

Enforcing City Contracts (Breaking Up Is Hard To Do?)

1. The Front End – Negotiating and Writing the Contract.

1.1. Goe

1.2.

1.3.

1.4. t the basics right and draft them clearly:

A. When the term starts and ends; who controls renewal and how.

B. What the tenant or concessionaire is obligated to pay and how that get's figured out.

C. What the tenant is responsible to do as maintenance and repair, etc.

D. What happens if the tenant or concessionaire defaults?

What must the City do?

Notice and cure period?

What remedies does the City have?

1.2. Identify the areas of possible ambiguity or disagreement, draft provisions to address them up front.

2. When the relationship sours.

2.1. Operating department (client) must monitor tenant, vendor, or concessionaire compliance. Neglect can undermine City's rights and remedies:

A. Course of conduct.

B. Waiver.

C. Estoppel.

2.2 Client must put important communications in writing (reminders of tenant's, vendor's, or concessionaire's responsibilities).

2.3 Law Department attorney's role:

A. Outline or tickler list.

B. Reminders.

C. Draft the notice and warning letters.

2.4 Default letters:

A. Track the agreement clearly; t sections – duties breached, cure period, consequence of failure to cure (City's remedies).

B. Identify the breach and cite to relevant provisions;

Duties breached and the source of the responsibility in the contract;

Applicable cure period; and

City's remedies if no cure.

C. Written as if the judge will read it.

2.5 Beyond legalities – getting City officials on board.

- A. For a minor issue, or little known tenant or concessionaire, often not an issue.
- B. Don't surprise or embarrass the Mayor or other City officials. Consider high profile deal; prominent tenant or concessionaire; and significant issue.

3. Enforcement against false claims, fraud. Negotiations. Options. Settlement – compliance agreements.

4. After it hits the fan – Litigation.

4.1 Pre-litigation discovery –

- A. Right to Know Act
- B. Pre-Complaint Discovery
- C. Litigation Holds
- D. E-Discovery

4.2 Mediation

- A. Required by Terms of most City contracts
- B. Preferred to dispute resolution even if not contractually required

4.3 Litigation Discovery

- A. Identifying a lead City official and preparing them for litigation (i.e. City designee)
- B. Written Discovery – Obtaining verification for all responses
- C. Getting documents and information from City officials
- D. Depositions

Protective Orders

4.4 Coordinating efforts between transactional attorneys and litigators

4.5 Arbitration/Trial/Trial by Jury?

Rules of evidence – parol evidence, prior communications, course of dealing, oral or written amendments to the contract

4.6 Special issues

- A. City attorneys as witnesses
- B. City officials as witnesses
- C. The departure from City employ of key officials
- D. The outrageous, irrational, unreasonable opponent
- E. Unusual claims for attorney's fees