <input checked="" type="checkbox"/> At a minimum, specifies type of collections, processing methods, and disposal requirements
Pricing schedule	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> Establishes initial rate of payment <input checked="" type="checkbox"/> Establishes how rate changes will be calculated, such as using CPI as a base factor <input checked="" type="checkbox"/> Addresses how changes due to external factors such as changes in law will be calculated <input checked="" type="checkbox"/> Specifies any fees and taxes that the contractor is responsible for <input checked="" type="checkbox"/> Addresses changes in long-term financial assurances for landfills and other responsibilities <input checked="" type="checkbox"/> Requires approval by city legislative or oversight body for any rate changes
Right to terminate contract	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> Details the conditions under which the city can terminate the contract <input checked="" type="checkbox"/> Specifies a short termination notice period <input checked="" type="checkbox"/> Specifies that contractor is liable for any damages and how the city will recoup the damages
Force majeure events	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> Specifies events that excuse nonperformance. These events: <ul style="list-style-type: none"> a) Should be uncontrollable and unpreventable circumstances b) Should not contain preventable circumstances including labor strikes and lockouts, subcontractor or vendor failure

<p>Force majeure events <i>(continued)</i></p>	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> Specifies a reasonable timeline and process for resuming the service <input checked="" type="checkbox"/> Establishes fines for not resuming service in a reasonable time period <input checked="" type="checkbox"/> Applies force majeure provision to both city's and contractor's responsibilities
<p>Disposal facilities requirement</p>	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> Establishes the specific locations where the collected wastes will be processed and disposed <input checked="" type="checkbox"/> Specifies related fees with processing and disposal and identifies the responsible party
<p>Frequency and hours</p>	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> Specifies how often service is provided and by what method <input checked="" type="checkbox"/> Specifies type(s) of customer(s) being serviced <input checked="" type="checkbox"/> Specifies service days and hours <input checked="" type="checkbox"/> Specifies that all collections at an address must occur on the same day <input checked="" type="checkbox"/> Details circumstances for when collections need to occur outside of specified days and hours and establishes city approval process
<p>Fleet requirements</p>	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> Specifies the terms of any sale of city's fleet to the Contractor, including market value price <input checked="" type="checkbox"/> Specifies an adequate size of fleet that contractor is required to maintain to provide quality service <input checked="" type="checkbox"/> Specifies that fleet must be maintained in good working condition (including the use of modern vehicles, compliance with specified maintenance standards, compliance with ANSI standards) <input checked="" type="checkbox"/> Requires contractor to maintain adequate fleet backup reserves <input checked="" type="checkbox"/> Establishes the city's right to inspect the fleet and all maintenance records at any time
<p>Tonnage audits</p>	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> Requires the contractor to keep frequent detailed records of volumes of waste and recyclables collected and disposed of

<p>Tonnage audits <i>(continued)</i></p>	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> Establishes the city's right to inspect the tonnage records at any time <input checked="" type="checkbox"/> Establishes proper procedures and standards for weighing the wastes
<p>City's use of equipment to perform service</p>	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> Requires the contractor to relinquish its equipment to the city in the case of contractor default at no cost to the city <input checked="" type="checkbox"/> Allows the city to use contractor personnel for continued provisional service <input checked="" type="checkbox"/> Requires the contractor to keep the equipment in good repair
<p>City's right of first refusal to purchase equipment or lease from vendor if contract is terminated</p>	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> In event of default, requires the contractor to offer the city the first right to purchase the contractor's equipment at fair market value less any amount due to the city <input checked="" type="checkbox"/> In event of default, requires the contractor to return any assets originally supplied or purchased from the city, to be purchased at fair market value less any amount due to the city
<p>GOOD MANAGEMENT</p>	
<p>Complaint resolution/fines</p>	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> Establishes clear protocol and procedures for customer complaints and what party is responsible for remedying complaints <input checked="" type="checkbox"/> Specifies a short timeline for complaint resolution <input checked="" type="checkbox"/> Requires contractor to maintain documentation of complaints and resolutions to be delivered to the city on a frequent and regular basis
<p>Schedule of fines (liquidated damages)</p>	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> Specifies and defines events of non-compliance <input checked="" type="checkbox"/> Specifies fines or liquidated damages for each event of non-compliance and details fine accruals until non-compliance is rectified <input checked="" type="checkbox"/> Establishes a timeline for fine remittance to the city <input checked="" type="checkbox"/> Establishes the city's right to set off or deduct unpaid fines or liquidated damages from payments to the contractor

<p>Schedule of fines (liquidated damages) <i>(continued)</i></p>	<ul style="list-style-type: none"> ✓ Fines or liquidated damages should be sufficiently high to disincentivize non-compliance ✓ Establishes the city's right to demand performance assurances if the contractor's ability to perform is in jeopardy
<p>Missed collections</p>	<ul style="list-style-type: none"> ✓ Specifies a short timeline for the contractor to remedy the missed collection, no more than 24 hours ✓ Specifies a monetary fine or liquidated damages amount for each missed collection and additional fines if the complaint remains unresolved
<p>Insurance</p>	<ul style="list-style-type: none"> ✓ Specifies the types of insurance that the contractor is required to carry in the city's jurisdiction ✓ Names the city and its affiliated parties as additional insureds
<p>Oversight Provisions</p>	<ul style="list-style-type: none"> ✓ Specifies that the city will perform contract monitoring and oversight and establishes those formal procedures, as well as dedicates adequate resources, including staff and funding to oversee the contract ✓ Requires the city and contractor to jointly develop an operations plan which covers 1) joint monitoring procedures, 2) procedures for fine assessment or performance incentive rewards, and 3) appeals processes ✓ Requires the city and contractor to designate contract implementation lead staffers
<p>WORKFORCE STABILITY</p>	
<p>Strikes, slowdowns, and lockouts</p>	<ul style="list-style-type: none"> ✓ Specifies that strikes, slowdowns, lockouts, and other labor-related issues are preventable circumstances and do not qualify as force majeure events. ✓ Specifies that there will be no work stoppages, no strikes, and no lockouts ✓ Requires high fines or liquidated damages for non-performance due to strike, slowdown, lockouts, and other labor-related issues

Staffing levels	<input checked="" type="checkbox"/> Specifies staffing levels that contractor must maintain that are sufficient and adequate to ensure service quality
Local labor requirements	<input checked="" type="checkbox"/> Requires the contractor to give preference to locally hired labor where permitted <input checked="" type="checkbox"/> Defines “local” based on city’s geography and demographics <input checked="" type="checkbox"/> If this is the first contract outsourcing the city’s waste services, requires the contractor to hire any city worker displaced by the outsourcing event <input checked="" type="checkbox"/> Requires the contractor to provide former city workers with salaries and benefits that are equal to or greater than the salary and benefits that the city provides similar employees
Prevailing Wage or Living Wage	<input checked="" type="checkbox"/> Requires that all employees of the contractor and subcontractor are paid not less than the prevailing rate of wage, including hourly wage, benefits, and paid overtime <input checked="" type="checkbox"/> Requires the contractor to pay any court fees, attorney fees, expert witness costs, etc., or any successful wage and/or benefits suit against the contractor <input checked="" type="checkbox"/> Specifies that under-payment of prevailing wage is a material default of the contract <input checked="" type="checkbox"/> Requires compliance with any local living wage and/or prevailing wage laws
Nondiscrimination clause	<input checked="" type="checkbox"/> Specifies a wide range of groups that are protected from discrimination <input checked="" type="checkbox"/> Requires the extension of the nondiscrimination clause to all job applicants, employees, and customers
Domestic partner benefits	<input checked="" type="checkbox"/> Requires the contractor to provide domestic partner benefits
Payment of labor and Set-off Rights	<input checked="" type="checkbox"/> Establishes the city’s right to set-off any unpaid, due wages to the contractor’s employees <input checked="" type="checkbox"/> Establishes procedures for any party engaged in a bona fide dispute over payment for services, labor, and/or materials to make a claim to the city that the city may pay and deduct from any remaining balance due to the contractor

ENVIRONMENTAL PROTECTIONS	
Contaminated loads	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> Requires the contractor to reject contaminated wastes at the source <input checked="" type="checkbox"/> Requires examination of loads at transfer stations and rejection of loads that meet a preset threshold of contamination <input checked="" type="checkbox"/> Establishes threshold levels for contamination that are as low as practical
Content audits	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> Establishes the city's right to conduct an audit of any load the contractor collects and/or delivers <input checked="" type="checkbox"/> Requires the city to conduct audits if the contract contains incentive-based compensation for meeting waste diversion targets or goals
Education Component	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> Requires the contractor to develop and implement educational initiatives regarding solid waste services, recycling, composting, and/or sustainability <input checked="" type="checkbox"/> Specifies the amount of money and time that contractor is required to spend on educational initiatives <input checked="" type="checkbox"/> Specifies what is and is not considered an education activity (e.g., tagging improperly sorted recyclables does not qualify as an educational activity)
Routing	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> Requires the contractor to submit route details, including the day of the week, service provided, and truck numbers to the city for approval before service begins <input checked="" type="checkbox"/> Requires the city to approve routes and any subsequent proposed changes

Appendix A

MUNICIPALITY CONTRACT LANGUAGE CHART

		Evansville, IN	Minneapolis, MN	Meridian, ID	Flint, MI	Jacksonville, FL	Oakland, CA	Seattle, WA	Toledo, OH	Henderson, NV	Conyers, GA
Control											
	Pricing schedule	X	X	X	X	X	X	X	X	X	X
	Disposal facilities requirement	X	X			X	X	X	X	X	X
	Rights to terminate contract	X	X	X	X	X	X			X	X
	Frequency and hours	X	X	X	X	X	X			X	X
	City's use of equipment to perform service					X	X			X	
	City's right of first refusal to purchase equipment	X								X	X
	Force majeure events		X		X	X	X	X			X
	Scope of work	X	X		X	X	X	X	X	X	X
	Fleet requirements	X			X	X	X	X			X
	Tonnage audits					X	X				X
Good Management											
	Complaint resolution/fines	X	X		X		X			X	X
	Schedule of fines (liquidated damages)	X	X			X	X				
	Missed collections	X	X		X	X	X			X	X
	Insurance	X	X	X	X	X	X	X	X	X	X
	Oversight provisions	X				X	X				
Workforce Stability											
	Strikes, slowdowns, lockouts		X					X			
	Staffing levels		X								
	Local labor requirements	X			X		X				X
	Living Wage	X	X			X	X				
	Nondiscrimination clause	X	X		X	X	X	X			X
	Domestic partner benefits		X			X	X				
	Payment of labor/Set-off Rights		X				X				
Environmental and Community Issues											
	Contaminated loads	X	X			X	X				
	Content audits					X	X				
	Education component	X			X	X	X			X	X
	Routing	X	X			X	X				X

Appendix B

MUNICIPAL PROFILES⁴⁵

Conyers, Ga.

2015 Population Estimate: 15,875

Contract version: June 1, 2012 – May 31, 2022

Evansville, Ind.

2015 Population Estimate: 119,943

Contract version: January 1, 2013 – December 31, 2022

Flint, Mich.

2015 Population Estimate: 98,310

Contract version: June 30, 2014 – June 30, 2016

Henderson, Nev.

2015 Population Estimate: 285,667

Contract version: December 26, 2006- December 31, 2025

Jacksonville, Fla.

2015 Population Estimate: 868,031

Contract version: October 1, 2007 – September 30, 2016

Minneapolis, Minn.

2015 Population Estimate: 410,939

Contract version: February 1, 2009 – January 31, 2014

Meridian, Idaho

2015 Population Estimate: 90,739

Contract version: September 9, 1999 – September 30, 2010 with extension and transfer of franchise documents

Oakland, Calif.

2015 Population Estimate: 419,267

Contract version: Sixth amendment to franchise agreement, dated July 1, 2005

Seattle, Wash.

2015 Population Estimate: 684,451

Contract version: March 30, 2009 - March 31, 2019

Toledo, Ohio

2015 Population Estimate: 279,789

Contract version: September 1, 2011 – August 31, 2016

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45. Population estimates are from the U.S. Census.

