City of Minneapolis
Solid Waste Organized Collection
Planning Process Participation Summary
April 10, 2007

A. Introduction

The following summarizes the solid waste organized collection planning process conducted by the City of Minneapolis through April 10, 2007.

1. Background

Since 1971, when the City of Minneapolis amended its Charter to establish a new approach to collection of residential mixed municipal solid waste, the City has divided collection into geographic halves: one half is collected by City employees, the other half is collected by Minneapolis Refuse Inc. (MRI), a consortium of solid waste haulers. The contracts with MRI have been for terms of five years each and have been continually renewed since the original contract in 1971.

On February 10, 2006, the Minneapolis City Council voted to conduct a Request For Proposals (RFP) process under which the City would seek competitive proposals for the solid waste collection contract held by MRI. MRI then filed suit in Hennepin County District Court seeking a Temporary Restraining Order (TRO) to prevent the City from moving forward with the RFP process. MRI argued that the City Council's vote violated Minnesota Statutes § 115A.94, which is entitled "Organized Collection."

At the initial hearing on the TRO, the City stated that it would extend MRI's contract to June 30, 2007, which was otherwise due to expire on December 31, 2006. The contract extension was entered into on March 20, 2006. On March 23, 2006, the District Court denied the TRO because of the City's extension of the contract.

On September 15, 2006, the Court issued an Order granting a temporary injunction requested by MRI that enjoined the City from proceeding with the RFP process and determined that the Organized Collection statute applies to the City and its actions regarding the RFP for solid waste collection. The City is now following the organized collection process outlined in Minn. Stat. § 115A.94.

2. Organized Collection Statute

Minn. Stat. § 115A.94, subd. 1 defines "organized collection" as a system for collecting solid waste in which a specified collector, or a member of an organization of collectors, is authorized to collect from a defined geographic

service area or areas, some or all of the solid waste that is released by generators for collection. Under Minn. Stat. § 115A.94, subd. 3(a), a local government unit may organize collection as a municipal service or by ordinance, franchise, license, negotiated or bidded contract, or other means, using one or more collectors or an organization of collectors.

Pursuant to Subd. 4(a) of the statute, at least 180 days before implementing a new ordinance, franchise, license, contract or other means of organizing collection, the city, by resolution of the governing body, shall announce its intent to organize collection and invite the participation of interested persons - including persons licensed to operate solid waste collection services - in planning and establishing the organized collection system. Pursuant to the statute, the City of Minneapolis held a public hearing on a Resolution of Intent to organize collection on November 9 and November 21, 2006 and on December 1, 2006, the City adopted a Resolution of Intent to organize collection.

3. Planning Process

The statute, under Subd. 4(c), provides that the City shall develop or supervise the development of plans or proposals for organized collection during a 90-day period following the Resolution of Intent. During this planning period, the City shall invite and employ the assistance of persons licensed as of the date of the Resolution of Intent to operate solid waste collection services in the City. Failure of a licensed collector to participate in the planning period, when the City has made a bona fide effort to provide the person the opportunity to participate, does not invalidate the planning process.

In January 2007, the City sent notices to all licensed haulers within the City stating that the planning process was beginning and outlining methods of participation for licensed haulers. The City indicated that it was planning a series of public meetings for haulers to attend, and also that the City would be accepting written comments on the planning process as well.

The City also notified all neighborhood associations within the contracted half of the City about the planning process for organized collection and offered the opportunity for neighborhood groups to have City officials and others attend a meeting of their neighborhood group to get their input on the planning process.

B. Methods of Participation

1. Three Hauler Meetings

The City conducted three meetings for licensed haulers and other interested parties. The meetings occurred on:

a. February 20, 2007 in northeast Minneapolis (17 persons attending);

b. February 22, 2007 in south Minneapolis (19 persons attending); and

c. March 8, 2007 in downtown Minneapolis (14 persons attending).

2. **Neighborhood Group Meeting Opportunities**

The City received four responses from neighborhood groups. Two responses were emails providing comments on the organized collection process; these neighborhood groups did not request a meeting. Two neighborhood groups requested meetings, which are scheduled for April 12 and May 2, 2007.

3. **Written Comments**

The City received several written comments regarding the planning process that are discussed further below.

C. Summary of All Comments

1. MRI Views

Many members and several representatives of MRI participated in each of the three meetings. MRI members and representatives made the expressed the following views:

a. Member hauling companies are 2nd or 3rd generation and have a long history of working in and with the City.

b. There is a high degree of customer satisfaction among City residents with their solid waste collection services. In particular, the most recent survey of residents in 2005 indicated that 93% of residents were satisfied with their service.

c. The system of "managed competition" between MRI and public collection crews has worked well since inception.

d. Beginning with the first contract in 1971, the contract negotiation process has worked well over the years.

e. There is no need for a Request for Proposals process, nor to change the current approach to contracting.

f. If a competitive process occurs and MRI is not selected, there would be significant negative impacts on the employees of MRI haulers.

g. Further, most of the MRI member haulers would not survive and therefore would not be a contracting option for the City in the future, even if the new contractor were to fail in providing the service.

h. The City should compare the costs of City crews versus MRI in order to assure cost control.

i. The City's overall solid waste collection costs are lower than in the suburbs or in St. Paul, and other "open hauling" cities.

In addition, MRI submitted detailed comment letters. See Exhibit A for a letter dated February 23 from Greg (Red) Burt, MRI Chairman, and a letter dated February 19 from Chuck Kutter, former MRI Chairman.

2. Other Hauler Views

Although other licensed haulers in addition to those that are members of MRI attended the meetings, none of them provided comments other than to express interest in continuing to participate in the organized collection process. Haulers that have expressed such interest are discussed below.

3. Labor Union Views

Several different labor unions attended the meetings and expressed their views.

a. Unions representing the City collection crew employees (City Employees Local 363 and Teamsters Local 320) supported the current approach to contracting with MRI and expressed concern about negative impacts on City collection crew employees if changes are made to the contracting system. The public employee unions would like to see growth of public employee role. If this does not occur, they do not want to see the contracting process result in a reduced public employee role.

b. Private employee unions (Minneapolis Central Labor Union Council and Teamsters Local 120) would like to see MRI or any other private haulers become unionized through the Labor Peace Agreement process.

See Exhibit B for a letter sent by Brendan D. Cummins of Miller O'Brien law firm on behalf of CLUC and Teamsters Local 120 that further discusses

their proposal for including a Labor Peace Agreement as part of the plan for contracting for collection services.

4. Neighborhood Group Views

Two neighborhood groups, Holland and Waite Park, invited City representatives to discuss organized collection at their neighborhood group meetings. These meetings will be on April 12 and May 2, 2007. There were also two email comments: one from the Fulton neighborhood supporting a competitive process for solid waste contracting and expressing a desire to continue receiving the same high level of solid waste collection service; and another from the Columbia neighborhood emphasizing the need to continue the high quality solid waste collection and recycling services that are currently provided.

D. Expressions of Interest in Participating in Organized Collection

Many parties submitted written requests to continue to be included in the organized collection process, explicitly requesting to participate in the negation process after completion of the planning process, as required by the Organized Collection Statute. Exhibit C provides a list of all parties expressing interest in further participation in the organized collection process, either by written request or through attendance at a meeting.

EXHIBIT A

(MRI Letters)

MINNEAPOLIS REFUSE
INCORPORATED

February 23, 2007

Mr. Steven A. Kotke, P.E.
City Engineer, Director
Department of Public Works
City of Minneapolis
350 South 5th Street, Room 203
Minneapolis, MN 55415

FEB 26 2007

Dear Mr. Kotke:

We appreciate the opportunity to provide comments regarding the system of organized collection in the City of Minneapolis. From our meetings during this planning process, we have understood the question before you is simply: "How does the City contract for its organized collection system?" We all agree that the current system has worked well for years. The concept of organized collection in the City of Minneapolis (with the 50/50 split) provides for competitive comparison. It is through this system of "managed competition" that the City is already in possession of the tools necessary to mandate competitive pricing. This is the outcome of the organized collection system the City currently employs.

Please consider the following:

About MRI

Minneapolis Refuse, Incorporated is a group of 14 independently-owned garbage haulers, employing nearly 70 people. Of the 14 members, 12 are small business enterprises, including women and minority-owned businesses. MRI was formed as a "partnership" with the City. For over 35 years, MRI has worked in cooperation with city haulers to provide award-winning solid waste disposal and recycling services to city residents.[1]

The MRI Partnership and "Managed Competition"

MRI was set up as a partnership with the City of Minneapolis not as a vendor/contract. The partnership was witnessed by language in the contract stating that the City intended to renegotiate the contract at the end of its conclusion each and every five-year period. (The Charter limits such contracts to five years.) That language was lost under duress and replaced by the passage of Minnesota Statue 115A which protected the small hauler by a process of input to the system and negotiations on the comments to that system.

[1] The history of the MRI/City partnership is attached to this letter.

1609 49TH AVENUE NORTH
MINNEAPOLIS, MINNESOTA 55430
612-529-4788 • FAX 612-529-4758

Printed on recycled paper

Small haulers from MRI were involved in the writing of this language and they clearly understood the legislative intent of the statute.

This competitive partnership is further witnessed by the fact that at its original conception, MRI collected 70% of the stops in the City of Minneapolis. Based on the expectation of a long-standing partnership, MRI released enough stops so that the 50/50 split could be created. The 50/50 split provided the City the exact management tool it needed to make this system competitive. Minneapolis could now afford to create a real partnership because of the competitive advantage of the 50/50 split, resulting in a system of managed competition unique to city government.

The City's Current Collection System is Cost-Effective and Efficient

The City's current organized collection system of managed competition works well, combining routes together to make it profitable for locally-owned businesses to divide and organize routes in an efficient and cost-effective way for the City residents. Every five years, the City and MRI have successfully renegotiated MRI's contract at competitive prices. Furthermore, the City residents receive more hauling service at the price charged than any other community or service provider in the region.

The City Has Missed Opportunities to Use the 50/50 Split as a Competitive System

Organized collection systems without a 50/50 split must seek competitive proposals in order to "check pricing." However, Minneapolis has a unique opportunity to compare costs of the two separate systems inside the 50/50 split to ensure that the City's costs are the most competitive in the region. This tool for competitive comparison has been lost in the City process over the past many years. It is time to recognize the partnership of the City's system and use the competitive split to ensure service standards and cost efficiencies by comparing the City's costs to the price offered by the MRI consortium.

MRI's Price is the City's Cost

The City has argued that it needs to know and understand MRI's costs in order to analyze the competitive system. MRI being made up of a variety of small haulers, each of whom has different costs, cannot assign a single cost to the price it offers to haul the City services. Small haulers often consider their time free as it relates to maintenance and other administrative requirements of the hauling business. This is to the City's advantage as witnessed by the price comparison of suburban city costs to the price charged Minneapolis residents. Price becomes cost.

Cart Service in Minneapolis

Minneapolis regulates its residential collection by facilitating the organized collection system in the 50/50 split. However, for the past several years, our style of housing has changed from single family to multi-unit town homes, etc. Many of these housing units are serviced by private haulers with cart service, not commercial dumpsters. The City

could/should choose to put all cart service in the organized collection system. As a partner in City service, MRI would welcome these new haulers to come to the table at MRI and become corporate members of the organization.

The City's Business Plan will Likely Put MRI's Haulers Totally Out of Business

The City's RFP plan sought to carve up MRI's routes into four quarters and bid them out separately. At some point, city action could have such a severe impact on MRI's ability to compete, that local haulers would go out of business.

If it is not Broken . . . ?

The current system provides top-rated collection services to city residents. The 50/50 split provides a system which is competitive in its very nature without displacing local small haulers. If it's not broken, why fix it?

The City of Minneapolis has this exciting opportunity to utilize the organized collection system originally intended. The City should continue the relationship between the City crews and the private organization of haulers (MRI) to continue to provide the residents with the highest standard of service at the most cost-effective price in the region. As partners, we look forward to continued discussion and opportunity to work with the City.

Thank you.

Sincerely,

Gregory (Red) Burt
Chairman, Minneapolis Refuse, Inc.

Attachment to MRI's February 23, 2007 Comment Letter

HISTORICAL BACKGROUND

The MRI and City "Partnership" for Collection of Solid Waste

Prior to the 1971 federal burning ban implemented by the City of Minneapolis, so-called "wet" garbage was collected by the City. Everything else was either burned by city residents or collected by private, independent haulers. Dozens of private haulers, including some of the haulers currently part of MRI, had provided garbage hauling services to the City's residents. Once burning was banned, it was clear there would be an enormous increase in collection demand. Many of the approximately 120,000 households that had previously burned their "dry" garbage were required to have collection services. There were mixed feelings among the private haulers at this time. The ban provided a significant business opportunity, both for existing haulers to expand their businesses and new haulers to enter the Minneapolis market. However, the ordinance enacted by the City Council at the same time as the burning ban authorized the City Engineer to organize and operate a combined public collection service, meaning the potential displacement of the existing private haulers.

Extensive negotiations took place between the City, on one hand, and individual private haulers and their association, the Minneapolis Suburban Refuse Removal Association, on the other. These talks ultimately resulted in the adoption of a visionary cooperative plan for a new, organized collection system. First, a new Minnesota corporation named Minneapolis Refuse, Inc. was formed, and all licensed residential haulers wishing to participate were invited to join as shareholders. In order to participate, each hauler was required to present its customer list to MRI. Forty-nine haulers, representing some 56,000 customers, did so. Cy Baker, the first general manager of MRI then retained a survey company to verify the customer lists and identify

the total number of stops. Once verified, each hauler, which contributed $1.00 per stop toward MRI administrative expenses, was issued one share of MRI stock for each stop, and was originally guaranteed that it would receive back from MRI the right to service a number of stops at least equal to the number of stops it had placed in the system.

The customers previously serviced by City crews, and those now held by MRI on behalf of its shareholders, were organized into systematic collection routes and were first reallocated between the City and MRI and then the MRI-assigned routes were allocated by MRI among the MRI shareholders.

Beginning in 1971, the City and MRI in fact entered five-year contracts for MRI to collect solid waste in the City. Under the original 1971 contract between the City and MRI, MRI received 70,021 residential units and the City approximately 50,000. The MRI share eventually increased to approximately 76,000 when it was discovered that the new system was working so well that the owners of apartment buildings in excess of four units requested to join the system.

By the mid 1970's, City equipment and employees had been increased to the point where the City wanted to collect from more of the total number of residential units. Charles A. Kutter, as the president of MRI, and Clayton Sorenson, the Director of Public Works, reached an agreement by which the MRI collection routes would be phased down over time to a point where MRI and the City each had responsibility for servicing fifty (50) percent of the total stops. That arrangement, a 50/50 split of all residential units, has generally remained in place until today. Currently, MRI and the City split the residential routes in half with MRI and the City each servicing approximately 53,000 residential units.

The sole consideration for participation by the private haulers in the newly organized collection system in 1971 was the assurance that they would receive, in return, the right to

perform collection services under the City contracts. MRI's haulers were given to believe that their future would be secure under this arrangement in that if the haulers provided acceptable levels of service at a reasonable fee they could expect to enjoy an ongoing relationship with the City through the MRI contracts. The haulers pooled their routes in consideration for routes contracted by MRI with the City. MRI and the City formed a unique partnership to provide for the collection of the City's solid waste.

City officials represented that it was the City's intent that this new relationship would in fact be long-term. As evidence, the City inserted into the first and succeeding five-year contracts a provision that "on the expiration of the five-year term of this contract it is the present intention of the parties to renew this contract for a second five-year term and this renewal shall not be arbitrarily refused by either of the parties so long as MRI shall have complied in all respects with the provisions of this contract." In reliance on the City's promise to continue the relationship with MRI, the haulers agreed to form MRI and enter five-year contracts with the expectation of the renewal of their relationship every five years.

In the early 1970's, there was a lot of discussion nationally about attempts by cities to "organize" garbage collection services and the matter was very controversial. During MRI's organizational discussions with the City in 1971, private haulers had been fully advised that if the City (a) attempted to put a purely public collection system in place or (b) sought to solicit proposals for one or more private organizations to provide the services that MRI had been providing, in either case displacing existing private haulers that had collection agreements with residential dwelling unit owners, they would have a legal claim against the City for "just compensation" under the United States and Minnesota Constitutions. Though MRI's agreement

with the City avoided the compensation matter for the time, it was premised upon a good-faith belief that MRI haulers' rights would be protected then and in the future.

For the past 35 years, MRI and its constituent members, currently 14 independent haulers, have provided garbage collection services to the residents and the City of Minneapolis.

The Current MRI and City Contract

On December 27, 2001, the City and MRI entered the current contract for MRI to provide for the combined collection and removal of all solid waste from residential premises (the "Contract"). The Contract is effective for five (5) years commencing January 1, 2002, and expiring on December 31, 2006. At the request of the Hennepin County District Court, the contract was extended to June 30, 2007.

MRI continues to perform its obligations under the Contract, and has a strong interest in a renewed contract with the City. At stake is the renewal of its contract, which if renewed for a five-year term, could be worth approximately $30 million.

The City's Policy and Process Has Been Biased To Select Another Hauler

The City's 2005 – 2010 Business Plan for Minneapolis Public Works includes the Business Plan for Solid Waste and Recycling Services. The Business Plan's Key Initiatives, includes "1. Ensure competitive process for all Solid Waste and Recycling Contracts." Moreover, on or about December 9, 2006, Council Member Ostrow sought and received a staff recommendation on the timeline needed for an RFP process. A December 9, 2006 Memorandum in response outlines a one-year process from the date of initial council action to the signing of a contract, and concludes, "This provides six months for a contractor other than MRI to purchase vehicles, hire employees, develop routes, train employees to the City system and be ready for a seamless beginning on January 1, 2007."

The City Refused to Re-Negotiate MRI's Contract, Proceeding with an RFP Without Following The Organized Collection Act

On February 10, 2006, instead of pursuing negotiations to renew the contact for solid-waste services with MRI, the City Council voted to have the Contract put up for a competitive request-for-proposals ("RFP") process. The City Council voted to have the RFP issued on or before April 17, 2006. The City Council also directed its Transportation and Public Works Committee ("TPW") to report back to the full City Council no later than March 31, 2006, with its recommendations regarding the RFP's requirements.

In contrast, immediately after that vote, the City Council voted to have a contract for solid-waste services for residential property with more than four (4) units, commercial properties, and the properties in the downtown core be subject to organized collection under the Organized Collection Act, Minnesota Statutes section 115A.94 (the "Act").

The City Continued Full Steam With Its RFP

On March 31, 2006, TPW reported back to the full City Council with its recommendations regarding the RFP's requirements. On April 21, 2006, the City issued its RFP. On May 25, 2006, MRI submitted its confidential proposal to the City in response to the RFP. At least two other haulers have also submitted proposals to the City in response to the RFP.

MRI's Would be Harmed by Displacement

The members of MRI have anywhere from one to eight employees that service their routes for MRI. Collectively, for 2006, the members received annualized gross revenues of about $6,415,000 from MRI under the contract with the City of Minneapolis. The members own anywhere from one to six collection trucks that service the routes for MRI.

Currently, the MRI members collectively serve a total of approximately 53,000 residential premises in the City for MRI. The members of MRI continue to perform their

obligations under the current arrangement with the City, and have strong interests in a renewed contract with the City. The members of MRI have built their business property and good will, and developed and maintained employment for their employees in reliance on the contracts with the City for the past 35 years.

The City of Minneapolis has required MRI's haulers to retrofit their collection trucks with a specific type of lift called a Zoeller lift, which required a capital investment of approximately $20,000 per truck. The trucks that have been retrofitted to meet the City's specifications are significantly less marketable to any other market in the United States.

3115575v1

Heidi

FEB 2 1 2007

Dear Mr. Kotke, Feb.19,2007

I am responding to your letter of Feb. 7, 2007. My Name is Charles Kutter, and I own Kutter's Rubbish Removal, Inc., As Kutter's Rubbish, I own stock in MRI. (Mpls. Refuse Inc.). I am one of the few left that were original stockholders of MRI in 1971. Most are second generations, and a few third generations. I really do not have any new suggestions to improve the service to the residents in Mpls.
I would really appreciate it if someone could let me know (or explain) why the city is looking for different systems of collecting garbage, compost, large items, and recyclables. I know MRI has done an excellent job of all four of the collections (above). I have been told that the city did its own survey and found that 93% of Mpls. Residents thought that garbage, etc was the best service that Mpls provided, one half city crews and one half MRI crews. That service alone should be enough to renegotiate the MRI contract with MRI.
Let me go one step further and explain, I was the president of MRI for the first 20 some years of its existence. I always told the stockholders that even if the city started shipping Mpls garbage, etc. to the moon, someone has to get it to the rocket ships. As long as we (MRI stockholders) did a good job for a fair price, why wouldn't we be the haulers collecting and hauling it to the rocket ships, or to put another way why should we have to worry about our jobs.
Now you might say how do we know your doing a good job. Simply compare MRI complaints to the city's. who is hauling the other half of Mpls. (MRI complaints have always been $1/10^{th}$ of 1 % of the national average.).
As for the fair price, again compare city's cost , to that of MRI.

Thank you for reading my comments, we have worked together for 35 years .I would hope it could continue .

Again THANKS,

Charles Kutter

Chuck Kutter
Route 231 MRI

P.S. If you or anyone would like to call me to discuss my letter or comments, feel free to call me anytime. Cell# 715-379-1001

1325 - S Dixieland Rd
Harlingen, TX 78552

EXHIBIT B

(Labor Union Letter)

MILLER•O'BRIEN
A Professional Limited Liability Partnership
ATTORNEYS
One Financial Plaza
120 South Sixth Street, Suite 2400
Minneapolis, MN 55402-1809
(612) 333-5831

Fax (612) 342-2613
E-mail: miller-obrien@miller-obrien.com
Web Address: www.miller-obrien.com

Nicole M. Blissenbach
Brendan D. Cummins
Justin D. Cummins
Kelly A. Jeanetta
Richard A. Miller
Margaret Luger-Nikolai
M. William O'Brien

Robert J. Alfton
of Counsel

Samuel I. Sigal
1905-1995

March 9, 2007

VIA FACSIMILE AND U.S. MAIL
(612) 673-3565

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

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.