EXHIBIT B

(Labor Union Letter)

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March 9, 2007

VIA FACSIMILE AND U.S. MAIL
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Mr. Steve Kotke, Director of Public Works
City of Minneapolis
350 South 5th Street, Room 203
Minneapolis, MN 55415

Re: Proposed Labor Peace Standard for Solid Waste Collection

Dear Mr. Kotke:

This letter constitutes written comments of the Minneapolis Central Labor Union Council ("CLUC") and the International Brotherhood of Teamsters, Local No. 120 ("Local 120") regarding the Organized Solid Waste Collection Plan under consideration in the City of Minneapolis. We hereby restate and emphasize the interest of both the CLUC and Local 120 to be included as interested parties in the 90-day post-planning discussion process.

The CLUC and Local 120 advocate adoption of a labor peace requirement as part of the Organized Collection Plan. The purpose of a labor peace standard is to protect the City's proprietary interest in uninterrupted collection services by (1) restricting work stoppages and other economic action that might interfere with those services and (2) requiring arbitration to resolve potentially disruptive labor disputes.

I have enclosed a copy of proposed labor peace language for consideration. Please note that we are still in the process of assessing the contractual and business relationships of the interested haulers, which could affect the scope and applicability of the proposed language. This letter addresses (1) whether or not the City can adopt a labor peace standard consistent with the applicable statute on solid waste collection and (2) whether or not a labor peace provision is consistent with the applicable labor laws. After a review of the applicable law, it is our opinion that the City can lawfully include a labor peace requirement in the Organized Collection Plan.

I. A Labor Peace Requirement Is Consistent With The "Organized Collection" Statute.

Minnesota statutes section 115A.94 governs the manner in which a city may organize collection of solid waste. The statute requires a participatory process in which interested persons are allowed to have input:

> The local government unit shall invite and employ the assistance of interested persons, including persons licensed to operate solid waste collection services in the local government unit, in developing plans and proposals for organized collection and in establishing the organized collection system.

Minn. Stat. § 115A.94, Subd. 3(c). The statute further provides that at least 180 days before implementing a contract for solid waste collection the City must adopt a resolution of intent to organize collection "and invite the participation of interested persons." Id., Subd. 4(a). "Interested persons" includes both the CLUC and Teamsters Local 120, an organization that represents or seeks to represent employees performing collection services. During a 90-day period following the resolution of intent, the City must develop or supervise the development of plans or proposals for organized collection. Id., Subd. 4(c). If the City is unable to agree on an organized collection arrangement with a majority of the licensed collectors who have expressed interest, or upon expiration of the 90 days, the City may propose implementation of an alternate method of organizing collection. Id., Subd. 4(d).

The statute permits the City to evaluate the proposed organized collection method in light of "at least" the following general standards: "achieving the stated organized collection goals of the city or town, minimizing displacement of collectors, ensuring participation of all interested parties in the decision-making process, and maximizing efficiency in solid-waste collection." Minn. Stat. § 115A.94, Subd. 4(e)(2).

A labor peace requirement is consistent with the language of the statute, which mandates evaluation of **"at least"** the listed factors and thus expressly contemplates that additional factors may be considered. Moreover, the City's interest in labor peace is similar to the factors delineated in the statute. The labor peace standard is designed to protect the City's financial and proprietary interest in the uninterrupted performance of solid waste collection services. This is analogous to the listed standards of "maximizing efficiency" and "achieving stated organized collection goals." Like those standards expressly listed in the statute, a labor peace standard is designed to ensure the efficient performance of solid waste collection services. Accordingly, proposed labor peace requirement is consistent with the applicable statute.

II. The Proposed Labor Peace Language Is Consistent With The Federal Labor Laws Because It Is Specifically Tailored To Protect The City's Financial or Proprietary Interest.

The proposed labor peace language is likely to be ruled lawful because it is modeled on a legal provision that has already been upheld by the United States Court of Appeals. See HERE Local 57 v. Sage Hospitality Resources, LLC, 390 F.3d 206 (3d. Cir. 2004).

Like private employers, public agencies may want to avoid costly labor-management disputes that can disrupt services or jeopardize investments. Accordingly, some local governments have required private employers with whom they do business to enter into labor peace agreements. A labor peace agreement is a collective bargaining agreement or other valid contract under the federal labor law which (1) prohibits work stoppages and (2) requires that all labor disputes be subject to arbitration.

Public agencies have required two types of employers to enter into labor peace agreements: private contractors doing business with a public agency, or employers on development projects in which the public agency has provided financing or has another form of proprietary interest. The intent of these agreements is to protect the City's proprietary and economic interest in its contracts by preventing costly and disruptive labor-management conflict.

The case law on point has upheld analogous requirements. In HERE Local 57 v. Sage Hospitality Resources, LLC, 390 F.3d 206 (3d. Cir. 2004) the Court upheld an ordinance of the City of Pittsburgh that requires employers on hotel development projects to sign a labor peace agreement as a condition of receiving public financing.

In an opinion authored by Judge Michael Chertoff, the Court of Appeals explained that the City's action of conditioning a grant of tax increment financing (TIF) upon a hotel developer's acceptance of a labor peace agreement was not regulatory, but rather was specifically tailored to advance or protect a proprietary financial interest of the City in the value of the tax-revenue-generating property, and thus was not preempted by National Labor Relations Act (NLRA). Id. at 216-18.

The Court noted that the City was a constituent in the agency that issued the TIF funds and the agency, as issuer, had a proprietary financial interest in the TIF development project that was the same as that of any nonprofit private entity that financed a development issuing bonds. The Court emphasized that the requirement that an employer sign a labor peace agreement was limited to projects receiving such public funds. Id.

The language proposed in this case is modeled on the Pittsburgh language, and is similar in every material respect. Therefore, it is likely to be upheld by the courts.

1. *The Proposed Labor Peace Language is not Preempted by Federal Labor Law.*

As explained by the Court of Appeals in Sage Hospitality, the central legal issue is whether the proposed labor peace language would be preempted by federal labor law. Analysis of the applicable legal principles suggests that a labor peace standard is likely to be upheld if it is specifically tailored to further the City's proprietary interests and is not designed to establish a general labor policy.

Under federal labor law, two preemption doctrines could be relevant to the analysis of the validity of the proposed labor peace language. The first is the so-called Garmon preemption doctrine. See San Diego Building Trades Council v. Garmon, 359 U.S. 236 (1959). Under this rule, federal labor law preempts state or local regulation of conduct that is "arguably protected or prohibited" by the National Labor Relations Act, 29 U.S.C. § 151 et seq. The second is the Machinists preemption doctrine, which precludes state and local regulation of conduct that Congress intended to leave unregulated or leave subject to the play of economic forces. See Machinists v. Wisconsin Employment Relations Comm'n, 427 U.S. 132 (1976).

In Golden State Transit Corp. v. City of Los Angeles ("Golden State I"), 475 U.S. 608 (1986) the Supreme Court applied the Machinists doctrine in ruling that the City of Los Angeles was preempted from conditioning the renewal of a taxicab operating license on the resolution of a labor dispute. In applying its licensing scheme, the City was using a regulatory mechanism to control labor relations in a situation where the City had no contractual or economic interest at stake. Accordingly, the City's action was preempted.

However, the Supreme Court has held that federal labor law preemption does not apply where a public agency acts as a proprietor or market participant rather than as a regulator. See Building and Construction Trades Council v. Associated Builders and Contractors, 507 U.S. 218, 232 (1993) [hereinafter "Boston Harbor"]. In Boston Harbor, a non-union contractors association challenged a Massachusetts state agency's requirement that construction contractors on a public project abide by a project labor agreement ("PLA"), which was designed to promote "worksite harmony, **labor-management peace**, and overall stability." See id. at 221 (emphasis added). Like a labor peace agreement, the PLA prohibited work stoppages and required binding arbitration for peaceful resolution of labor disputes. The contractors association contended that the PLA requirement was preempted by federal law governing labor organizing.

The United States Supreme Court upheld the PLA requirement. The Court reasoned that the state agency could require the agreement because the agency was acting as a proprietor on the construction project rather than as a regulator. Id. at 230-33.

> We hold today that [the state agency's PLA requirement] is not government regulation and that it is therefore subject to neither Garmon nor Machinists preemption. [The PLA requirement] constitutes proprietary conduct . . .

See Boston Harbor, 507 U.S. at 232.

The Court explained that the state agency had the same right to further its economic interests via requiring PLAs as a private proprietor would have:

> To the extent that a private purchaser may choose a contractor based upon that contractor's willingness to enter into a prehire agreement, a public entity as purchaser should be permitted to do the same. . . . In the absence of any express or implied indication by Congress that a State may not manage its own property when it pursues its purely proprietary interests, and where analogous private conduct would be permitted, this Court will not infer such a restriction.

Boston Harbor, 507 U.S. at 231.

Applying Boston Harbor, the Third Circuit Court of Appeals explained that the preemption analysis is subject to a two-part test:

> [W]hether a government's condition of funding constitutes market participation that falls within the Boston Harbor exception to preemption review depends upon the following two step test: First, does the challenged funding condition serve to advance or preserve the state's proprietary interest in a project or transaction, as an investor, owner, or financier? Second, is the scope of the funding condition "specifically tailored" to the proprietary interest?

Sage Hospitality, 390 F.3d at 215-16, citing Boston Harbor, 507 U.S. at 232. "If a condition of procurement satisfies these two steps, then it reflects the government's action as a market participant and escapes preemption review. But if the funding condition does not serve, or sweeps more broadly than, a government agency's proprietary economic interest, it must submit to review under labor law preemption standards." Sage Hospitality, 390 F.3d at 216.

(a) The City is Acting In Its Proprietary and Financial Interest

The first element of the two-step test for preemption is whether or not the City or agency is acting as a proprietor or regulator in adopting a labor peace standard. Under the proposed labor peace language, the City would be acting in its proprietary interest by contracting for services.

The weight of applicable authority establishes that a government agency is acting in its proprietary capacity where, as here, it establishes standards to protect its economic interest in contracting for services. See Building Trades v. Allbaugh, 295 F.3d 28 (D.C. Cir. 2002) (government acting as proprietor as to federally funded construction contracts); Cardinal Towing & Auto Repair, Inc. v. City of Bedford, 180 F.3d 686, 693 (5th Cir. 1999) (treating municipal contracting decision as proprietary action), cited in Sage Hospitality, 390 F.3d at 215; Petrey v. City of Toledo, 246 F.3d 548 (6th Cir. 2001) (requirements for towing contractors providing services to the city were not preempted); Tocher v. City of Santa Ana, 219 F.3d 1040 (9th Cir. 2000) (rules regarding towing contracts were a "classic example of a municipality acting

as a market participant"); Associated Gen. Contractors, 159 F.3d at 1183 (requirement that contractors adhere to collective bargaining agreement with particular benefits package was proprietary); Colfax Corp. v. Illinois State Toll Highway Authority, 79 F.3d 631, 634-35 (7th Cir.1996) (requirement that contractor adhere to area collective bargaining agreement was proprietary); The Legal Aid Society, 114 F.Supp. 2d at 239-40 (upholding the City's decision not to contract with an agency because of work stoppages was a proprietary decision and thus was not preempted by the NLRA); Minnesota Chapter of Assoc. Builders & Contractors, Inc. v. County of St. Louis, 825 F.Supp. 238, 243-44 (D.Minn.1993) (bid specification requiring bidders for jail construction contract agree to labor agreement with benefits levels and no-strike clause was proprietary); Hotel & Restaurant Employees Local 2 v. Marriott Corp, 1993 WL 341286 (N.D. Cal. 1993) (city redevelopment agency's request for assurances from two finalists for contract that their involvement in hotel project would not lead to labor strife was proprietary); Sprint Spectrum L.P. v. Mills, 283 F.3d 404 (2d Cir. 2002) (school district has proprietary interest in contracting for telecommunications services); see also Alameda Newspapers, Inc. v. City of Oakland, 95 F.3d 1406 (9th Cir. 1996) (applying Boston Harbor even though city was not dealing with its own property but rather was acting as a marketplace participant).

It is important to note that the courts have declined to second-guess a government agency's findings about whether a particular contractual condition is actually likely to further the agency's economic interests. The courts have restricted themselves to the narrow inquiry as to whether the contractual condition in question is proprietary or regulatory in nature. See, e.g., The Legal aid Society v. The City of New York, 114 F.Supp. 2d 204, 239-40 (S.D.N.Y. 2000) ("Circuit courts applying the proprietary action theory have declined to question the wisdom of particular means selected by a state or municipality in order to achieve its proprietary purpose."); Cardinal Towing & Auto Repair, Inc. v. City of Bedford, 180 F.3d 686, 695-96 (5th Cir. 1999) (deferring to city's proprietary decision to replace broad scheme involving multiple towing contracts with more competitive scheme involving single towing contract); Associated Gen. Contractors v. Metropolitan Water Dist., 159 F.3d 1178, 1184 (9th Cir.1998) ("[Plaintiff] might not think that [the agency scheme] is the best way to address those concerns [of labor harmony and efficiency], but it is pellucid that the concerns are the typical ones held by any market participant who is interested in building out a project without incurring unnecessary transaction costs. That is merely proprietary action.").

The cases invalidating labor peace requirements are inapplicable to the proposed language because they involved attempts to apply labor peace to third parties lacking contractual relationships with the public agency. In Metropolitan Milwaukee Association of Commerce v. Milwaukee County, 431 F.3d 277, 279-82 (7th Cir. 2005), the court concluded that the government was not acting in its proprietary interest because the labor peace agreements were not limited to services for the County but also applied to employees who did not perform services on behalf of the County. Similarly, in Aeroground, Inc. v. City and County of San Francisco, 170 F.Supp. 2d 950 (N.D. Ca. 2001), the court invalidated an airport's card check rule that applied to third party employers. Unlike Milwaukee County and Aeroground Inc., the proposed language limits the labor peace requirement to services performed by contractors for the City of Minneapolis:

(b) The Labor Peace Language is Specifically Tailored to Protect the City's Proprietary and Financial Interest.

As drafted, the model language is specifically tailored to protect the City's proprietary interest in contracting for services. The language, if adopted, would require employers of employees hired to perform solid waste collection services for the City to be signatory to collective bargaining agreements or other valid contracts under 29 U.S.C. sec. 185(a) with any labor organization seeking to represent those employees, where such agreements and contracts prohibit work stoppages and require that all labor disputes be submitted to arbitration.

This requirement of a collective bargaining agreement or other valid agreement prohibiting work stoppages is no broader than necessary because under federal law employers may not unilaterally prohibit their employees or labor organizations seeking to represent them from engaging in job actions. See 29 U.S.C. §§ 157, 163. A voluntary agreement is necessary to prohibit such job actions. Id. Additionally, employees and unions seeking to represent them cannot be required to follow an arbitration procedure for peaceful resolution of labor disputes unless they agree to it in a collective bargaining agreement or other contract that is valid under 29 U.S.C. § 185(a).

The model language does not delve into the details of the labor-management relationship, and only provides for the bare essentials for labor peace: (1) no work stoppages and (2) peaceful resolution of labor disputes through arbitration. Significantly, the model language provides that an employer is relieved of its obligations to enter into such an agreement if a labor organization places conditions on its agreement that the City Council finds to be arbitrary or capricious.

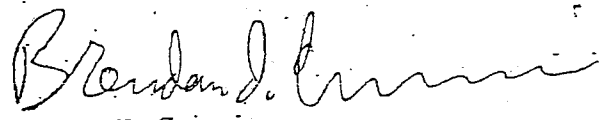
Moreover, the model language is no broader than necessary to protect the City's financial interest because the labor peace requirement would be specifically limited to "the duration of the employer's contracts with the City." Thus, the labor peace obligation would end when the City's financial or proprietary interest ends. The labor peace requirement would apply only to those businesses that have a direct financial or contractual relationship with the City, or to their subcontractors or any other employer performing the services in which the City has an economic and proprietary interest.

It must be emphasized that the proposed language does not require "card check," employer neutrality, access to employee rosters or employer property, or any other provisions favorable to labor organizing. This contrasts with the provisions that were invalidated in the Milwaukee County and Aeroground decisions cited above. The language is solely and exclusively focused on the City's interest in protecting labor peace. While a Union can request additional items, it is up to the employer and Union to negotiate which additional terms, if any, will be included.

In light of the foregoing, the proposed language is lawful because it is specifically tailored to protect the City's proprietary interest. See Sage Hospitality, 390 F.3d at 216-18.

Our review of the applicable law suggests that the proposed labor peace language is consistent with both state and federal law.

Sincerely,



Brendan D. Cummins

Encl.

c: Mr. Bill McCarthy, CLUC
Mr. Rhys Ledger, Local 120

LABOR PEACE LANGUAGE FOR SOLID WASTE COLLECTION

Union contracts; No Work Stoppage; Arbitration. To protect the City's proprietary interest, any contractor performing solid waste collection services for the City of Minneapolis ("Contractor") shall be or become signatory to a valid collective bargaining agreement or other valid agreement under 29 U.S.C. Section 185 with any labor organization seeking to represent employees employed to perform solid waste collection services under the contract with the City as a condition precedent to its contract with the City. Such collective bargaining agreement or other valid agreement must contain a provision prohibiting the labor organization and its members, and in the case of a collective bargaining agreement, all employees covered by the agreement, from engaging in any picketing, work stoppages, boycotts or any other economic interference with the operations of Contractor for the duration of Contractor's contract with the City (the "No-strike pledge"). Such agreement must provide that during this time period, all disputes relating to employment conditions or the negotiation thereof shall be submitted to final and binding arbitration. Each and every contractor and employer of employees hired to perform solid waste collection services shall require that any work under its contract or contracts with the City to be done by the contractor's or employer's subcontractors, member companies, shareholders, subsidiaries, owners or co-owners, affiliates, or any related companies or entities shall be done under collective bargaining agreements or other valid agreements under 29 U.S.C. Section 185 containing the same provisions as specified above. Contractors and employers shall be relieved of the obligations of this provision with respect to a labor organization if the labor organization places conditions upon its No-strike pledge that the City Council finds, after notice and hearing, to be arbitrary or capricious.