

**SOLID WASTE MANAGEMENT – COMMERCIAL WASTE ZONES – NOVEMBER 2020**

**THE CITY OF NEW YORK DEPARTMENT OF SANITATION (the “Department”, or “DSNY”), REQUEST FOR PROPOSALS (“RFP”)**

**TITLE: Commercial Waste Zone Implementation**

To provide commercial waste hauling services for 20 established Commercial Waste Zones (CWZ) and containerized commercial waste citywide. Services include Refuse, Recycling and Organic Waste collection, transport and removal from commercial establishments within the City of New York.

**PROCUREMENT IDENTIFICATION NUMBER: 82720AD0038**

**E-PIN: 82721P0001**

## Table of Contents

Request for Proposals –Commercial Waste Zones Implementation .....	<b>Error! Bookmark not defined.</b>
Table of Contents .....	2
Introduction and Purpose of the RFP .....	3
Section I: Information Required for Part 1 of the RFP .....	7
Section II: Preliminary Information for Part 2 of the RFP .....	11
Section III: Summary of the Request for Proposals .....	13
Section IV: Scope of Services & Compliance with Procurement Requirements .....	15
Section V: Format and Content of the Part 2 of the RFP Proposal Package .....	19
Section VI: Proposal Evaluation and Contract Award Procedures .....	20
Section VII: General Information to Proposers .....	22

### Attachments

Attachment 1: Iran Divestment Act Compliance Rider for NYC Contractors

Attachment 2: Hiring and Employment Rider: HireNYC and Reporting Requirements

Attachment 3: NYC Fair Chance Act

Attachment 4: Doing Business Data Form

Appendix A: General Provisions Governing Contracts for Consultants, Professional, Technical, Human and Client Services

Appendix B: Local Law 199 of 2019

Appendix C: The Rules of the City of New York, Title 16: Department of Sanitation, Chapter 20: Commercial Waste Zones (Rules promulgated thus far)

## **Introduction and Purpose of the RFP**

Every year, more than 100,000 New York City office buildings, retailers, restaurants, manufacturers, and other commercial establishments generate more than 3,000,000 tons of waste. The Department of Sanitation (“DSNY” or “the Department”) collects waste from New York City residents, and a network of more than 90 private waste carters collect waste from commercial establishments.

These private haulers, or carters, operate in a disorganized, competitive market characterized by inefficiency. In some parts of New York City, more than 50 carters service a single neighborhood, and an individual commercial block may see dozens of private waste collection trucks on a given night.

Local Law 199 of 2019 (“LL 199”), enacted by the City Council and signed by the Mayor last year, sets out a framework for Commercial Waste Zones (“CWZ”) that will maximize routing efficiency in the commercial waste sector, among other environmental and safety initiatives. Further information, including the environmental review that DSNY conducted for the CWZ program can be found at [nyc.gov/commercialwaste](http://nyc.gov/commercialwaste). Under the framework, as further developed in Title 16 of the Rules of the City of New York, private commercial waste carters (i.e., Proposers) will compete for the right to service businesses within 20 geographically-based Zones with up to three (3) carters servicing each Zone, as well as one of up to five (5) containerized commercial waste (as defined in Section II.E, below) citywide contracts.

LL 199 represents a significant milestone in the process of reforming New York City’s commercial waste industry. Commercial Waste Zones will align the private carting industry with the City’s overall vision of growth, equity, sustainability, and resiliency.

Proposers that are awarded contracts for Zone(s) and/or for containerized commercial waste citywide services will be required to meet strict standards for safety and customer service, while offering a range of services and embracing innovative approaches to move New York City businesses toward a zero-waste future. After implementation of the commercial waste zones system, no private carter will be authorized to collect commercial waste from any commercial establishment in New York City, unless the carter has been selected as an Awardee pursuant to this RFP or is operating as a subcontractor for an Awardee as authorized by an agreement entered into pursuant to this RFP. Operation of an unauthorized commercial waste carting business will be enforceable with civil and criminal penalties, as set forth in LL 199.

The result of this solicitation process is projected to reduce truck traffic by more than 50 percent while improving customer service and safety standards, promoting fairness and transparency, and advancing efforts to reduce waste disposal and increase diversion from landfills through recycling and organics services.

For all 20 Zones and the up to five (5) containerized commercial waste citywide awards, the Department is using a competitive solicitation process to award Selected Proposers the ability to serve customers within designated collection Zones and/or containerized commercial waste citywide. This RFP will provide NYC businesses with a robust, efficient, and reliable commercial waste collection system. This will improve the quality of life for New Yorkers in neighborhoods across New York City by creating safer streets, cleaner air, and quieter nights.

## RFP NYC COMMERCIAL WASTE ZONES

DSNY is seeking appropriately experienced and qualified firms to perform a full range of commercial waste collection, transport and removal services, as described in Section IV.C, Proposed Services. The Department will select and enter into an agreement with each Awardee under this RFP permitting the Awardee to provide for the collection, transport and removal of commercial waste within the zone or zones for which the Awardee has been selected, and/or for the collection, transport and removal of containerized commercial waste from any commercial establishment within the City of New York as set forth in such agreement.

LL 199 requires the Department of Sanitation to release a Request for Proposals (“RFP”) for commercial waste collection, transport and removal services in the designated commercial waste zones by November 20, 2020. To meet this statutory deadline, DSNY is releasing this RFP, which will be in two parts. The COVID-19 pandemic is not yet over, and conditions in the New York City carting industry are still far from normal. However, economic conditions have been improving and the City has made slow-but-steady progress on reopening commercial businesses and restarting economic activity.

DSNY is issuing this two-part RFP with two different submission due dates, with the first due date being February 19, 2021 (Part 1 of the RFP). Part 2 of the RFP will be issued after submissions to Part 1 of the RFP have been received and reviewed. The due date for Part 2 of the RFP will be set as part of a future addendum issued pursuant to this RFP.

Part 1 of the RFP (contained herein) requests information about proposers’ qualifications to participate in the CWZ program, as well as additional information outlined in LL199. This is information that can be provided now without the need for hired technical assistance and would not be affected by COVID-related disruptions. Proposers will be required to respond to Part 1 of the RFP in order to be eligible to respond to Part 2 of the RFP.

Part 2 of the RFP will request a submission that complies fully with the requirements of LL 199 and the Rules of the City of New York. Part 2 of the RFP will include additional information added by addenda, including, but not limited to, templates for various plans required by LL 199 and a sample contract between the Awardee and DSNY.

As DSNY has stated previously, DSNY will issue proposed rules that detail minimum requirements for CWZ awardees and any designated carters that the awardees subcontract with to perform services under the Agreement. Reading these rules is not necessary for completion of Part 1 of the RFP, but will be necessary for completion of Part 2. This timeframe will ensure that proposers will have all necessary information to develop an informed proposal. We expect that some proposed rules may be published as early as December 2020 or January 2021.

### **Definitions and Acronyms**

Agreement. The term “Agreement” shall mean an agreement between DSNY and the Awardee, made pursuant to this RFP. It shall have the same meaning as “Contract,” as defined below.

## RFP NYC COMMERCIAL WASTE ZONES

*Awardee.* The term “Awardee” means an entity with whom the Department enters into an Agreement for the provision of commercial waste collection services pursuant to section 16-1002 of the Administrative Code of the City of New York.

*Commercial waste.* The term “commercial waste” means all trade waste, as defined in subdivision f of section 16-501 of the Administrative Code of the City of New York, except for construction and demolition debris; fill material; medical waste; electronic waste; textiles; yard waste collected by landscapers; waste collected by a one-time, on-call bulk waste removal service; grease; paper that is collected for the purpose of shredding or destruction; or waste that is collected by a micro-hauler. References to “commercial waste” in this title shall be construed to also refer to “containerized commercial waste” unless otherwise specified.

*Commercial waste zone.* The term “commercial waste zone” or “zone” means a geographic area designated by the Commissioner pursuant to section 16-1001 of the Administrative Code of the City of New York.

*Commissioner.* The term “Commissioner” means the Commissioner of Sanitation.

*Containerized commercial waste.* The term “containerized commercial waste” means commercial waste that: (i) is stored on the premises of the commercial establishment that generates such waste in a container that has a capacity of 10 cubic yards or more, and which may or may not be equipped with compaction ability and (ii) is transported directly in such container when such container is at or near capacity from such commercial establishment to a transfer, processing or disposal location.

*Contract.* The term “Contract” shall mean a contract between DSNY and the Awardee, made pursuant to this RFP. It shall have the same meaning as “Agreement,” as defined above.

*Department.* The term “Department” means the Department of Sanitation.

*Designated carter.* The term “designated carter” or “carter” means a licensee that is authorized to provide commercial waste collection services pursuant to an agreement between an Awardee and the Department entered into pursuant to section 16-1002 of the Administrative Code of the City of New York. The term “designated carter” may describe the Awardee or another licensee that the Awardee has designated to fulfill the terms of such agreement as specified therein, and provided further that notwithstanding any other provision of this section, the term “designated carter” may also include a person that the Awardee has designated to fulfill the terms of such agreement as specified therein who is operating in accordance with the provisions of title 16-A of the Administrative Code of the City of New York and the rules promulgated pursuant to such title and who is authorized by the Business Integrity Commission to collect certain categories of commercial waste without a license.

*Licensee.* The term “licensee” means any person licensed to collect trade waste pursuant to title 16-A.

*Plan Templates.* The term “Plan Templates” shall mean templates, to be distributed by DSNY as part of a future addendum to this RFP, for Proposers to complete and submit as part of their responses to Part 2 of the RFP. These plans are required by LL 199. The plans include, but are not limited to: Capacity and Operations Plan; Customer Service Plan; Waste Reduction Plan; Waste Management Plan; Air Pollution and Greenhouse Gas Emissions Reduction Plan; Health and Safety Plan; Transition Plan; and Subcontracting Plan.

## RFP NYC COMMERCIAL WASTE ZONES

Proposal. The term “Proposal” shall mean all records and documents submitted to the Department by a Proposer in response to this Request for Proposals for consideration to provide commercial waste collection services for select Commercial Waste Zones (“Zones”).

Proposer. The term “Proposer” shall mean the primary entity (or entities of a joint venture or prime contractor in a prime contractor/subcontractor relationship) that submits a proposal to the Department for the provision of commercial waste collection services as described in this Request for Proposals.

Selected Proposer. The term “Selected Proposer” shall have the same meaning as “Awardee,” as defined above.

Subcontractor. The term “Subcontractor” shall mean a secondary entity in a prime contractor/subcontractor relationship that has contracted to provide a Proposer with a specific subset of commercial waste collection services.

Trade waste. The term “trade waste” has the same meaning as such term is defined in subdivision f of section 16-501 of the Administrative Code of the City of New York.

### Acronyms

All acronyms used in this document are defined below:

ACCO	Agency Chief Contracting Officer	LL	Local Law
ACP	Agency Contact Person	MTS	Marine Transfer Station
BIC	Business Integrity Commission	NYC	New York City
CDL	Commercial Driver License	PPB	Procurement Policy Board
CWZ	Commercial Waste Zone	PSLL	Paid Safe and Sick Leave Law
DSNY	Department of Sanitation	RCNY	Rules of the City of New York
FGEIS	Final Generic Environmental Impact Statement	RFP	Request for Proposal
GPS	Global Positioning System	PCP	Proposed Contract Plans
H&S	Health & Safety	PDF	Portable Document Format

## **Part 1 of the RFP**

### **Section I: Information Required for Part 1 of the RFP**

#### **I.A Initial Submission to DSNY**

Instead of submitting one response to this RFP, all Proposers must submit a full Part 1 response to DSNY by the RFP Part I Due Date detailed in Section I.B. Pages 7 to 9 of this document constitute the submission requirements of Part 1 of the RFP. A RESPONSE TO PART 1 IS DUE ON FEBRUARY 19, 2021 AT 11:00 A.M. FAILURE TO RESPOND TO PART 1 OF THE RFP BY FEBRUARY 19, 2021 AT 11:00 A.M. WILL MAKE YOU INELIGIBLE TO CONTINUE WITH THE RFP PROCESS AND INELIGIBLE FOR AN AWARD OF A CONTRACT PURSUANT TO THIS RFP. DSNY WILL NOT ACCEPT ANY RESPONSES TO PART 2 OF THE RFP FROM PROPOSERS WHO HAVE NOT RESPONDED TO THIS PART 1 BY FEBRUARY 19, 2021 AT 11:00 A.M.

Please note that all of the below information is required to be updated, if applicable, when submitting a Part 2 of the RFP response. DSNY reserves the right to request additional information regarding compliance with licensing requirements, key staff, financial & business information, and compliance history in Part 2 of the RFP. Each Proposer must provide the following in response to Part 1 of the RFP:

#### **I.A.1 Compliance with Licensing Requirements**

Each Proposer must submit one of the following:

1. a copy of the Proposer's active Trade Waste Removal License issued by the Business Integrity Commission ("BIC"); or
2. a signed, notarized letter from a principal of the Proposer certifying that it currently has a pending Trade Waste Removal license application with BIC.

#### **I.A.2 Key Staff Information**

Each Proposer must list key staff who will be working on this Contract, including the three officers that exert the most control over the company, directors, and owners (those who own at least 10%) of the firm. For each person listed, include their title and proposed role in executing the scope of services of this RFP. In addition, for each person listed, provide a detailed description of their technical expertise and relevant experience, managerial background, and the managerial authority they possess. All Part 1

## RFP NYC COMMERCIAL WASTE ZONES

Proposers must disclose with their Part 1 submissions the name of any officer, director, or owner of the Proposer (as defined above) who is also an employee of the City.

### **I.A.3 Financial and Business Information**

Proposers must provide current financial records and business information in their response to Part 1 of the RFP, subject to later updating in Part 2 of the RFP, as applicable.

The Proposer must submit the following:

- a) A copy of Proposer's most recent certified audit of its financial statements that have been completed in accordance with Generally Accepted Accounting Principles.
- b) The last three (3) annual financial statements for the Proposer, including schedules of assets and liabilities; net income; and cash flow.
- c) A narrative describing how the Proposer's financial circumstances have changed as a result of the COVID-19 pandemic.

### **I.A.4 Compliance History**

Pursuant to LL 199, Proposers must submit their compliance history detailing their compliance with existing federal, state, and local laws, including, but not limited to, laws relating to waste collection, removal and disposal, environmental protection, antitrust, consumer protection, health and safety, labor and employment, and anti-discrimination protections.

For Part 1 of the RFP, provide and append the following documentation:

- a) Violations and summonses, including driving infractions, that drivers hired by the Proposer have received while engaging in waste carting activities for the Proposer during the past three (3) years.
- b) Provide records of any collisions, injuries, or fatalities involving employees of the Proposer while actively performing work as part of their duties as an employee of the Proposer within the past three (3) years.
- c) Provide records of the current wage schedule and applicable benefits for Proposer's employees or titles that currently work in the New York City metropolitan area, as well as for any of Proposer's employees or titles either inside or outside of the New York City metropolitan area who Proposer anticipates performing work on the CWZ program.

### **I.B Part 1 of the RFP Due Dates and Time and Location**

Part 1 of the RFP Due Date:

**Date: Friday, February 19, 2021**

**Time: 11:00 a.m.**

Responses to Part 1 of the RFP may be submitted electronically or in hard copy. If submitting in hard copy, they must be submitted to:

## RFP NYC COMMERCIAL WASTE ZONES

Kirk Eng  
Agency Chief Contracting Officer  
44 Beaver St. – 2<sup>nd</sup> Floor  
New York, NY 10004

If submitting electronically, they must be submitted to [CWZRFP@dsny.nyc.gov](mailto:CWZRFP@dsny.nyc.gov).

Telegraphic, Mailgram, or faxed responses to Part 1 of the RFP will not be accepted by the Department.

Responses to Part 1 of the RFP delivered by hand or received electronically after the Part 1 of the RFP Due Date and Time are late and shall not be accepted by the Department, except as provided under the New York City Procurement Policy Board (PPB) Rules.

### **I.C Part 1 of the RFP Informational Conference**

An Informational Conference for proposers will be held prior to the Part 1 of the RFP Due Date. The Informational Conference will be held virtually. Proposers are encouraged to attend this Informational Conference. This virtual conference can be accessed at:

**Conference Date: Thursday, January 7, 2021 at 11:00 a.m.**

Meeting link: <https://dsnynyc.webex.com/dsnynyc/j.php?MTID=mbec93e2ac038b958408f20b5fb885660>

Meeting number: 132 726 3465

Password: 12345

Join by video system Dial [1327263465@dsnynyc.webex.com](https://dsnynyc.webex.com) You can also dial 173.243.2.68 and enter your meeting number.

Join by phone +1-415-655-0001 US Toll

Access code: 132 726 3465

Password: 12345

Proposers are requested to inform the ACP, no later than 48 hours before the scheduled date, of the number of persons attending the Informational Conference. Proposers are encouraged to submit written questions in advance of the Informational Conference. Nothing stated at the Informational Conference shall change the RFP unless a change is made by a written addendum to the RFP.

Attendance by Proposers to the Informational Conference is optional, but highly encouraged.

### **I.D Authorized Agency Contact Person**

The authorized Agency Contact Person (ACP) for all matters concerning both Part 1 and Part 2 of this Request for Proposals is:

Justin Bland  
125 Worth St. – 7<sup>th</sup> Floor  
New York, NY 10013  
Tel.: (646) 885-5009

## RFP NYC COMMERCIAL WASTE ZONES

All questions and requests for additional information concerning this RFP must be directed to Justin Bland, the ACP at:

Email: [CWZRFP@dsny.nyc.gov](mailto:CWZRFP@dsny.nyc.gov)

### **I.E Joint Venture Information for Part 1 of the RFP**

A proposal in response to Part 2 of the RFP from a joint venture will be considered by DSNY if:

- a) The joint venture is formed prior to the Part 1 of the RFP due date and the joint venture submits a complete response to Part 1 of the RFP; or
- b) Two or more entities separately submit complete responses to Part 1 of the RFP; those two or more entities form a joint venture prior to the Part 2 of the RFP due date; and the newly formed joint venture submits a single proposal in response to Part 2 of the RFP.

## **Section II: Preliminary Information for Part 2 of the RFP**

### **II.A Background for Part 2 of the RFP**

DSNY is issuing this two-part RFP with two different submission due dates, with the Part 2 Due Date to be determined by a future addendum to this RFP. The carting industry and its customers (office buildings, restaurants, Broadway theatres, catering companies, and sports arenas, among others) have been greatly impacted by the COVID-19 pandemic. Business is still down significantly from where it was prior to the pandemic. DSNY will be issuing addenda to this RFP in the future that will enable Proposers to respond to Part 2 of the RFP. Only a response to Part 1 of the RFP is required at this time.

All Proposers *must* have submitted a complete response to Part 1 of the RFP in order to be eligible to submit a Part 2 of the RFP Proposal. DSNY will be distributing additional information regarding Part 2 of the RFP in future addenda to this RFP; this information will include, but not be limited to, the Part 2 of the RFP Due Date, templates for the plans required by LL 199 that Proposers must complete and submit as part of their response to Part 2 of the RFP, and a sample contract between DSNY and the Awardees. Proposers cannot submit a response to Part 2 of the RFP at this time. We will be providing additional information before Proposers are required or able to respond to Part 2 of the RFP.

### **II.B Part 2 of the RFP Pre-Proposal Conference**

Two Pre-Proposal Conferences will be held prior to the Part 2 of the RFP Due Date. Proposers *must* attend at least one of these Pre-Proposal Conferences.

**The Pre-Proposal Conference dates and locations for Part 2 Proposal submissions will be provided as part of a future addendum to this RFP.**

### **II.C Part 2 of the RFP Proposal Due Date and Time and Location**

**The Part 2 of the RFP Proposal Due Date and Time and Location will be provided as part of a future addendum to this RFP**

### **II.D Anticipated Contract Start Date: To be Provided by Addendum**

After submissions have been reviewed and evaluated, the Department will issue a Notice of Award to each Awardee that has been selected for each Commercial Waste Zone and each Awardee selected for containerized commercial waste services citywide. DSNY, with the Awardee, will then finalize and sign a contract covering all services for which the Awardee has been selected to perform. DSNY will then submit the contract for registration.

As required by LL 199, the implementation of Commercial Waste Zone services under these contracts will be phased in by zone, beginning with a Transition Period for each zone during which customers will switch from their current carters to one of the Awardees selected for the zone. DSNY will promulgate

## RFP NYC COMMERCIAL WASTE ZONES

rules determining the start and end dates for each zone's Transition Period. Commencement of services in each zone will occur in accordance with this schedule

The Department anticipates awarding to all Selected Proposers for the Commercial Waste Zones at approximately the same time, but will phase the Transition Period by geography or other logical phasing to ensure a smooth transition citywide. Transition Period start and end dates will differ by zone. More information about the Transition Period will be provided in forthcoming DSNY rules and in Part 2 of the RFP.

## **Section III: Summary of the Request for Proposals**

### **III.A Organization of this RFP and Submission of One Proposal**

Prior to submitting a response to Part 2 of the RFP, all Proposers must submit a Part 1 response to DSNY by the Part 1 of the RFP Due Date detailed in Section I.B, above. Proposers who do not comply with this requirement will not be considered for a contract award pursuant to this RFP. Proposers should not submit proposals in response to Part 2 of this RFP until DSNY has issued addenda in which Plan Templates, the Sample Agreement, and other required information is distributed to Proposers.

This RFP is being issued for all Commercial Waste Zones (20 total zones, up to 3 Awardees per Zone) and containerized commercial waste citywide service awards (up to 5 contracts). There will not be RFPs issued for each individual Zone or separately for containerized commercial waste services citywide.

### **III.B Anticipated Contract Term**

As per section 16-1002(a) of Local Law 199 of 2019 (Appendix B), the initial term of the contract awarded pursuant to Part 2 of this RFP will include authorization for the Selected Proposer to operate for **ten (10) years in each Zone** for which the Selected Proposer has been selected. This allows for an initial term of longer than 10 years if the Agreement covers multiple Zones that are phased in at different times during the Transition Period. Awards will only be made after Proposers' Part 2 submissions are received by DSNY. The Department reserves the right to renew the zone's term of contract for up to two (2) periods of up to five (5) years each, at the sole discretion of the Department. Therefore, overall contract length may be longer than 10 years if the Selected Proposer wins multiple zones that are phased in at different times and certain zones have been renewed.

All Awardees will need to maintain an active Trade Waste Removal License issued by BIC, which must be renewed every two (2) years or be subject to termination of the contract prior to the term end date.

The Transition Period phasing and dates will be determined by Rule after this RFP is released. This rule will also address where and when the zone-specific Selected Proposer has a right to operate.

### **III.C Minimum Requirements for Submitting a Proposal for Part 2 of the RFP**

The following are the minimum requirements for a Proposer to satisfy under Part 2 of this RFP. Proposals that do not satisfy the minimum qualification requirements to submit a Part 2 of the RFP Proposal set forth below will be determined to be non-responsive and will be rejected.

- The Proposer must have an active Trade Waste Removal License provided by BIC or have applied for a License by the time the Part 1 of the RFP Proposal is submitted.
- The Proposer must have submitted its complete Part 1 response, pursuant to Section I of this RFP, by the Part 1 of the RFP Due Date specified in Section I.B, above.

Proposers who do not comply with this requirement will not be considered for a contract award pursuant to this RFP.

### **III.D Insurance Requirements for Part 2 of the RFP**

The minimum insurance requirements for an Awardee in accordance with Part 2 of this RFP will be provided as part of a future addendum to this RFP. Part 2 Proposals that do not comply with the minimum insurance requirements within 30 days of notice of award or the Department's written request will be determined to be non-responsive and will be rejected.

All policies, endorsements, certificates and/or binders shall be subject to approval by the DSNY Agency Chief Contracting Officer (ACCO) as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the DSNY ACCO. The Selected Proposer agrees to provide the Department with a copy of said policies, certificates, and/or endorsements. Additional information regarding insurance requirements for Part 2 of the RFP will be provided as part of a future addendum to this RFP.

### **III.E Performance Bond Requirements for Part 2 of the RFP**

As security for performance under the terms of this RFP and subsequent Agreement between DSNY and Awardees, Awardees will be required to furnish, upon execution of the Agreement with the Department, a performance bond, in an amount to be specified in a future addendum to this RFP. The performance bond must be in one of the following forms: a cashier's check made payable to the Department, a certified check made payable to the Department, or a Proposer's bond executed as principal by the Proposer and as surety, by a corporate surety insurer authorized to engage in such business in New York, with the Department as beneficiary. The terms of the performance bond must be renewed annually for the duration of the contract.

## **Section IV: Scope of Services & Compliance with Procurement Requirements**

### **IV.A Department Goals and Objectives for this RFP**

The Department will be seeking appropriately experienced and qualified firms to perform a full range of commercial waste collection, transport and removal services, as described in Section IV.C Proposed Services.

Each Proposer will be required to specify which zone or zones they want to be considered for and/or whether they want to be considered for collection of containerized commercial waste services citywide.

The Department will select and enter into an agreement with each Awardee permitting the Awardee to provide for the collection, transport and removal of commercial waste within the zone or zones for which the Awardee has been selected, and/or for the collection, transport and removal of containerized commercial waste from any commercial establishment within the city of New York as set forth in such agreement.

This solicitation will result in up to 65 awards. There will be a maximum of three (3) awards for each of 20 geographic Zones, as well as up to five (5) awards for containerized commercial waste collection services citywide. The Department reserves the right to award fewer than the maximum number of available awards if there are fewer than three (3) qualified Proposers for each designated Zone and fewer than five (5) qualified Proposers for containerized commercial waste collection services citywide. A single Awardee may be selected for multiple zones, and an Awardee may be selected for zone service and containerized commercial waste collection services citywide. However, the maximum number of awards a single Awardee may be granted is 15 commercial waste zone awards plus one award for collection of containerized commercial waste services citywide.

The following are primary objectives of the Commercial Waste Zones Program.

- **Zero Waste Goal:** Reduce commercial waste disposal and increase recycling and organic waste collection.
- **Environmental Benefits:** Reduce environmental impacts (reductions in air pollutants such as greenhouse gases and particulate matter, less nighttime noise, less roadway wear and tear, and improved quality of life in neighborhoods) through a reduction in truck traffic, cleaner vehicles, and infrastructure investment to promote environmentally responsible behavior throughout the industry.
- **Pricing Structure:** Provide transparent pricing to customers with financial incentives for waste reduction and diversion.
- **Customer Service:** Strengthen customer service standards such as guaranteed service, service accountability, recycling services, periodic waste assessments, language access, etc.
- **Health and Safety:** Improve industry safety standards and make streets safer for the public.
- **Disposal:** Ensure disposal of waste is sustainable, reliable, and equitable.

## RFP NYC COMMERCIAL WASTE ZONES

- Infrastructure: Ensure truck upgrade compliance and encourage further modernization of fleet and facilities.

### **IV.B Plan Submissions**

DSNY will be promulgating Rules that will set minimum submission requirements for each of the below plans. Plan Templates for each of these plans will be distributed by DSNY as part of a future addendum to this RFP. Proposers will be required to complete and submit these Plan Templates as part of their responses to Part 2 of the RFP. These plan submissions are required by LL 199. The plans include, but are not limited to:

- Capacity and Operations Plan
- Customer Service Plan
- Waste Reduction Plan
- Waste Management Plan
- Air Pollution and Greenhouse Gas Emissions Reduction Plan
- Health and Safety Plan
- Transition Plan
- Subcontracting Plan

### **IV.C Proposed Services**

For the duration of the contract term, the Selected Proposer will provide continuous refuse, recycling and organics service to commercial waste customers in their awarded Zone(s) and uphold their contractual obligations with the City, including operational requirements and any reporting requirements related to the service of commercial waste customers, which will be detailed in forthcoming rules to be promulgated by DSNY.

Estimated quantities of customers, customer pickup frequencies, customer business types, and amount of waste generated in each Zone will be provided in the Customer Pricing Schedules Form, which will be provided as part of a future addendum to this RFP. These estimates will be provided to Proposers, for informational purposes only, to assist Proposers in developing Part 2 Proposals, including the selection of Zones for which to submit Proposals, development of proposed pricing, and understanding the number and types of establishments in a given Zone.

### **IV.D Payment for Services**

Selected Proposers will receive no compensation or other payments from the City relating to the Proposer's operations.

Each Proposer will be responsible for negotiating fee arrangements with customers requesting service, subject in all respects to the Customer Pricing Schedule, pricing requirements in the Selected Proposer's Agreement with the Department and forthcoming DSNY rules. Proposers will be required to submit a proposed Customer Pricing Schedule as part of their Part 2 of the RFP Proposal.

#### **IV.E Compliance with Local Law 34 of 2007**

Pursuant to Local Law 34 of 2007, amending the City's Campaign Finance Law, the City established a computerized database containing the names of any "person" that has "business dealings with the City" as such terms are defined in the Local Law. For the purposes of the database, each Proposer will be required to complete the attached Doing Business Data Form (Attachment 4) and return it with its Part 2 Proposal, and must do so in a separate section of the delivered binder. (If the Proposer is a proposed joint venture, the entities that comprise the proposed joint venture must each complete a Data Form.) If the City determines that a Proposer has failed to submit a Data Form or has submitted a Data Form that is not complete, the Proposer will be notified by the Department and will be given four (4) calendar days from receipt of notification to cure the specified deficiencies and return a complete Data Form to the Department. Failure to do so will result in a determination that the Proposal is non-responsive. Receipt of notification is defined as the day the notice is e-mailed or faxed (if the Proposer has provided an e-mail address or fax number), or no later than five (5) days from the date of mailing or upon delivery, if delivered.

#### **IV.F Whistleblower Protection**

Local Law No. 199 of 2019, codified at section 16-1009 of the New York City Administrative Code, pertains to the Whistleblower Protections and applies to all activity herein.

#### **IV.G Compliance with the Iran Divestment Act**

Pursuant to State Finance Law Section 165-a and General Municipal Law Section 103-g, the City is prohibited from entering into contracts with persons engaged in investment activities in the energy sector of Iran. Each Proposer will be required to complete the attached Bidder's Certification of Compliance with the Iran Divestment Act (Attachment 1) as part of its Part 2 Proposal, certifying that it is not on a list of entities engaged in investment activities in Iran created by the Commissioner of the NYS Office of General Services. If a Proposer appears on that list, the Department will be able to award a contract to such Proposer only in situations where the Proposer is taking steps to cease its investments in Iran or where the Proposer is a necessary sole source. Please refer to Attachment 1 for information on the Iran Divestment Act required for this solicitation and instructions on how to complete the required form and to <https://ogs.ny.gov/iran-divestment-act-2012> for additional information concerning the list of entities.

#### **IV.H Subcontractor Compliance**

The selected Proposers will be required to utilize the City's web-based system to identify all subcontractors in order to obtain subcontractor approval pursuant to Procurement Policy Board (PPB) Rule section 4-13, and will also be required to enter all subcontractor payment information and other related information in such system during the contract term. Please read Section 3.02 of Appendix A.

The City's web based subcontractor reporting system is located online at the Payee Information Portal at: <https://a127-pip.nyc.gov/webapp/PRDPCW/SelfService>.

## RFP NYC COMMERCIAL WASTE ZONES

Note: A Proposer may only have up to two (2) subcontractors who perform commercial waste collection services per Zone. All subcontractors must be licensed by BIC or otherwise authorized to collect trade waste by BIC. All subcontractors shall be identified in the Part 2 Proposal. See Section IV for more details.

### **IV.I HireNYC and Reporting Requirements**

The Hiring and Employment Rider describes the HireNYC process and obligations, including reporting requirements throughout the life of the contract. The HireNYC process requires contractors to enroll with the HireNYC system within thirty days after the registration of the contract subject to this solicitation, to provide information regarding all entry to mid-level job opportunities arising from this Agreement and located in New York City, and to agree to interview qualified candidates from HireNYC for those opportunities. The Rider also includes reporting requirements unrelated to HireNYC. (See Attachment 2)

### **IV.J Paid Safe and Sick Leave Law**

The Earned Sick Time Act, also known as the Paid Safe and Sick Leave Law (PSLL), requires covered employees who annually perform more than 80 hours of work in New York City to be provided with paid sick time. Contractors of the City of New York [or of other governmental entities] may be required to provide sick time pursuant to the PSLL. Section 4.06 of Appendix A incorporates the PSLL as a material term of any Agreement awarded pursuant to this RFP.

## **Section V: Format and Content of the Part 2 of the RFP Proposal Package**

Proposers will be required to provide all Part 2 of the RFP Proposal Package contents in the format described in this section, subject to further updates. DSNY reserves the right to request additional information regarding compliance with licensing requirements, key staff, financial & business information, and compliance history in Part 2 of the RFP. Part 2 of the RFP Proposal Package will be comprised largely of a response to all attachments described in Section IV.B, formatted according Section V.A. This does not include Proposers' Part 1 of the RFP submission. Proposers should not submit proposals in response to Part 2 of this RFP until DSNY has issued addenda in which Plan Templates, the Sample Agreement, and other required information is distributed to Proposers.

### **V.A Proposal Package Format (“Checklist”)**

A “checklist” to assure completeness prior to submitting the Part 2 of the RFP Proposal Package to the Department will be provided as part of a future addendum to this RFP. Proposers should not submit proposals in response to Part 2 of this RFP until DSNY has issued addenda in which Plan Templates, the Sample Agreement, and other required information is distributed to Proposers.

### **V.B Part 2 of the RFP Proposal Package Content**

The Proposal Package of Part 2 of the RFP will be generally comprised of four submission sections: the Program Proposal, the Capacity & Operations Proposal, the Technical Proposal, and the Pricing Proposal. A detailed Proposal Package content list will be provided as part of a future addendum to this RFP. Proposers should not submit proposals in response to Part 2 of this RFP until DSNY has issued addenda in which Plan Templates, the Sample Agreement, and other required information is distributed to Proposers.

## Section VI: Proposal Evaluation and Contract Award Procedures

### VI.A Evaluation Procedures

For all Proposers of Part 2 of the RFP who submitted a timely and complete Part 1 of the RFP submission by the Part 1 of the RFP Due Date, the Department will evaluate each Proposal submitted. DSNY will take into account the information provided in each Proposal, Proposer's references, and any other information about the Proposer's performance available to the Department such as, but not limited to, any records available to BIC.

All the required forms, attachments, and plans must be fully completed at the time of submission of the Part 2 proposal. Upon review, the Department, at its discretion, may notify a Proposer that additional information or clarification is necessary.

Proposals will be comprehensively evaluated, rated, and ranked by an Evaluation Committee based on the Evaluation Criteria prescribed in Section VI.B Evaluation Criteria of this RFP.

The Agreements between the Department and each Selected Proposer that result from this RFP must be registered with the New York City Comptroller, which may delay the eventual start date of each Agreement.

### VI.B Evaluation Criteria

All timely Proposers of Part 2 of the RFP who submitted a timely and complete Part 1 of the RFP submission by the Part 1 of the RFP Due Date will have their Proposals evaluated according to the requirements set forth in LL 199 and the Evaluation Criteria described below. These criteria are subject to further updates once Part 2 is released.

#### 1. **Capacity and Operations (30%)**

- *Experience:* A Proposer's performance with existing routes and customers will be evaluated, along with the number of customers served, locations of customers, specific experience in NYC and specific geographies and zones (where applicable), and similar experience and performance of services outside of NYC. Experience in collecting and marketing recyclables and organics will also be considered. Experience of subcontractors will be evaluated as part of this criterion.
- *Capacity & Financial and Business Information:* A Proposer's financial strength will be evaluated, including net worth, profitability, debt to equity ratio, and liquidity; its organizational structure and size, including its workforce size; and existing fleet and facilities/physical assets will be evaluated in comparison to its ability to provide services in the Zone(s) it has proposed upon. In addition, Proposals will be evaluated based on the specific experience of the Proposer's team members (individuals and subcontractors) to perform the range of services required to service each Zone or to provide containerized commercial waste services. The Department will determine the number of Zones a selected Proposer can handle and how

## RFP NYC COMMERCIAL WASTE ZONES

well the Proposer self-assessed its capabilities, inclusive of the Department's determination of scale-up capabilities based on submitted information.

- *Compliance History:* A Proposer will be evaluated for history of compliance with federal, state and local laws, as specified in LL 199, including but not limited to, safety and labor regulations and consideration of historical records of CDL violations, workers' compensation cases, and any history of injuries and fatalities in the last three (3) years.

### **2. Technical Proposal (35%)**

- *Proposed Contract Plans:* For all required plans, Proposers will be evaluated based on the quality, completeness, and approach outlined in each plan. Such evaluation will determine the Proposer's understanding of the required services and its commitment to meet the specifics of its proposed plans, though the Department reserves the right to negotiate specific aspects of the Plans prior to entering into the Agreement with the Selected Proposer.

### **3. Price Proposal (35%)**

- *Price Proposal:* A Proposer's proposed price will be evaluated for the reasonableness of prices proposed and in comparison with other Proposals received for a given Zone(s) or for containerized commercial waste citywide contracts. Any special fees and charges will also be comparatively evaluated. As part of the price evaluations, the Department will consider the varying charges for maximum monthly fixed charges, variable rate charges, monthly container rental rates, service rates per pull, and extra services.

In conjunction with the evaluation process, the Department will be determining the number of contracts to award to the qualified and responsive Proposers so that sufficient coverage is provided to all Zones. This may require the need to request updated information on organizational capabilities and pricing, and other pertinent information. Updated information will be evaluated using the same evaluation criteria included in this section. Note that while price is a strong consideration as part of the evaluation of Proposals, it is not the only factor.

### **V.I.C Basis for Agreement Award**

Agreements will be awarded to the responsible Proposers whose proposals are determined to be the most advantageous to the City, taking into consideration the price and such other factors or criteria as set forth in this RFP. Agreement award shall be subject to the timely completion of Agreement negotiations between the Department and the Selected Proposer.

### **V.I.D Post-Award Documentation**

Several documents will be required of the Proposers once the Zones have been awarded. These documents include a Certificate or other evidence of Insurance, Proof of Performance Bond, and an Emergency Action Plan to be developed in partnership with the City.

## **Section VII: General Information to Proposers**

### **VII.A Complaints**

The New York City Comptroller is charged with the audit of contracts in New York City. Any Proposer who believes that there has been unfairness, favoritism or impropriety in the Proposal process should inform the Comptroller, Office of Contract Administration, 1 Centre Street, Room 1005, New York, NY 10007; [contract@comptroller.nyc.gov](mailto:contract@comptroller.nyc.gov), or at (212) 669-2323. In addition, the New York City Department of Investigation should be informed of such complaints at its Investigations Division, 80 Maiden Lane, New York, NY 10038; the telephone number is (212) 825-5959.

### **VII.B Applicable Laws**

This Request for Proposals and the resulting contract award(s), if any, unless otherwise stated, are subject to all applicable local, state, and federal laws. A copy of the PPB Rules may be obtained by contacting the PPB at (212) 788-0010 or at: <http://www.nyc.gov/html/mocs/ppb/html/home/home.shtml>.

### **VII.C General Contract Provisions**

Contracts shall be subject to New York City's general contract provisions, in substantially the form that they appear in "Appendix A—General Provisions Governing Contracts for Consultants, Professional and Technical Services" or, if the Department utilizes other than the formal Appendix A, in substantially the form that they appear in the Department's general contract provisions. A copy of the applicable document is available through the Authorized Agency Contact Person.

### **VII.D Accuracy of RFP and Related Documents**

The Agency assumes no responsibility for the completeness, or the accuracy of specific technical and background information presented in the RFP, or otherwise distributed or made available during the procurement process. In addition, the Agency will not be bound by or be responsible for any explanation or interpretation of the proposed documents other than those given in writing by the Agency through the issuance of addenda. In no event may a Proposer rely on any oral statement by the Agency, or its agents, advisors or consultants.

### **VII.E Personal Investigations**

Proposers to this RFP shall satisfy themselves through personal investigation and by such other means as may be deemed necessary concerning the conditions which may affect delivery of the proposed contract services, finalization of the Final Contract and subsequent delivery of the contracted services, as well as their costs. No information derived from any part of this RFP or from the District shall relieve the Proposer from any risk or from fulfilling the provisions of the Agreement.

### **VII.F Conflict of Interest**

All Proposers must disclose with their Proposals the name of any officer, director or agent who is also an employee of the City. Further, all firms must disclose the name of any City employee who owns, directly or indirectly, an interest of ten (10%) percent or more in the firm or any of its subsidiaries or affiliates.

### **VII.G Contract Award**

Contract award is subject to each of the following applicable conditions and any others that may apply: New York City MacBride Principles Law; submission by the Proposer of the requisite New York City Department of Business Services/Division of Labor Services Employment Report and certification by that office; submission by the Proposer of the requisite PASSPort Questionnaires/Affidavits of No Change and review of the information contained therein by the New York City Department of Investigation; all other required oversight approvals; and applicable provisions of federal, state and local laws and executive orders requiring affirmative action and equal employment opportunity.

### **VII.H Proposer Appeal Rights**

Pursuant to New York City's Procurement Policy Board Rules, Proposers have the right to appeal Department non-responsiveness determinations and Department non-responsibility determinations and to protest a Department's determination regarding the solicitation or award of a contract.

### **VII.I Multi-Year Contracts**

Multi-year contracts are subject to modification or cancellation if the Selected Proposer's performance is not satisfactory. The Department will notify the Selected Proposer as soon as is practical. In the event of cancellation, the Selected Proposer will be compensated for costs, if any, incurred prior to cancellation which are so provided for in the contract.

### **VII.J Prices Irrevocable**

Pricing proposed by the Proposer in response to Part 2 of the RFP shall be irrevocable until contract award, unless the Proposal is withdrawn. Proposals may only be withdrawn by submitting a written request to the Department prior to contract award but after the expiration of 90 days after the opening of proposals. This shall not limit the discretion of the Department to request Proposers to revise proposed prices (service rates) through the submission of best and final offers and/or the conduct of negotiations. The Department does anticipate one or more processes for the Proposer to petition to have their maximum proposed rates lifted.

### **VII.K Confidential, Proprietary Information or Trade Secrets**

Proposers should give specific attention to the identification of those portions of their proposals that they deem to be confidential, proprietary information or trade secrets and provide any justification of why such materials, upon request, should not be disclosed by the City. Such information must be easily separable

from the non-confidential sections of the Proposal. All information not so identified may be disclosed by the City.

### **VII.L RFP Postponement/Cancellation**

The Department reserves the right to postpone or cancel this RFP, in whole or in part, and to reject all proposals.

### **VII.M Proposer Costs**

Proposers will not be reimbursed for any costs incurred to prepare proposals.

### **VII.N PASSPort Fees**

Pursuant to PPB Rule 2-08(f)(2), the Proposer will be charged a fee for the administration of the PASSPort system, including the Vendor Name Check Process, if a Vendor Name Check review is required to be conducted by the Department of Investigation. The Proposer shall also be required to pay the applicable fees for any of its subcontractors for which Vendor Name Check reviews are required. As the estimated value for each contract resulting from this RFP is estimated to be above \$1,000,000, the fee will be \$350.

### **VII.O Charter Section 312(a) Certification**

The Department has determined that the contract(s) to be awarded through this Request for Proposals will not result in the displacement of any New York City employee within this Department. See attached Displacement Determination Form.

The Department has determined that the contract(s) to be awarded through this Request for Proposals will result in the displacement of New York City employee(s) within this Department. See attached Displacement Determination Form.

The contract to be awarded through this Request for Proposals is a task order contract that does not simultaneously result in the award of a first task order; a displacement determination will be made in conjunction with the issuance of each task order pursuant to such task order contract. Determinations for any subsequent task orders will be made in conjunction with such subsequent task orders.

\_\_\_\_\_  
(Commissioner) (Agency Chief Contracting Officer)

\_\_\_\_\_  
Date

## **Attachments**

### **Program Proposal:**

- Attachment 1 - Iran Divestment Act Compliance and Rider for NYC Contractors
- Attachment 2 - Hiring and Employment Rider: HireNYC and Reporting Requirements
- Attachment 3 - NYC Fair Chance Act
- Attachment 4 - Doing Business Data Form

**Templates for the Capacity & Operations Proposal, Technical Proposal, and Price Proposal will be provided as part of a future addendum to this RFP.**

## **Appendices**

- Appendix A – General Provisions Governing Contracts for Consultants, Professional, Technical, Human and Client Services
- Appendix B – Local Law 199 of 2019
- Appendix C – The Rules of the City of New York, Title 16: Department of Sanitation, Chapter 20: Commercial Waste Zones

**Attachment 1:**

**Iran Divestment Act Compliance Rider**

**IRAN DIVESTMENT ACT COMPLIANCE RIDER FOR  
NEW YORK CITY CONTRACTORS**

The Iran Divestment Act of 2012, effective as of April 12, 2012, is codified at State Finance Law (“SFL”) §165-a and General Municipal Law (“GML”) §103-g. The Iran Divestment Act, with certain exceptions, prohibits municipalities, including the City, from entering into contracts with persons engaged in investment activities in the energy sector of Iran. Pursuant to the terms set forth in SFL §165-a and GML §103-g, a person engages in investment activities in the energy sector of Iran if:

(a) the person provides goods or services of twenty million dollars or more in the energy sector of Iran, including a person that provides oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran; or

(b) The person is a financial institution that extends twenty million dollars or more in credit to another person, for forty-five days or more, if that person will use the credit to provide goods or services in the energy sector in Iran and is identified on a list created pursuant to paragraph (b) of subdivision three of Section 165-a of the State Finance Law and maintained by the Commissioner of the Office of General Services.

A bid or proposal shall not be considered for award nor shall any award be made where the bidder or proposer fails to submit a signed and verified bidder’s certification.

**Each bidder or proposer must certify that it is not on the list of entities engaged in investment activities in Iran created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law. In any case where the bidder or proposer cannot certify that they are not on such list, the bidder or proposer shall so state and shall furnish with the bid or proposal a signed statement which sets forth in detail the reasons why such statement cannot be made. The City of New York may award a bid to a bidder who cannot make the certification on a case by case basis if:**

**(1) The investment activities in Iran were made before the effective date of this section (i.e., April 12, 2012), the investment activities in Iran have not been expanded or renewed after the effective date of this section and the person has adopted, publicized and is implementing a formal plan to cease the investment activities in Iran and to refrain from engaging in any new investments in Iran: or**

**(2) The City makes a determination that the goods or services are necessary for the City to perform its functions and that, absent such an exemption, the City would be unable to obtain the goods or services for which the contract is offered. Such determination shall be made in writing and shall be a public document.**

**BIDDER'S CERTIFICATION OF COMPLIANCE WITH  
IRAN DIVESTMENT ACT**

Pursuant to General Municipal Law §103-g, which generally prohibits the City from entering into contracts with persons engaged in investment activities in the energy sector of Iran, the bidder/proposer submits the following certification:

[Please Check One]

**BIDDER'S CERTIFICATION**

- By submission of this bid or proposal, each bidder/proposer and each person signing on behalf of any bidder/proposer certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief, that each bidder/proposer is not on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law.
  
- I am unable to certify that my name and the name of the bidder/proposer does not appear on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law. I have attached a signed statement setting forth in detail why I cannot so certify.

Dated \_\_\_\_\_, New York

\_\_\_\_\_, 20\_\_

\_\_\_\_\_  
*SIGNATURE*

\_\_\_\_\_  
*PRINTED NAME*

\_\_\_\_\_  
*TITLE*

Sworn to before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
*Notary Public*

**Attachment 2:**

**Hiring and Employment Rider: HireNYC and Reporting Requirements**

**HIRING AND EMPLOYMENT RIDER:**  
**HIRENYC AND REPORTING REQUIREMENTS**

**Introduction**

This Rider shall apply to all contracts for goods, services, and construction with a value of one million dollars (\$1,000,000.00) or more, provided, however, that certain requirements of the Rider shall only apply as indicated below. This Rider addresses the HireNYC process, including reporting obligations under the HireNYC process, and certain other reporting requirements imposed by law. In general, the HireNYC process under this Rider requires the Contractor to enroll with the HireNYC portal for the City of New York (“the City”) found within the Department of Small Business Services’s (“SBS”) website, to disclose all entry to mid-level job opportunities described in this Rider arising from this contract and located in New York City, and to agree to interview qualified candidates from HireNYC for those opportunities.

**HireNYC Requirements**

**A. Enrollment**

The Contractor shall enroll with the HireNYC system, found at [www.nyc.gov/sbs](http://www.nyc.gov/sbs), within thirty (30) days after the registration of this Contract pursuant to Section 328 of the New York City Charter. The Contractor shall provide information about the business, designate a primary contact and say whether it intends to hire for any entry to mid-level job opportunities arising from this contract and located in New York City, and, if so, the approximate start date of the first hire.

**B. Job Posting Requirements**

Once enrolled in HireNYC, the Contractor agrees to update the HireNYC portal with all entry to mid-level job opportunities arising from this contract and located in New York City, if any, which shall be defined as jobs requiring no more than an associate degree, as provided by the New York State Department of Labor (see Column F of <https://labor.ny.gov/stats/2012-2022-NYS-Employment-Prospects.xls>). The information to be updated includes the types of entry and mid-level positions made available from the work arising from the contract and located in New York City, the number of positions, the anticipated schedule of initiating the hiring process for these positions, and the contact information for the Contractor’s representative charged with overseeing hiring. The Contractor must update the HireNYC portal with any hiring needs arising from the contract and located in New York City, and the requirements of the jobs to be filled, no less than three weeks prior to the intended first day of employment for each new position, except with the permission of SBS, not to be unreasonably withheld, and must also update the HireNYC portal as set forth below.

After enrollment through HireNYC and submission of relevant information, SBS will work with the Contractor to develop a recruitment plan which will outline the candidate screening process,

and will provide clear instructions as to when, where, and how interviews will take place. HireNYC will screen applicants based on employer requirements and refer applicants whom it believes are qualified to the Contractor for interviews. The Contractor must interview referred applicants whom it believes are qualified.

After completing an interview of a candidate referred by HireNYC, the Contractor must provide feedback via the portal within twenty (20) business days to indicate which candidates were interviewed and hired, if any. In addition, the Contractor shall provide the start date of new hires, and additional information reasonably related to such hires, within twenty (20) business days after the start date. In the event the Contractor does not have any job openings covered by this Rider in any given year, the Contractor shall be required to provide an annual update to HireNYC to that effect. For this purpose, the reporting year shall run from the date of the registration of the contract and each anniversary date.

These requirements do not limit the Contractor's ability to assess the qualifications of prospective workers, and to make final hiring and retention decisions. No provision of this Rider shall be interpreted so as to require the Contractor to employ any particular worker.

In addition, the provisions of this Rider shall not apply to positions that the Contractor intends to fill with employees employed pursuant to the job retention provision of Section 22-505 of the Administrative Code of the City of New York. The Contractor shall not be required to report such openings with HireNYC. However, the Contractor shall enroll with the HireNYC system pursuant to Section A, above, and, if such positions subsequently become open, then the remaining provisions of this Rider will apply.

### **C. Breach and Liquidated Damages**

If the Contractor fails to comply with the terms of the contract and this Rider (1) by not enrolling its business with HireNYC; (2) by not informing HireNYC, as required, of open positions; or (3) by failing to interview a qualified candidate, the contracting agency may assess liquidated damages in the amount of two-thousand five hundred dollars (\$2,500.00) per breach. For all other events of noncompliance with the terms of this Rider, the agency may assess liquidated damages in the amount of five hundred dollars (\$500) per breach.

Furthermore, in the event the Contractor breaches the requirements of this Rider during the term of the contract, the City may hold the Contractor in default of this contract.

### **Audit Compliance**

In addition to the auditing requirements set forth in other parts of the contract, the Contractor shall permit SBS and the City to inspect any and all records concerning or relating to job openings or the hiring of individuals for work arising from the contract and located in New York City. The Contractor shall permit an inspection within seven (7) business days of the request.

### **Other Reporting Requirements**

The Contractor shall report to the City, on a monthly basis, all information reasonably requested by the City that is necessary for the City to comply with any reporting requirements imposed by law or rule, including any requirement that the City maintain a publicly accessible database. In addition, the Contractor agrees to comply with all reporting requirements imposed by law or rule, or as otherwise requested by the City.

### **Construction Requirements**

Construction contractors shall comply with the HireNYC requirements set forth above for all non-trades jobs (e.g., for an administrative position arising out of the work of the contract and located in New York City) as set forth above.

In addition, construction contractors shall reasonably cooperate with SBS and the City on specific outreach events, including Hire on the Spot events, for the hiring of trades workers for the work of this contract.

Further, this contract shall be subject to a project labor agreement if so required elsewhere in this contract.

### **Federal Hiring Requirements**

The Contractor shall comply with all federal hiring requirements as may be set forth elsewhere in this contract, including, as applicable:

- Section 3 of the HUD Act of 1968, which requires, to the greatest extent feasible, economic opportunities for 30 percent of new hires be given to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- Executive Order 11246, which prohibits discrimination in employment due to race, color, religion, sex or national origin, and requires the implementation of goals for minority and female participation for work involving any Construction trade.

**Attachment 3:**

**NYC Fair Chance Act**

\_\_\_\_\_  
Applicant Name

## Fair Chance Act Notice

After extending a conditional offer of employment, we checked your criminal record. Based on the enclosed check, we have reservations about hiring you for the position of \_\_\_\_\_, and may decide to retract our job offer. Below explains why. We invite you to provide us with any information that could help us decide to offer you the job. If you choose to provide us with additional information you have \_\_\_\_\_ days (must be at least three business days) from the date you receive this to do so.

If you wish to respond, please contact \_\_\_\_\_.

In your response, you may:

- Tell us about any errors on your criminal record;
- Give us any additional information you'd like us to consider after reviewing this notice.

The following factors were considered, as required by Article 23-A of the New York State Correction Law, before making our determination:

A.	<input type="checkbox"/> The government encourages employers to hire people with criminal records.
B.	<input type="checkbox"/> The specific duties and responsibilities of the job, which are: 1. _____ 2. _____ 3. _____ 4. _____
C.	<input type="checkbox"/> We believe your record impacts your fitness or ability to perform these duties and responsibilities because:  _____
D.	<input type="checkbox"/> How long ago your criminal activity, not your conviction, occurred: _____ years _____ months
E.	<input type="checkbox"/> Your age when your criminal activity, not your conviction, occurred: _____ years old
F.	<input type="checkbox"/> The seriousness of the conduct that led to your criminal record, which is:  _____
G.	<input type="checkbox"/> Your evidence of rehabilitation and good conduct, which is listed below. 1. _____ 2. _____ 3. _____ <i>If you have additional documents we should consider, please send them, including evidence that you attended school, job training, or counseling; or are involved with your community. They can include letters from people who know you, like teachers, counselors, supervisors, clergy, and parole or probation officers.</i>
H.	<input type="checkbox"/> Our legitimate interest in protecting property, and the safety and welfare of specific individuals or the general public, which is:  _____
I.	<input type="checkbox"/> Your certificate(s) of relief or certificate of good conduct shows that you are rehabilitated. If you did not have a certificate, we did not hold that against you.

Based on these factors, we may deny you the job because (choose one or both below):

We believe there is a direct relationship between your criminal record and the job we offered to you, and the factors listed above do not lessen that relationship because:

Your criminal record creates an unreasonable risk to specific persons, the general public, or our property because:

**Attachment 4:**

**Doing Business Data Form**

# Doing Business Data Form

To be completed by the City agency prior to distribution Agency Sanitation Transaction ID \_\_\_\_\_

**Check One**

**Transaction Type (check one)**

- Proposal    Award    Concession    Economic Development Agreement    Franchise    Grant    Pension Investment Contract    Contract

Any entity receiving, applying for or proposing on an award or agreement must complete a Doing Business Data Form (see Q&A sheet for more information). Please either type responses directly into this fillable form or print answers by hand in black ink, and be sure to fill out the certification box on the last page. **Submission of a complete and accurate form is required for a proposal to be considered responsive or for any entity to receive an award or enter into an agreement.**

This Data Form requires information to be provided on principal officers, owners and senior managers. The name, employer and title of each person identified on the Data Form will be included in a public database of people who do business with the City of New York, as will the organizations that own 10% or more of the entity. No other information reported on this form will be disclosed to the public. **This Data Form is not related to the City's PASSPort registration or VENDEX requirements.**

**Please return the completed Data Form to the City office that supplied it.** Please contact the Doing Business Accountability Project at [DoingBusiness@mocs.nyc.gov](mailto:DoingBusiness@mocs.nyc.gov) or 212-788-8104 with any questions regarding this Data Form. Thank you for your cooperation.

**Entity Information**

*If you are completing this form by hand, please print clearly.*

Entity EIN/TIN \_\_\_\_\_ Entity Name \_\_\_\_\_

**Filing Status**

**(Select One)**

**NEW:** Data Forms submitted now must include the listing of **organizations**, as well as individuals, with 10% or more ownership of the entity. Until such certification of ownership is submitted through a change, new or update form, a no change form will not be accepted.

- Entity has never completed a Doing Business Data Form. Fill out the entire form.  
 Change from previous Data Form dated \_\_\_\_\_. Fill out only those sections that have changed, and indicate the name of the persons who no longer hold positions with the entity.  
 No Change from previous Data Form dated \_\_\_\_\_. Skip to the bottom of the last page.

**Entity is a Non-Profit**    Yes    No

**Entity Type**    Corporation (any type)    Joint Venture    LLC    Partnership (any type)    Sole Proprietor    Other (specify) \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Phone \_\_\_\_\_ E-mail \_\_\_\_\_

*Provide your e-mail address in order to receive notices regarding this form by e-mail.*

**Principal Officers**

Please fill in the required identification information for each officer listed below. If the entity has no such officer or its equivalent, please check "This position does not exist." If the entity is filing a Change Form and the person listed is replacing someone who was previously disclosed, please check "This person replaced..." and fill in the name of the person being replaced so his/her name can be removed from the *Doing Business Database*, and indicate the date that the change became effective.

**Chief Executive Officer (CEO) or equivalent officer**

*The highest ranking officer or manager, such as the President, Executive Director, Sole Proprietor or Chairperson of the Board.*

This position does not exist

First Name \_\_\_\_\_ MI \_\_\_\_\_ Last \_\_\_\_\_ Birth Date (mm/dd/yy) \_\_\_\_\_

Office Title \_\_\_\_\_ Employer (if not employed by entity) \_\_\_\_\_

Home Address \_\_\_\_\_

This person replaced former CEO \_\_\_\_\_ on date \_\_\_\_\_

**Chief Financial Officer (CFO) or equivalent officer**

*The highest ranking financial officer, such as the Treasurer, Comptroller, Financial Director or VP for Finance.*

This position does not exist

First Name \_\_\_\_\_ MI \_\_\_\_\_ Last \_\_\_\_\_ Birth Date (mm/dd/yy) \_\_\_\_\_

Office Title \_\_\_\_\_ Employer (if not employed by entity) \_\_\_\_\_

Home Address \_\_\_\_\_

This person replaced former CFO \_\_\_\_\_ on date \_\_\_\_\_

**Chief Operating Officer (COO) or equivalent officer**

*The highest ranking operational officer, such as the Chief Planning Officer, Director of Operations or VP for Operations.*

This position does not exist

First Name \_\_\_\_\_ MI \_\_\_\_\_ Last \_\_\_\_\_ Birth Date (mm/dd/yy) \_\_\_\_\_

Office Title \_\_\_\_\_ Employer (if not employed by entity) \_\_\_\_\_

Home Address \_\_\_\_\_

This person replaced former COO \_\_\_\_\_ on date \_\_\_\_\_

**Principal Owners**

Please fill in the required identification information for all individuals or organizations that, through stock shares, partnership agreements or other means, own or control 10% or more of the entity. If no individual or organization owners exist, please check the appropriate box to indicate why and skip to the Senior Managers section. If the entity is owned by other companies that control 10% or more of the entity, those companies must be listed. If an owner was identified on the previous page, fill in his/her name and write "See above." If the entity is filing a Change Form, list any individuals or organizations that are no longer owners at the bottom of this section. If more space is needed, attach additional pages labeled "Additional Owners."

There are no owners listed because (select one):

- The entity is not-for-profit
- The entity is an individual
- No individual or organization owns 10% or more of the entity

Other (explain) \_\_\_\_\_

**Individual Owners (who own or control 10% or more of the entity)**

First Name \_\_\_\_\_ MI \_\_\_\_ Last \_\_\_\_\_ Birth Date (mm/dd/yy) \_\_\_\_\_

Office Title \_\_\_\_\_ Employer (if not employed by entity) \_\_\_\_\_

Home Address \_\_\_\_\_

First Name \_\_\_\_\_ MI \_\_\_\_ Last \_\_\_\_\_ Birth Date (mm/dd/yy) \_\_\_\_\_

Office Title \_\_\_\_\_ Employer (if not employed by entity) \_\_\_\_\_

Home Address \_\_\_\_\_

**Organization Owners (that own or control 10% or more of the entity)**

Organization Name \_\_\_\_\_

Organization Name \_\_\_\_\_

Organization Name \_\_\_\_\_

**Remove the following previously-reported Principal Owners**

Name \_\_\_\_\_ Removal Date \_\_\_\_\_

Name \_\_\_\_\_ Removal Date \_\_\_\_\_

Name \_\_\_\_\_ Removal Date \_\_\_\_\_

**Senior Managers**

Please fill in the required identification information for all senior managers who oversee any of the entity's relevant transactions with the City (e.g., contract managers if this form is for a contract award/proposal, grant managers if for a grant, etc.). Senior managers include anyone who, either by title or duties, has substantial discretion and high-level oversight regarding the solicitation, letting or administration of any transaction with the City. At least one senior manager must be listed, or the Data Form will be considered incomplete. If a senior manager has been identified on a previous page, fill in his/her name and write "See above." If the entity is filing a Change Form, list individuals who are no longer senior managers at the bottom of this section. If more space is needed, attach additional pages labeled "Additional Senior Managers."

**Senior Managers**

First Name \_\_\_\_\_ MI \_\_\_\_ Last \_\_\_\_\_ Birth Date (mm/dd/yy) \_\_\_\_\_

Office Title \_\_\_\_\_ Employer (if not employed by entity) \_\_\_\_\_

Home Address \_\_\_\_\_

First Name \_\_\_\_\_ MI \_\_\_\_ Last \_\_\_\_\_ Birth Date (mm/dd/yy) \_\_\_\_\_

Office Title \_\_\_\_\_ Employer (if not employed by entity) \_\_\_\_\_

Home Address \_\_\_\_\_

First Name \_\_\_\_\_ MI \_\_\_\_ Last \_\_\_\_\_ Birth Date (mm/dd/yy) \_\_\_\_\_

Office Title \_\_\_\_\_ Employer (if not employed by entity) \_\_\_\_\_

Home Address \_\_\_\_\_

**Remove the following previously-reported Senior Managers**

Name \_\_\_\_\_ removal date \_\_\_\_\_

Name \_\_\_\_\_ removal date \_\_\_\_\_

**Certification**

I certify that the information submitted on these two pages and \_\_\_\_\_ additional pages is accurate and complete. I understand that willful or fraudulent submission of a materially false statement may result in the entity being found non-responsible and therefore denied future City awards.

Name \_\_\_\_\_ Title \_\_\_\_\_

Entity Name \_\_\_\_\_ Work Phone # \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

**Appendix A:**  
**General Provisions Governing Contracts for**  
**Consultants, Professional, Technical, Human and Client Services**

**APPENDIX A**

**GENERAL PROVISIONS GOVERNING CONTRACTS FOR  
CONSULTANTS, PROFESSIONAL, TECHNICAL, HUMAN, AND CLIENT SERVICES**

**ARTICLE 1 - DEFINITIONS..... 1**

*Section 1.01 Definitions..... 1*

**ARTICLE 2 – REPRESENTATIONS, WARRANTIES, CERTIFICATIONS, AND DISCLOSURES ..... 2**

*Section 2.01 Procurement of Agreement ..... 2*

*Section 2.02 Conflicts of Interest ..... 2*

*Section 2.03 Certification Relating to Fair Practices..... 3*

*Section 2.04 Disclosures Relating to Vendor Responsibility ..... 3*

*Section 2.05 Disclosure Relating to Bankruptcy and Reorganization ..... 3*

*Section 2.06 Authority to Execute Agreement ..... 4*

**ARTICLE 3 - ASSIGNMENT AND SUBCONTRACTING ..... 4**

*Section 3.01 Assignment..... 4*

*Section 3.02 Subcontracting ..... 5*

**ARTICLE 4 - LABOR PROVISIONS..... 7**

*Section 4.01 Independent Contractor Status..... 7*

*Section 4.02 Employees and Subcontractors..... 8*

*Section 4.03 Removal of Individuals Performing Work ..... 8*

*Section 4.04 Minimum Wage; Living Wage ..... 9*

*Section 4.05 Non-Discrimination in Employment ..... 11*

*Section 4.06 Paid Sick Leave Law..... 14*

*Section 4.07 Whistleblower Protection Expansion Act ..... 18*

**ARTICLE 5 - RECORDS, AUDITS, REPORTS, AND INVESTIGATIONS..... 20**

*Section 5.01 Books and Records ..... 20*

*Section 5.02 Retention of Records ..... 20*

*Section 5.03 Inspection..... 20*

*Section 5.04 Audit ..... 21*

*Section 5.05 No Removal of Records from Premises ..... 21*

*Section 5.06 Electronic Records ..... 22*

*Section 5.07 Investigations Clause..... 22*

## Appendix A January 2018 Final

---

<i>Section 5.08 Confidentiality</i> .....	24
<b>ARTICLE 6 - COPYRIGHTS, PATENTS, INVENTIONS, AND ANTITRUST</b> .....	<b>26</b>
<i>Section 6.01 Copyrights and Ownership of Work Product</i> .....	26
<i>Section 6.02 Patents and Inventions</i> .....	27
<i>Section 6.03 Pre-existing Rights</i> .....	27
<i>Section 6.04 Antitrust</i> .....	27
<b>Article 7 - INSURANCE</b> .....	<b>28</b>
<i>Section 7.01 Agreement to Insure</i> .....	28
<i>Section 7.02 Workers' Compensation, Disability Benefits, and Employers' Liability Insurance</i> .....	28
<i>Section 7.03 Other Insurance</i> .....	29
<i>Section 7.04 General Requirements for Insurance Coverage and Policies</i> .....	30
<i>Section 7.05 Proof of Insurance</i> .....	31
<i>Section 7.06 Miscellaneous</i> .....	32
<b>Article 8 - PROTECTION OF PERSONS AND PROPERTY AND INDEMNIFICATION</b> .....	<b>33</b>
<i>Section 8.01 Reasonable Precautions</i> .....	33
<i>Section 8.02 Protection of City Property</i> .....	33
<i>Section 8.03 Indemnification</i> .....	33
<i>Section 8.04 Infringement Indemnification</i> .....	33
<i>Section 8.05 Indemnification Obligations Not Limited By Insurance Obligation</i> .....	34
<i>Section 8.06 Actions By or Against Third Parties</i> .....	34
<i>Section 8.07 Withholding of Payments</i> .....	34
<i>Section 8.08 No Third Party Rights</i> .....	35
<b>ARTICLE 9 - CONTRACT CHANGES</b> .....	<b>35</b>
<i>Section 9.01 Contract Changes</i> .....	35
<i>Section 9.02 Changes Through Fault of Contractor</i> .....	35
<b>ARTICLE 10 - TERMINATION, DEFAULT, REDUCTIONS IN FUNDING, AND LIQUIDATED DAMAGES</b> .....	<b>35</b>
<i>Section 10.01 Termination by the City Without Cause</i> .....	35
<i>Section 10.02 Reductions in Federal, State, and/or City Funding</i> .....	36
<i>Section 10.03 Contractor Default</i> .....	37
<i>Section 10.04 Force Majeure</i> .....	39
<i>Section 10.05 Procedures for Termination</i> .....	39

**Appendix A January 2018 Final**

---

*Section 10.06 Miscellaneous Provisions* ..... 40

*Section 10.07 Liquidated Damages*..... 41

**Article 11 - PROMPT PAYMENT AND ELECTRONIC FUNDS TRANSFER**..... 41

*Section 11.01 Prompt Payment* ..... 41

*Section 11.02 Electronic Funds Transfer*..... 41

**Article 12 - CLAIMS** ..... 42

*Section 12.01 Choice of Law* ..... 42

*Section 12.02 Jurisdiction and Venue*..... 42

*Section 12.03 Resolution of Disputes* ..... 42

*Section 12.04 Claims and Actions* ..... 47

*Section 12.05 No Claim Against Officials, Agents, or Employees*..... 47

*Section 12.06 General Release*..... 48

*Section 12.07 No Waiver* ..... 48

**ARTICLE 13 - APPLICABLE LAWS** ..... 48

*Section 13.01 PPB Rules*..... 48

*Section 13.02 All Legal Provisions Deemed Included*..... 48

*Section 13.03 Severability / Unlawful Provisions Deemed Stricken*..... 48

*Section 13.04 Compliance With Laws* ..... 48

*Section 13.05 Unlawful Discrimination in the Provision of Services* ..... 49

*Section 13.05 Americans with Disabilities Act (ADA)* ..... 49

*Section 13.06 Voter Registration* ..... 50

*Section 13.07 Political Activity*..... 53

*Section 13.08 Religious Activity*..... 53

*Section 13.09 Participation in an International Boycott*..... 53

*Section 13.10 MacBride Principles* ..... 53

*Section 13.11 Access to Public Health Insurance Coverage Information*..... 54

*Section 13.12 Distribution of Personal Identification Materials* ..... 55

**Article 14 - MISCELLANEOUS PROVISIONS** ..... 56

*Section 14.01 Conditions Precedent*..... 56

*Section 14.02 Merger* ..... 56

*Section 14.03 Headings* ..... 56

*Section 14.04 Notice*..... 56

## ARTICLE 1 - DEFINITIONS

### Section 1.01 Definitions

The following words and expressions, or pronouns used in their stead, shall, wherever they appear in this Agreement, be construed as follows, unless a different meaning is clear from the context:

A. “Agency Chief Contracting Officer” or “ACCO” means the position delegated authority by the Agency Head to organize and supervise the procurement activity of subordinate Agency staff in conjunction with the City Chief Procurement Officer.

B. “Agreement” means the various documents, including this Appendix A, that constitute the contract between the Contractor and the City.

C. “City” means the City of New York.

D. “City Chief Procurement Officer” or “CCPO” means the position delegated authority by the Mayor to coordinate and oversee the procurement activity of Mayoral agency staff, including the ACCOs.

E. “Commissioner” or “Agency Head” means the head of the Department or his or her duly authorized representative. The term “duly authorized representative” shall include any person or persons acting within the limits of his or her authority.

F. “Comptroller” means the Comptroller of the City of New York.

G. “Contractor” means the entity entering into this Agreement with the City.

H. “Days” means calendar days unless otherwise specifically noted to mean business days.

I. “Department” or “Agency” means the City agency or office through which the City has entered into this Agreement.

J. “Law” or “Laws” means the New York City Charter (“Charter”), the New York City Administrative Code (“Admin. Code”), a local rule of the City of New York, the Constitutions of the United States and the State of New York, a statute of the United States or of the State of New York and any ordinance, rule or regulation having the force of law and adopted pursuant thereto, as amended, and common law.

K. “Procurement Policy Board” or “PPB” means the board established pursuant to Charter § 311 whose function is to establish comprehensive and consistent procurement policies and rules that have broad application throughout the City.

L. “PPB Rules” means the rules of the Procurement Policy Board as set forth in Title 9 of the Rules of the City of New York (“RCNY”), § 1-01 *et seq.*

M. “SBS” means the New York City Department of Small Business Services.

N. “State” means the State of New York.

## **ARTICLE 2 – REPRESENTATIONS, WARRANTIES, CERTIFICATIONS, AND DISCLOSURES**

### **Section 2.01 Procurement of Agreement**

A. The Contractor represents and warrants that, with respect to securing or soliciting this Agreement, the Contractor is in compliance with the requirements of the New York State Lobbying Law (Legislative Law §§ 1-a *et seq.*). The Contractor makes such representation and warranty to induce the City to enter into this Agreement and the City relies upon such representation and warranty in the execution of this Agreement.

B. For any breach or violation of the representation and warranty set forth in Paragraph A above, the Commissioner shall have the right to annul this Agreement without liability, entitling the City to recover all monies paid to the Contractor; and the Contractor shall not make claim for, or be entitled to recover, any sum or sums due under this Agreement. The rights and remedies of the City provided in this Section 2.01(B) are not exclusive and are in addition to all other rights and remedies allowed by Law or under this Agreement.

### **Section 2.02 Conflicts of Interest**

A. The Contractor represents and warrants that neither it nor any of its directors, officers, members, partners or employees, has any interest nor shall they acquire any interest, directly or indirectly, which conflicts in any manner or degree with the performance of this Agreement. The Contractor further represents and warrants that no person having such interest or possible interest shall be employed by or connected with the Contractor in the performance of this Agreement.

B. Consistent with Charter § 2604 and other related provisions of the Charter, the Admin. Code and the New York State Penal Law, no elected official or other officer or employee of the City, nor any person whose salary is payable, in whole or in part, from the City Treasury, shall participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or other entity in which he or she is, directly or indirectly, interested; nor shall any such official, officer, employee, or person have any interest in, or in the proceeds of, this Agreement. This Section 2.02(B) shall not prevent directors, officers, members, partners, or employees of the Contractor from participating in decisions relating to this Agreement where their sole personal interest is in the Contractor.

C. The Contractor shall not employ a person or permit a person to serve as a member of the Board of Directors or as an officer of the Contractor if such employment or service would violate Chapter 68 of the Charter.

**Section 2.03 Certification Relating to Fair Practices**

A. The Contractor and each person signing on its behalf certifies, under penalties of perjury, that to the best of its, his or her knowledge and belief:

1. The prices and other material terms set forth in this Agreement have been arrived at independently, without collusion, consultation, communication, or agreement with any other bidder or proposer or with any competitor as to any matter relating to such prices or terms for the purpose of restricting competition;

2. Unless otherwise required by Law or where a schedule of rates or prices is uniformly established by a government agency through regulation, policy, or directive, the prices and other material terms set forth in this Agreement that have been quoted in this Agreement and on the bid or proposal submitted by the Contractor have not been knowingly disclosed by the Contractor, directly or indirectly, to any other bidder or proposer or to any competitor prior to the bid or proposal opening; and

3. No attempt has been made or will be made by the Contractor to induce any other person or entity to submit or not to submit a bid or proposal for the purpose of restricting competition.

B. The fact that the Contractor (i) has published price lists, rates, or tariffs covering items being procured, (ii) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (iii) has sold the same items to other customers at the same prices and/or terms being bid or proposed, does not constitute, without more, a disclosure within the meaning of this Section 2.03.

**Section 2.04 Disclosures Relating to Vendor Responsibility**

The Contractor represents and warrants that it has duly executed and filed all disclosures as applicable, in accordance with Admin. Code § 6-116.2, PPB Rule § 2-08, and the policies and procedures of the Mayor’s Office of Contract Services. The Contractor acknowledges that the Department’s reliance on the completeness and veracity of the information stated therein is a material condition to the execution of this Agreement, and the Contractor represents and warrants that the information it and its principals have provided is accurate and complete.

**Section 2.05 Disclosure Relating to Bankruptcy and Reorganization**

If the Contractor files for bankruptcy or reorganization under Chapter Seven or Chapter Eleven of the United States Bankruptcy Code, the Contractor shall disclose such action to the Department within seven days of filing.

**Section 2.06 Authority to Execute Agreement**

The Contractor represents and warrants that: (i) its execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate action on its part; (ii) it has all necessary power and authority to execute, deliver and perform its obligations under this Agreement; and (iii) once executed and delivered, this Agreement will constitute its legal, valid and binding obligation, enforceable in accordance with its terms.

**ARTICLE 3 - ASSIGNMENT AND SUBCONTRACTING**

**Section 3.01 Assignment**

A. The Contractor shall not assign, transfer, convey, or otherwise dispose of this Agreement, or the right to execute it, or the right, title, or interest in or to it or any part of it, or assign, by power of attorney or otherwise, any of the monies due or to become due under this Agreement, without the prior written consent of the Commissioner. The giving of any such consent to a particular assignment shall not dispense with the necessity of such consent to any further or other assignments. Any such assignment, transfer, conveyance, or other disposition without such written consent shall be void.

B. Before entering into any such assignment, transfer, conveyance, or other disposal of this Agreement, the Contractor shall submit a written request for approval to the Department giving the name and address of the proposed assignee. The proposed assignee's disclosure that is required by PPB Rule § 2-08(e) must be submitted within 30 Days after the ACCO has granted preliminary written approval of the proposed assignee, if required. Upon the request of the Department, the Contractor shall provide any other information demonstrating that the proposed assignee has the necessary facilities, skill, integrity, past experience, and financial resources to perform the specified services in accordance with the terms and conditions of this Agreement. The Department shall make a final determination in writing approving or disapproving the assignee after receiving all requested information.

C. Failure to obtain the prior written consent to such an assignment, transfer, conveyance, or other disposition may result in the revocation and annulment of this Agreement, at the option of the Commissioner. The City shall thereupon be relieved and discharged from any further liability and obligation to the Contractor, its assignees, or transferees, who shall forfeit all monies earned under this Agreement, except so much as may be necessary to pay the Contractor's employees.

D. The provisions of this Section 3.01 shall not hinder, prevent, or affect an assignment by the Contractor for the benefit of its creditors made pursuant to the Laws of the State.

E. This Agreement may be assigned, in whole or in part, by the City to any corporation, agency, or instrumentality having authority to accept such assignment. The City shall provide the Contractor with written notice of any such assignment.

**Section 3.02 Subcontracting**

A. In accordance with PPB Rule § 4-13, all subcontractors must be approved by the Department prior to commencing work under a subcontract.

1. *Approval when subcontract is \$20,000 or less.* The Department hereby grants approval for all subcontractors providing services covered by this Agreement pursuant to a subcontract in an amount that does not exceed \$20,000.00. The Contractor must submit monthly reports to the Department listing all such subcontractors and shall list the subcontractor in the City's Payee Information Portal ([www.nyc.gov/pip](http://www.nyc.gov/pip)).

2. *Approval when subcontract is greater than \$20,000.*

a. The Contractor shall not enter into any subcontract for an amount greater than \$20,000.00 without the prior approval by the Department of the subcontractor.

b. Prior to entering into any subcontract for an amount greater than \$20,000.00, the Contractor shall submit a written request for the approval of the proposed subcontractor to the Department giving the name and address of the proposed subcontractor, the portion of the work and materials that it is to perform and furnish, and the estimated cost of the subcontract. If the subcontractor is providing professional services under this Agreement for which professional liability insurance or errors and omissions insurance is reasonably commercially available, the Contractor shall submit proof of professional liability insurance in the amount required by Article 7. In addition, the Contractor shall list the proposed subcontractor in the City's Payee Information Portal ([www.nyc.gov/pip](http://www.nyc.gov/pip)) and provide the following information: maximum subcontract value, description of subcontractor work, start and end date of the subcontract, and the subcontractor's industry.<sup>1</sup>

c. Upon receipt the information required above, the Department in its discretion may grant or deny preliminary approval for the Contractor to contract with the subcontractor.

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<sup>1</sup> Assistance establishing a Payee Information Portal account and using the system may be obtained by emailing the Financial Information Services Agency Help Desk at [pip@fisa.nyc.gov](mailto:pip@fisa.nyc.gov).

d. The Department shall notify the Contractor within 30 Days whether preliminary approval has been granted. If preliminary approval is granted, the Contractor shall provide such documentation as may be requested by the Department to show that the proposed subcontractor has the necessary facilities, skill, integrity, past experience and financial resources to perform the required work, including, the proposed subcontract and/or any of the items listed in PPB Rule 4-13(d)(3).

e. Upon receipt of all relevant documentation, the Department shall notify the Contractor in writing whether the proposed subcontractor is approved. If the proposed subcontractor is not approved, the Contractor may submit another proposed subcontractor unless the Contractor decides to do the work. No subcontractor shall be permitted to perform work unless approved by the Department.

f. For proposed subcontracts that do not exceed \$25,000.00, the Department's approval shall be deemed granted if the Department does not issue a written approval or disapproval within 45 Days of the Department's receipt of the written request for approval or, if PPB Rule 2-08(e) is applicable, within 45 Days of the Department's acknowledged receipt of fully completed disclosures for the subcontractor.

B. All subcontracts must be in writing. All subcontracts shall contain provisions specifying that:

1. The work performed by the subcontractor must be in accordance with the terms of the Agreement between the City and the Contractor;

2. Nothing contained in the agreement between the Contractor and the subcontractor shall impair the rights of the City;

3. Nothing contained in the agreement between the Contractor and the subcontractor, or under the Agreement between the City and the Contractor, shall create any contractual relation between the subcontractor and the City; and

4. The subcontractor specifically agrees to be bound by Section 4.05(D) and Article 5 of this Appendix A and specifically agrees that the City may enforce such provisions directly against the subcontractor as if the City were a party to the subcontract.

C. The Contractor agrees that it is as fully responsible to the Department for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by such subcontractors as it is for the acts and omissions of any person directly employed by it.

D. For determining the value of a subcontract, all subcontracts with the same subcontractor shall be aggregated.

E. The Department may revoke the approval of a subcontractor granted or deemed granted pursuant to Section 3.02(A) if revocation is deemed to be in the interest of the City in writing on no less than 10 Days' notice unless a shorter period is warranted by considerations of health, safety, integrity issues, or other similar factors. Upon the effective date of such revocation, the Contractor shall cause the subcontractor to cease all work under the Agreement. The City shall not incur any further obligation for services performed by such subcontractor pursuant to this Agreement beyond the effective date of the revocation. The City shall pay for services provided by the subcontractor in accordance with this Agreement prior to the effective date of revocation.

F. The Department's approval of a subcontractor shall not relieve the Contractor of any of its responsibilities, duties, and liabilities under this Agreement. At the request of the Department, the Contractor shall provide the Department a copy of any subcontract.

G. Individual employer-employee contracts are not subcontracts subject to the requirements of this Section 3.02.

H. The Contractor shall report in the City's Payee Information Portal payments made to each subcontractor within 30 days of making the payment. If any of the information provided in accordance with Section 3.02(A)(2)(b) changes during the term of this Agreement, the Contractor shall update the information in such Portal accordingly. Failure of the Contractor to list a subcontractor and/or to report subcontractor payments in a timely fashion may result in the Department declaring the Contractor in default of the Agreement and will subject Contractor to liquidated damages in the amount of \$100 per day for each day that the Contractor fails to identify a subcontractor along with the required information about the subcontractor and/or fails to report payments to a subcontractor, beyond the time frames set forth herein or in the notice from the City.

## **ARTICLE 4 - LABOR PROVISIONS**

### **Section 4.01 Independent Contractor Status**

The Contractor and the City agree that the Contractor is an independent contractor and not an employee, subsidiary, affiliate, division, department, agency, office, or unit of the City. Accordingly, the Contractor and its employees, officers, and agents shall not, by reason of this Agreement or any performance pursuant to or in connection with this Agreement, assert the existence of any relationship or status on the part of the Contractor, with respect to the City, that differs from or is inconsistent with that of an independent contractor.

**Section 4.02 Employees and Subcontractors**

All persons who are employed by the Contractor and all the Contractor's subcontractors (including without limitation, consultants and independent contractors) that are retained to perform services under or in connection with this Agreement are neither employees of the City nor under contract with the City. The Contractor, and not the City, is responsible for their work, direction, compensation, and personal conduct while the Contractor is engaged under this Agreement. Nothing in this Agreement, and no entity or person's performance pursuant to or in connection with this Agreement, shall create any relationship between the City and the Contractor's employees, agents, subcontractors, or subcontractor's employees or agents (including without limitation, a contractual relationship, employer-employee relationship, or quasi-employer/quasi-employee relationship) or impose any liability or duty on the City (i) for or on account of the acts, omissions, liabilities, rights or obligations of the Contractor, its employees or agents, its subcontractors, or its subcontractor's employees or agents (including without limitation, obligations set forth in any collective bargaining agreement); or (ii) for taxes of any nature; or (iii) for any right or benefit applicable to an official or employee of the City or to any officer, agent, or employee of the Contractor or any other entity (including without limitation, Workers' Compensation coverage, Employers' Liability coverage, Disability Benefits coverage, Unemployment Insurance benefits, Social Security coverage, employee health and welfare benefits or employee retirement benefits, membership or credit). The Contractor and its employees, officers, and agents shall not, by reason of this Agreement or any performance pursuant to or in connection with this Agreement, (i) hold themselves out as, or claim to be, officials or employees of the City, including any department, agency, office, or unit of the City, or (ii) make or support in any way on behalf of or for the benefit of the Contractor, its employees, officers, or agents any demand, application, or claim upon or against the City for any right or benefit applicable to an official or employee of the City or to any officer, agent, or employee of the Contractor or any other entity. Except as specifically stated in this Agreement, nothing in the Agreement and no performance pursuant to or in connection with the Agreement shall impose any liability or duty on the City to any person or entity whatsoever.

**Section 4.03 Removal of Individuals Performing Work**

The Contractor shall not have anyone perform work under this Agreement who is not competent, faithful, and skilled in the work for which he or she shall be employed. Whenever the Commissioner shall inform the Contractor, in writing, that any individual is, in his or her opinion, incompetent, unfaithful, or unskilled, such individual shall no longer perform work under this Agreement. Prior to making a determination to direct a Contractor that an individual shall no longer perform work under this Agreement, the Commissioner shall provide the Contractor an opportunity to be heard on no less than five Days' written notice. The Commissioner may direct the Contractor to prohibit the individual from performing work under the Agreement pending the opportunity to be heard and the Commissioner's determination.

**Section 4.04 Minimum Wage; Living Wage**

A. Except for those employees whose minimum wage is required to be fixed in accordance with N.Y. Labor Law §§ 220 or 230 or by Admin. Code § 6-109, all persons employed by the Contractor in the performance of this Agreement shall be paid, without subsequent deduction or rebate, unless expressly authorized by Law, not less than the minimum wage as prescribed by Law. Any breach of this Section 4.04 shall be deemed a material breach of this Agreement.

B. If this Agreement involves the provision of homecare services, day care services, head start services, services to persons with cerebral palsy, building services, food services, or temporary services, as those services are defined in Admin. Code § 6-109 (“Section 6-109”), in accordance with Section 6-109, the Contractor agrees as follows:

1. The Contractor shall comply with the requirements of Section 6-109, including, where applicable, the payment of either a prevailing wage or a living wage, as those terms are defined in Section 6-109.

2. The Contractor shall not retaliate, discharge, demote, suspend, take adverse employment action in the terms and conditions of employment or otherwise discriminate against any employee for reporting or asserting a violation of Section 6-109, for seeking or communicating information regarding rights conferred by Section 6-109, for exercising any other rights protected under Section 6-109, or for participating in any investigatory or court proceeding relating to Section 6-109. This protection shall also apply to any employee or his or her representative who in good faith alleges a violation of Section 6-109, or who seeks or communicates information regarding rights conferred by Section 6-109 in circumstances where he or she in good faith believes it applies.

3. The Contractor shall maintain original payroll records for each of its covered employees reflecting the days and hours worked on contracts, projects, or assignments that are subject to the requirements of Section 6-109, and the wages paid and benefits provided for such hours worked. The Contractor shall maintain these records for the duration of the term of this Agreement and shall retain them for a period of four years after completion of this Agreement. For contracts involving building services, food services, or temporary services, the Contractor shall submit copies of payroll records, certified by the Contractor under penalty of perjury to be true and accurate, to the Department with every requisition for payment. For contracts involving homecare, day care, head start or services to persons with cerebral palsy, the Contractor shall submit either certified payroll records or categorical information about the wages, benefits, and job classifications of covered employees of the Contractor, and of any subcontractors, which shall be the substantial equivalent of the information required in Section 6-109(2)(a)(iii).

4. The Contractor and all subcontractors shall pay all covered employees by check and shall provide employees check stubs or other documentation at least once each month containing information sufficient to document compliance with the requirements of the Living Wage Law concerning living wages, prevailing wages, supplements, and health benefits. In addition, if this Agreement is for an amount greater than \$1,000,000.00, checks issued by the Contractor to covered employees shall be generated by a payroll service or automated payroll system (an in-house system may be used if approved by the Department). For any subcontract for an amount greater than \$750,000.00, checks issued by a subcontractor to covered employees shall be generated by a payroll service or automated payroll system (an in-house system may be used if approved by the Department).

5. The Department will provide written notices to the Contractor, prepared by the Comptroller, detailing the wages, benefits, and other protections to which covered employees are entitled under Section 6-109. Such notices will be provided in English, Spanish and other languages spoken by ten percent or more of a covered employer's covered employees. Throughout the term of this Agreement, the Contractor shall post in a prominent and accessible place at every work site and provide each covered employee a copy of the written notices provided by the Department. The Contractor shall provide the notices to its subcontractors and require them to be posted and provided to each covered employee.

6. The Contractor shall ensure that its subcontractors comply with the requirements of Section 6-109, and shall provide written notification to its subcontractors of those requirements. All subcontracts made by the Contractor shall be in writing and shall include provisions relating to the wages, supplements, and health benefits required by Section 6-109. No work may be performed by a subcontractor employing covered employees prior to the Contractor entering into a written subcontract with the subcontractor.

7. Each year throughout the term of the Agreement and whenever requesting the Department's approval of a subcontractor, the Contractor shall submit to the Department an updated certification, as required by Section 6-109 and in the form of the certification attached to this Agreement, identifying any changes to the current certification.

8. Failure to comply with the requirements of Section 6-109 may, in the discretion of the Department, constitute a material breach by the Contractor of the terms of this Agreement. If the Contractor and/or subcontractor receives written notice of such a breach and fails to cure such breach within 30 Days, the City shall have the right to pursue any rights or remedies available under this Agreement or under applicable law, including termination of the Agreement. If the Contractor fails to perform in accordance with any of the requirements of Section 6-109 and fails to cure such failure in accordance with the preceding sentence, and there is a continued need for the service, the City may obtain from another source the required service as specified in the original Agreement, or

any part thereof, and may charge the Contractor for any difference in price resulting from the alternative arrangements, and may, as appropriate, invoke such other sanctions as are available under the Agreement and applicable law. In addition, the Contractor agrees to pay for all costs incurred by the City in enforcing the requirements of Section 6-109, including the cost of any investigation conducted by or on behalf of the Department or the Comptroller, where the City discovers that the Contractor or its subcontractor(s) failed to comply with the requirements of this Section 4.04(B) or of Section 6-109. The Contractor also agrees, that should it fail or refuse to pay for any such investigation, the Department is hereby authorized to deduct from a Contractor's account an amount equal to the cost of such investigation.

**Section 4.05 Non-Discrimination in Employment**

A. General Prohibition. To the extent required by law, the Contractor shall not unlawfully discriminate against any employee or applicant for employment because of actual or perceived age, religion, religious practice, creed, sex, gender, gender identity or gender expression, sexual orientation, status as a victim of domestic violence, stalking, and sex offenses, familial status, partnership status, marital status, caregiver status, pregnancy, childbirth or related medical condition, disability, presence of a service animal, predisposing genetic characteristics, race, color, national origin (including ancestry), alienage, citizenship status, political activities or recreational activities as defined in N.Y. Labor Law 201-d, arrest or conviction record, credit history, military status, uniformed service, unemployment status, salary history, or any other protected class of individuals as defined by City, State or Federal laws, rules or regulations. The Contractor shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities, due to pregnancy, childbirth, or a related medical condition, due to status as a victim of domestic violence, stalking, or sex offenses, or due to religion.

B. N.Y. Labor Law § 220-e. If this Agreement is for the construction, alteration or repair of any public building or public work or for the manufacture, sale, or distribution of materials, equipment, or supplies, the Contractor agrees, as required by N.Y. Labor Law § 220-e, that:

1. In the hiring of employees for the performance of work under this Agreement or any subcontract hereunder, neither the Contractor, subcontractor, nor any person acting on behalf of such Contractor or subcontractor, shall by reason of race, creed, color, disability, sex or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates;

2. Neither the Contractor, subcontractor, nor any person on his or her behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this Agreement on account of race, creed, color, disability, sex or national origin;

## Appendix A January 2018 Final

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3. There may be deducted from the amount payable to the Contractor by the City under this Agreement a penalty of \$50.00 for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of this Agreement; and

4. This Agreement may be terminated by the City, and all monies due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this Section 4.05.

The provisions of this Section 4.05(B) shall be limited to operations performed within the territorial limits of the State of New York.

C. Admin. Code § 6-108. If this Agreement is for the construction, alteration or repair of buildings or the construction or repair of streets or highways, or for the manufacture, sale, or distribution of materials, equipment or supplies, the Contractor agrees, as required by Admin. Code § 6-108, that:

1. It shall be unlawful for any person engaged in the construction, alteration or repair of buildings or engaged in the construction or repair of streets or highways pursuant to a contract with the City or engaged in the manufacture, sale or distribution of materials, equipment or supplies pursuant to a contract with the City to refuse to employ or to refuse to continue in any employment any person on account of the race, color or creed of such person.

2. It shall be unlawful for any person or any servant, agent or employee of any person, described in Section 4.05(C)(1) above, to ask, indicate or transmit, orally or in writing, directly or indirectly, the race, color, creed or religious affiliation of any person employed or seeking employment from such person, firm or corporation.

Breach of the foregoing provisions shall be deemed a breach of a material provision of this Agreement.

Any person, or the employee, manager or owner of or officer of such firm or corporation who shall violate any of the provisions of this Section 4.05(C) shall, upon conviction thereof, be punished by a fine of not more than \$100.00 or by imprisonment for not more than 30 Days, or both.

D. E.O. 50 -- Equal Employment Opportunity

1. This Agreement is subject to the requirements of City Executive Order No. 50 (1980) ("E.O. 50"), as revised, and the rules set forth at 66 RCNY §§ 10-01 *et seq.* No agreement will be awarded unless and until these requirements have been complied with in their entirety. The Contractor agrees that it:

a. Will not discriminate unlawfully against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability,

marital status, sexual orientation or citizenship status with respect to all employment decisions including, but not limited to, recruitment, hiring, upgrading, demotion, downgrading, transfer, training, rates of pay or other forms of compensation, layoff, termination, and all other terms and conditions of employment;

b. Will not discriminate unlawfully in the selection of subcontractors on the basis of the owners', partners' or shareholders' race, color, creed, national origin, sex, age, disability, marital status, sexual orientation, or citizenship status;

c. Will state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that all qualified applicants will receive consideration for employment without unlawful discrimination based on race, color, creed, national origin, sex, age, disability, marital status, sexual orientation or citizenship status, and that it is an equal employment opportunity employer;

d. Will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or memorandum of understanding, written notification of its equal employment opportunity commitments under E.O. 50 and the rules and regulations promulgated thereunder;

e. Will furnish before this Agreement is awarded all information and reports including an Employment Report which are required by E.O. 50, the rules and regulations promulgated thereunder, and orders of the SBS, Division of Labor Services ("DLS"); and

f. Will permit DLS to have access to all relevant books, records, and accounts for the purposes of investigation to ascertain compliance with such rules, regulations, and orders.

2. The Contractor understands that in the event of its noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations, or orders, such noncompliance shall constitute a material breach of this Agreement and noncompliance with E.O. 50 and the rules and regulations promulgated thereunder. After a hearing held pursuant to the rules of DLS, the Director of DLS may direct the Commissioner to impose any or all of the following sanctions:

- a. Disapproval of the Contractor; and/or
- b. Suspension or termination of the Agreement; and/or
- c. Declaring the Contractor in default; and/or

d. In lieu of any of the foregoing sanctions, imposition of an employment program.

3. Failure to comply with E.O. 50 and the rules and regulations promulgated thereunder in one or more instances may result in the Department declaring the Contractor to be non-responsible.

4. The Contractor agrees to include the provisions of the foregoing Sections 4.05(D)(1)-(3) in every subcontract or purchase order in excess of \$100,000.00 to which it becomes a party unless exempted by E.O. 50 and the rules and regulations promulgated thereunder, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Director of DLS as a means of enforcing such provisions including sanctions for noncompliance. A supplier of unfinished products to the Contractor needed to produce the item contracted for shall not be considered a subcontractor or vendor for purposes of this Section 4.05(D)(4).

5. The Contractor further agrees that it will refrain from entering into any subcontract or modification thereof subject to E.O. 50 and the rules and regulations promulgated thereunder with a subcontractor who is not in compliance with the requirements of E.O. 50 and the rules and regulations promulgated thereunder. A supplier of unfinished products to the Contractor needed to produce the item contracted for shall not be considered a subcontractor for purposes of this Section 4.05(D)(5).

6. Nothing contained in this Section 4.05(D) shall be construed to bar any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, that is operated, supervised or controlled by or in connection with a religious organization, from lawfully limiting employment or lawfully giving preference to persons of the same religion or denomination or from lawfully making such selection as is calculated by such organization to promote the religious principles for which it is established or maintained.

#### **Section 4.06 Paid Sick Leave Law**

##### *A. Introduction and General Provisions.*

1. The Earned Sick Time Act, also known as the Paid Sick Leave Law (“PSLL”), requires covered employees who annually perform more than 80 hours of work in New York City to be provided with paid sick time.<sup>2</sup> Contractors of the City or of other governmental entities may be required to provide sick time pursuant to the PSLL.

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<sup>2</sup> Pursuant to the PSLL, if fewer than five employees work for the same employer, as determined pursuant Admin. Code § 20-912(g), such employer has the option of providing such employees uncompensated sick time.

2. The PSLI became effective on April 1, 2014, and is codified at Title 20, Chapter 8, of the Admin. Code. It is administered by the City's Department of Consumer Affairs ("DCA"). DCA's rules promulgated under the PSLI are codified at Chapter 7 of Title 6 of the Rules of the City of New York ("Rules").

3. The Contractor agrees to comply in all respects with the PSLI and the Rules, and as amended, if applicable, in the performance of this Agreement. The Contractor further acknowledges that such compliance is a material term of this Agreement and that failure to comply with the PSLI in performance of this Agreement may result in its termination.

4. The Contractor must notify the ACCO in writing within 10 Days of receipt of a complaint (whether oral or written) regarding the PSLI involving the performance of this Agreement. Additionally, the Contractor must cooperate with DCA's education efforts and must comply with DCA's subpoenas and other document demands as set forth in the PSLI and Rules.

5. The PSLI is summarized below for the convenience of the Contractor. The Contractor is advised to review the PSLI and Rules in their entirety. On the website [www.nyc.gov/PaidSickLeave](http://www.nyc.gov/PaidSickLeave) there are links to the PSLI and the associated Rules as well as additional resources for employers, such as Frequently Asked Questions, timekeeping tools and model forms, and an event calendar of upcoming presentations and webinars at which the Contractor can get more information about how to comply with the PSLI. The Contractor acknowledges that it is responsible for compliance with the PSLI notwithstanding any inconsistent language contained herein.

*B. Pursuant to the PSLI and the Rules: Applicability, Accrual, and Use.*

1. An employee who works within the City of New York for more than eighty hours in any consecutive 12-month period designated by the employer as its "calendar year" pursuant to the PSLI ("Year") must be provided sick time. Employers must provide a minimum of one hour of sick time for every 30 hours worked by an employee and compensation for such sick time must be provided at the greater of the employee's regular hourly rate or the minimum wage. Employers are not required to provide more than 40 hours of sick time to an employee in any Year.

2. An employee has the right to determine how much sick time he or she will use, provided that employers may set a reasonable minimum increment for the use of sick time not to exceed four hours per Day. In addition, an employee may carry over up to 40 hours of unused sick time to the following Year, provided that no employer is required to allow the use of more than 40 hours of sick time in a Year or carry over unused paid sick time if the employee is paid for such unused sick time and the employer provides the employee with at least the legally required amount of paid sick time for such employee for the immediately subsequent Year on the first Day of such Year.

3. An employee entitled to sick time pursuant to the PSLL may use sick time for any of the following:

a. such employee's mental illness, physical illness, injury, or health condition or the care of such illness, injury, or condition or such employee's need for medical diagnosis or preventive medical care;

b. such employee's care of a family member (an employee's child, spouse, domestic partner, parent, sibling, grandchild, or grandparent, or the child or parent of an employee's spouse or domestic partner) who has a mental illness, physical illness, injury or health condition or who has a need for medical diagnosis or preventive medical care;

c. closure of such employee's place of business by order of a public official due to a public health emergency; or

d. such employee's need to care for a child whose school or childcare provider has been closed due to a public health emergency.

4. An employer must not require an employee, as a condition of taking sick time, to search for a replacement. However, an employer may require an employee to provide: reasonable notice of the need to use sick time; reasonable documentation that the use of sick time was needed for a reason above if for an absence of more than three consecutive work days; and/or written confirmation that an employee used sick time pursuant to the PSLL. However, an employer may not require documentation specifying the nature of a medical condition or otherwise require disclosure of the details of a medical condition as a condition of providing sick time and health information obtained solely due to an employee's use of sick time pursuant to the PSLL must be treated by the employer as confidential.

5. If an employer chooses to impose any permissible discretionary requirement as a condition of using sick time, it must provide to all employees a written policy containing those requirements, using a delivery method that reasonably ensures that employees receive the policy. If such employer has not provided its written policy, it may not deny sick time to an employee because of non-compliance with such a policy.

6. Sick time to which an employee is entitled must be paid no later than the payday for the next regular payroll period beginning after the sick time was used.

C. *Exemptions and Exceptions.* Notwithstanding the above, the PSLL does not apply to any of the following:

1. an independent contractor who does not meet the definition of employee under N.Y. Labor Law § 190(2);

2. an employee covered by a valid collective bargaining agreement in effect on April 1, 2014, until the termination of such agreement;
3. an employee in the construction or grocery industry covered by a valid collective bargaining agreement if the provisions of the PSLL are expressly waived in such collective bargaining agreement;
4. an employee covered by another valid collective bargaining agreement if such provisions are expressly waived in such agreement and such agreement provides a benefit comparable to that provided by the PSLL for such employee;
5. an audiologist, occupational therapist, physical therapist, or speech language pathologist who is licensed by the New York State Department of Education and who calls in for work assignments at will, determines his or her own schedule, has the ability to reject or accept any assignment referred to him or her, and is paid an average hourly wage that is at least four times the federal minimum wage;
6. an employee in a work study program under Section 2753 of Chapter 42 of the United States Code;
7. an employee whose work is compensated by a qualified scholarship program as that term is defined in the Internal Revenue Code, Section 117 of Chapter 20 of the United States Code; or
8. a participant in a Work Experience Program (WEP) under N.Y. Social Services Law § 336-c.

D. *Retaliation Prohibited.* An employer may not threaten or engage in retaliation against an employee for exercising or attempting in good faith to exercise any right provided by the PSLL. In addition, an employer may not interfere with any investigation, proceeding, or hearing pursuant to the PSLL.

E. *Notice of Rights.*

1. An employer must provide its employees with written notice of their rights pursuant to the PSLL. Such notice must be in English and the primary language spoken by an employee, provided that DCA has made available a translation into such language. Downloadable notices are available on DCA's website at <http://www.nyc.gov/html/dca/html/law/PaidSickLeave.shtml>.
2. Any person or entity that willfully violates these notice requirements is subject to a civil penalty in an amount not to exceed \$50.00 for each employee who was not given appropriate notice.

F. *Records.* An employer must retain records documenting its compliance with the PSLL for a period of at least three years, and must allow DCA to access such records in furtherance of an investigation related to an alleged violation of the PSLL.

G. *Enforcement and Penalties.*

1. Upon receiving a complaint alleging a violation of the PSLL, DCA has the right to investigate such complaint and attempt to resolve it through mediation. Within 30 Days of written notification of a complaint by DCA, or sooner in certain circumstances, the employer must provide DCA with a written response and such other information as DCA may request. If DCA believes that a violation of the PSLL has occurred, it has the right to issue a notice of violation to the employer.

2. DCA has the power to grant an employee or former employee all appropriate relief as set forth in Admin. Code § 20-924(d). Such relief may include, among other remedies, treble damages for the wages that should have been paid, damages for unlawful retaliation, and damages and reinstatement for unlawful discharge. In addition, DCA may impose on an employer found to have violated the PSLL civil penalties not to exceed \$500.00 for a first violation, \$750.00 for a second violation within two years of the first violation, and \$1,000.00 for each succeeding violation within two years of the previous violation.

H. *More Generous Policies and Other Legal Requirements.* Nothing in the PSLL is intended to discourage, prohibit, diminish, or impair the adoption or retention of a more generous sick time policy, or the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous sick time. The PSLL provides minimum requirements pertaining to sick time and does not preempt, limit, or otherwise affect the applicability of any other law, regulation, rule, requirement, policy or standard that provides for greater accrual or use by employees of sick leave or time, whether paid or unpaid, or that extends other protections to employees. The PSLL may not be construed as creating or imposing any requirement in conflict with any federal or state law, rule, or regulation.

#### **Section 4.07 Whistleblower Protection Expansion Act**

A. In accordance with Local Laws 30 and 33 of 2012, codified at Admin. Code §§ 6-132 and 12-113, respectively,

1. Contractor shall not take an adverse personnel action with respect to an officer or employee in retaliation for such officer or employee making a report of information concerning conduct which such officer or employee knows or reasonably believes to involve corruption, criminal activity, conflict of interest, gross mismanagement or abuse of authority by any officer or employee relating to this Agreement to (i) the Commissioner of the Department of Investigation, (ii) a member of

the New York City Council, the Public Advocate, or the Comptroller, or (iii) the City Chief Procurement Officer, ACCO, Agency head, or Commissioner.

2. If any of Contractor's officers or employees believes that he or she has been the subject of an adverse personnel action in violation of this Section 4.07, he or she shall be entitled to bring a cause of action against Contractor to recover all relief necessary to make him or her whole. Such relief may include but is not limited to: (i) an injunction to restrain continued retaliation, (ii) reinstatement to the position such employee would have had but for the retaliation or to an equivalent position, (iii) reinstatement of full fringe benefits and seniority rights, (iv) payment of two times back pay, plus interest, and (v) compensation for any special damages sustained as a result of the retaliation, including litigation costs and reasonable attorney's fees.

3. Contractor shall post a notice provided by the City (attached hereto) in a prominent and accessible place on any site where work pursuant to the Agreement is performed that contains information about:

a. how its employees can report to the New York City Department of Investigation allegations of fraud, false claims, criminality or corruption arising out of or in connection with the Agreement; and

b. the rights and remedies afforded to its employees under Admin. Code §§ 7-805 (the New York City False Claims Act) and 12-113 (the Whistleblower Protection Expansion Act) for lawful acts taken in connection with the reporting of allegations of fraud, false claims, criminality or corruption in connection with the Agreement.

4. For the purposes of this Section 4.07, "adverse personnel action" includes dismissal, demotion, suspension, disciplinary action, negative performance evaluation, any action resulting in loss of staff, office space, equipment or other benefit, failure to appoint, failure to promote, or any transfer or assignment or failure to transfer or assign against the wishes of the affected officer or employee.

5. This Section 4.07 is applicable to all of Contractor's subcontractors having subcontracts with a value in excess of \$100,000.00; accordingly, Contractor shall include this Section 4.07 in all subcontracts with a value in excess of \$100,000.00.

B. Section 4.07 is not applicable to this Agreement if it is valued at \$100,000.00 or less. Sections 4.07(A)(1), (2), (4), and (5) are not applicable to this Agreement if it was solicited pursuant to a finding of an emergency. Section 4.07(A)(3) is neither applicable to this Agreement if it was solicited prior to October 18, 2012 nor if it is a renewal of a contract executed prior to October 18, 2012.

**ARTICLE 5 - RECORDS, AUDITS, REPORTS, AND INVESTIGATIONS**

**Section 5.01 Books and Records**

The Contractor agrees to maintain separate and accurate books, records, documents, and other evidence, and to utilize appropriate accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement.

**Section 5.02 Retention of Records**

The Contractor agrees to retain all books, records, documents, other evidence relevant to this Agreement, including those required pursuant to Section 5.01, for six years after the final payment or expiration or termination of this Agreement, or for a period otherwise prescribed by Law, whichever is later. In addition, if any litigation, claim, or audit concerning this Agreement has commenced before the expiration of the six-year period, the books, records, documents, and other evidence must be retained until the completion of such litigation, claim, or audit. Any books, records, documents, and other evidence that are created in an electronic format in the regular course of business may be retained in an electronic format. Any books, records, documents, or other evidence that are created in the regular course of business as a paper copy may be retained in an electronic format provided that they satisfy the requirements of N.Y. Civil Practice Law and Rules (“CPLR”) 4539(b), including the requirement that the reproduction is created in a manner “which does not permit additions, deletions, or changes without leaving a record of such additions, deletions, or changes.” Furthermore, the Contractor agrees to waive any objection to the admissibility of any such books, records, documents, or other evidence on the grounds that such documents do not satisfy CPLR 4539(b).

**Section 5.03 Inspection**

A. At any time during the Agreement or during the record retention period set forth in Section 5.02, the City, including the Department and the Department’s Office of the Inspector General, as well as City, State, and federal auditors and any other persons duly authorized by the City shall, upon reasonable notice, have full access to and the right to examine and copy all books, records, documents, and other evidence maintained or retained by or on behalf of the Contractor pursuant to this Article 5. Notwithstanding any provision herein regarding notice of inspection, all books, records, documents, and other evidence of the Contractor kept pursuant to this Agreement shall be subject to immediate inspection, review, and copying by the Department’s Office of the Inspector General, the Comptroller, and/or federal auditors without prior notice and at no additional cost to the City. The Contractor shall make such books, records documents, and other evidence available for inspection in the City of New York or shall reimburse the City for expenses associated with the out-of-City inspection.

B. The Department shall have the right to have representatives of the Department or of the City, State or federal government present to observe the services being performed. If

observation of particular services or activity would constitute a waiver of a legal privilege or violate the Law or an ethical obligation under the New York Rules of Professional Conduct for attorneys, National Association of Social Workers Code of Ethics or other similar code governing the provision of a profession's services in New York State, the Contractor shall promptly inform the Department or other entity seeking to observe such work or activity. Such restriction shall not act to prevent government representatives from inspecting the provision of services in a manner that allows the representatives to ensure that services are being performed in accordance with this Agreement.

C. The Contractor shall not be entitled to final payment until the Contractor has complied with any request for inspection or access given under this Section 5.03.

**Section 5.04 Audit**

A. This Agreement and all books, records, documents, and other evidence required to be maintained or retained pursuant to this Agreement, including all vouchers or invoices presented for payment and the books, records, and other documents upon which such vouchers or invoices are based (e.g., reports, cancelled checks, accounts, and all other similar material), are subject to audit by (i) the City, including the Comptroller, the Department, and the Department's Office of the Inspector General, (ii) the State, (iii) the federal government, and (iv) other persons duly authorized by the City. Such audits may include examination and review of the source and application of all funds whether from the City, the State, the federal government, private sources, or otherwise.

B. Audits by the City, including the Comptroller, the Department, and the Department's Office of the Inspector General, are performed pursuant to the powers and responsibilities conferred by the Charter and the Admin. Code, as well as all orders, rules, and regulations promulgated pursuant to the Charter and Admin. Code.

C. The Contractor shall submit any and all documentation and justification in support of expenditures or fees under this Agreement as may be required by the Department and by the Comptroller in the exercise of his/her powers under Law.

D. The Contractor shall not be entitled to final payment until the Contractor has complied with the requirements of this Section 5.04.

**Section 5.05 No Removal of Records from Premises**

Where performance of this Agreement involves use by the Contractor of any City books, records, documents, or data (in hard copy, or electronic or other format now known or developed in the future) at City facilities or offices, the Contractor shall not remove any such items or material (in the format in which it originally existed, or in any other converted or derived format) from such facility or office without the prior written approval of the Department's designated official. Upon the request by the Department at any time during the Agreement or after the

Agreement has expired or terminated, the Contractor shall return to the Department any City books, records, documents, or data that has been removed from City premises.

**Section 5.06 Electronic Records**

As used in this Appendix A, the terms “books,” “records,” “documents,” and “other evidence” refer to electronic versions as well as hard copy versions.

**Section 5.07 Investigations Clause**

A. The Contractor agrees to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State or City agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry.

B.

1. If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract, or license entered into with the City, or State, or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the Laws of the State, or;

2. If any person refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the governmental agency that is a party in interest in, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision thereof or any local development corporation within the City, then;

C.

6. The Commissioner or Agency Head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less than five (5) Days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.

7. If any non-governmental party to the hearing requests an adjournment, the Commissioner or Agency Head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to Paragraph E below without the City incurring any penalty or damages for delay or otherwise.

D. The penalties that may attach after a final determination by the Commissioner or Agency Head may include but shall not exceed:

1. The disqualification for a period not to exceed five years from the date of an adverse determination for any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City; and/or

2. The cancellation or termination of any and all such existing City contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this Agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.

E. The Commissioner or Agency Head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in Paragraphs (1) and (2) below. He or she may also consider, if relevant and appropriate, the criteria established in Paragraphs (3) and (4) below, in addition to any other information that may be relevant and appropriate:

1. The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.

2. The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.

3. The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City.

4. The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under Paragraph D above, provided that the party or entity has given actual notice to the Commissioner or Agency Head upon the acquisition of the interest, or at the hearing called for in Paragraph (C)(1) above gives notice and proves that such interest was previously acquired. Under either circumstance, the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

**F. Definitions**

1. The term “license” or “permit” as used in this Section shall be defined as a license, permit, franchise, or concession not granted as a matter of right.

2. The term “person” as used in this Section shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.

3. The term “entity” as used in this Section shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, leases, or permits from or through the City, or otherwise transacts business with the City.

4. The term “member” as used in this Section shall be defined as any person associated with another person or entity as a partner, director, officer, principal, or employee.

G. In addition to and notwithstanding any other provision of this Agreement, the Commissioner or Agency Head may in his or her sole discretion terminate this Agreement upon not less than three (3) Days written notice in the event the Contractor fails to promptly report in writing to the City Commissioner of Investigation any solicitation of money, goods, requests for future employment or other benefits or thing of value, by or on behalf of any employee of the City or other person or entity for any purpose that may be related to the procurement or obtaining of this Agreement by the Contractor, or affecting the performance of this Agreement.

**Section 5.08 Confidentiality**

A. The Contractor agrees to hold confidential, both during and after the completion or termination of this Agreement, all of the reports, information, or data, furnished to, or prepared, assembled or used by, the Contractor under this Agreement. The Contractor agrees to maintain the confidentiality of such reports, information, or data by using a reasonable degree of care, and using at least the same degree of care that the Contractor uses to preserve the confidentiality of its own confidential information. The Contractor agrees that such reports, information, or data shall not be made available to any person or entity without the prior written approval of the Department. The obligation under this Section 5.08 to hold reports, information or data confidential shall not apply where the Contractor is legally required to disclose such reports, information or data, by virtue of a subpoena, court order or otherwise (“disclosure

demand”), provided that the Contractor complies with the following: (1) the Contractor shall provide advance notice to the Commissioner, in writing or by e-mail, that it received a disclosure demand for to disclose such reports, information or data and (2) if requested by the Department, the Contractor shall not disclose such reports, information, or data until the City has exhausted its legal rights, if any, to prevent disclosure of all or a portion of such reports, information or data. The previous sentence shall not apply if the Contractor is prohibited by law from disclosing to the Department the disclosure demand for such reports, information or data.

B. The Contractor shall provide notice to the Department within three days of the discovery by the Contractor of any breach of security, as defined in Admin. Code § 10-501(b), of any data, encrypted or otherwise, in use by the Contractor that contains social security numbers or other personal identifying information as defined in Admin. Code § 10-501 (“Personal Identifying Information”), where such breach of security arises out of the acts or omissions of the Contractor or its employees, subcontractors, or agents. Upon the discovery of such security breach, the Contractor shall take reasonable steps to remediate the cause or causes of such breach, and shall provide notice to the Department of such steps. In the event of such breach of security, without limiting any other right of the City, the City shall have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover the costs of notifications and/or other actions mandated by any Law, or administrative or judicial order, to address the breach, and including any fines or disallowances imposed by the State or federal government as a result of the disclosure. The City shall also have the right to withhold further payments hereunder for the purpose of set-off in sufficient sums to cover the costs of credit monitoring services for the victims of such a breach of security by a national credit reporting agency, and/or any other commercially reasonable preventive measure. The Department shall provide the Contractor with written notice and an opportunity to comment on such measures prior to implementation. Alternatively, at the City’s discretion, or if monies remaining to be earned or paid under this Agreement are insufficient to cover the costs detailed above, the Contractor shall pay directly for the costs, detailed above, if any.

C. The Contractor shall restrict access to confidential information to persons who have a legitimate work related purpose to access such information. The Contractor agrees that it will instruct its officers, employees, and agents to maintain the confidentiality of any and all information required to be kept confidential by this Agreement.

D. The Contractor, and its officers, employees, and agents shall notify the Department, at any time either during or after completion or termination of this Agreement, of any intended statement to the press or any intended issuing of any material for publication in any media of communication (print, news, television, radio, Internet, etc.) regarding the services provided or the data collected pursuant to this Agreement at least 24 hours prior to any statement to the press or at least five business days prior to the submission of the material for publication, or such shorter periods as are reasonable under the circumstances. The Contractor may not issue any statement or submit any material for publication that includes confidential information as prohibited by this Section 5.08.

E. At the request of the Department, the Contractor shall return to the Department any and all confidential information in the possession of the Contractor or its subcontractors. If the Contractor or its subcontractors are legally required to retain any confidential information, the Contractor shall notify the Department in writing and set forth the confidential information that it intends to retain and the reasons why it is legally required to retain such information. The Contractor shall confer with the Department, in good faith, regarding any issues that arise from the Contractor retaining such confidential information. If the Department does not request such information or the Law does not require otherwise, such information shall be maintained in accordance with the requirements set forth in Section 5.02.

F. A breach of this Section 5.08 shall constitute a material breach of this Agreement for which the Department may terminate this Agreement pursuant to Article 10. The Department reserves any and all other rights and remedies in the event of unauthorized disclosure.

## **ARTICLE 6 - COPYRIGHTS, PATENTS, INVENTIONS, AND ANTITRUST**

### **Section 6.01 Copyrights and Ownership of Work Product**

A. Any reports, documents, data, photographs, deliverables, and/or other materials produced pursuant to this Agreement, and any and all drafts and/or other preliminary materials in any format related to such items produced pursuant to this Agreement, shall upon their creation become the exclusive property of the City.

B. Any reports, documents, data, photographs, deliverables, and/or other materials provided pursuant to this Agreement (“Copyrightable Materials”) shall be considered “work-made-for-hire” within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. § 101, and the City shall be the copyright owner thereof and of all aspects, elements, and components thereof in which copyright protection might exist. To the extent that the Copyrightable Materials do not qualify as “work-made-for-hire,” the Contractor hereby irrevocably transfers, assigns and conveys exclusive copyright ownership in and to the Copyrightable Materials to the City, free and clear of any liens, claims, or other encumbrances. The Contractor shall retain no copyright or intellectual property interest in the Copyrightable Materials. The Copyrightable Materials shall be used by the Contractor for no purpose other than in the performance of this Agreement without the prior written permission of the City. The Department may grant the Contractor a license to use the Copyrightable Materials on such terms as determined by the Department and set forth in the license.

C. The Contractor acknowledges that the City may, in its sole discretion, register copyright in the Copyrightable Materials with the United States Copyright Office or any other government agency authorized to grant copyright registrations. The Contractor shall fully cooperate in this effort, and agrees to provide any and all documentation necessary to accomplish this.

D. The Contractor represents and warrants that the Copyrightable Materials: (i) are wholly original material not published elsewhere (except for material that is in the public domain); (ii) do not violate any copyright Law; (iii) do not constitute defamation or invasion of the right of privacy or publicity; and (iv) are not an infringement, of any kind, of the rights of any third party. To the extent that the Copyrightable Materials incorporate any non-original material, the Contractor has obtained all necessary permissions and clearances, in writing, for the use of such non-original material under this Agreement, copies of which shall be provided to the City upon execution of this Agreement.

E. If the services under this Agreement are supported by a federal grant of funds, the federal and State government reserves a royalty-free, non-exclusive irrevocable license to reproduce, publish, or otherwise use and to authorize others to use, for federal or State government purposes, the copyright in any Copyrightable Materials developed under this Agreement.

F. If the Contractor publishes a work dealing with any aspect of performance under this Agreement, or with the results of such performance, the City shall have a royalty-free, non-exclusive irrevocable license to reproduce, publish, or otherwise use such work for City governmental purposes.

### **Section 6.02 Patents and Inventions**

The Contractor shall promptly and fully report to the Department any discovery or invention arising out of or developed in the course of performance of this Agreement. If the services under this Agreement are supported by a federal grant of funds, the Contractor shall promptly and fully report to the federal government for the federal government to make a determination as to whether patent protection on such invention shall be sought and how the rights in the invention or discovery, including rights under any patent issued thereon, shall be disposed of and administered in order to protect the public interest.

### **Section 6.03 Pre-existing Rights**

In no case shall Sections 6.01 and 6.02 apply to, or prevent the Contractor from asserting or protecting its rights in any discovery, invention, report, document, data, photograph, deliverable, or other material in connection with or produced pursuant to this Agreement that existed prior to or was developed or discovered independently from the activities directly related to this Agreement.

### **Section 6.04 Antitrust**

The Contractor hereby assigns, sells, and transfers to the City all right, title, and interest in and to any claims and causes of action arising under the antitrust laws of the State or of the United States relating to the particular goods or services procured by the City under this Agreement.

## ARTICLE 7 - INSURANCE

### Section 7.01 Agreement to Insure

The Contractor shall maintain the following types of insurance if and as indicated in Schedule A (with the minimum limits and special conditions specified in Schedule A) throughout the term of this Agreement, including any applicable guaranty period. All insurance shall meet the requirements set forth in this Article 7. Wherever this Article 7 requires that insurance coverage be “at least as broad” as a specified form (including all ISO forms), there is no obligation that the form itself be used, provided that the Contractor can demonstrate that the alternative form or endorsement contained in its policy provides coverage at least as broad as the specified form.

### Section 7.02 Workers’ Compensation, Disability Benefits, and Employers’ Liability Insurance

A. The Contractor shall maintain workers’ compensation insurance, employers’ liability insurance, and disability benefits insurance, in accordance with Law on behalf of, or in regard to, all employees providing services under this Agreement

B. Within 10 Days of award of this Agreement or as otherwise specified by the Department, and as required by N.Y. Workers’ Compensation Law §§ 57 and 220(8), the Contractor shall submit proof of Contractor’s workers’ compensation insurance and disability benefits insurance (or proof of a legal exemption) to the Department in a form acceptable to the New York State Workers’ Compensation Board. ACORD forms are not acceptable proof of such insurance. The following forms are acceptable:

1. Form C-105.2, *Certificate of Workers’ Compensation Insurance*;
2. Form U-26.3, *State Insurance Fund Certificate of Workers’ Compensation Insurance*;
3. Form SI-12, *Certificate of Workers’ Compensation Self-Insurance*;
4. Form GSI-105.2, *Certificate of Participation in Worker’s Compensation Group Self-Insurance*;
5. Form DB-120.1, *Certificate of Disability Benefits Insurance*;
6. Form DB-155, *Certificate of Disability Benefits Self-Insurance*;
7. Form CE-200 – *Affidavit of Exemption*;
8. Other forms approved by the New York State Workers’ Compensation Board; or

9. Other proof of insurance in a form acceptable to the City.

### **Section 7.03 Other Insurance**

A. *Commercial General Liability Insurance.* The Contractor shall maintain commercial general liability insurance in the amounts specified in Schedule A covering operations under this Agreement. Coverage must be at least as broad as the coverage provided by the most recently issued ISO Form CG 00 01, primary and non-contributory, and “occurrence” based rather than “claims-made.” Such coverage shall list the City, together with its officials and employees, and any other entity that may be listed on Schedule A as an additional insured with coverage at least as broad as the most recently issued ISO Form CG 20 10 or CG 20 26 and, if construction is performed as part of the services, ISO Form CG 20 37.

B. *Commercial Automobile Liability Insurance.* If indicated in Schedule A and/or if vehicles are used in the provision of services under this Agreement, the Contractor shall maintain commercial automobile liability insurance for liability arising out of ownership, maintenance or use of any owned, non-owned, or hired vehicles to be used in connection with this Agreement. Coverage shall be at least as broad as the most recently issued ISO Form CA 00 01. If vehicles are used for transporting hazardous materials, the commercial automobile liability insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS-90.

C. *Professional Liability Insurance.*

1. If indicated in Schedule A, the Contractor shall maintain and submit evidence of professional liability insurance or errors and omissions insurance appropriate to the type(s) of such services to be provided under this Agreement. The policy or policies shall cover the liability assumed by the Contractor under this Agreement arising out of the negligent performance of professional services or caused by an error, omission, or negligent act of the Contractor or anyone employed by the Contractor.

2. All subcontractors of the Contractor providing professional services under this Agreement for which professional liability insurance or errors and omissions insurance is reasonably commercially available shall also maintain such insurance in the amount specified in Schedule A. At the time of the request for subcontractor approval, the Contractor shall provide to the Department, evidence of such professional liability insurance on a form acceptable to the Department.

3. Claims-made policies will be accepted for professional liability insurance. All such policies shall have an extended reporting period option or automatic coverage of not less than two years. If available as an option, the Contractor shall purchase extended reporting period coverage effective on cancellation or termination of such insurance unless a new policy is secured with a retroactive date, including at least the last policy year.

D. *Crime Insurance.* If indicated in Schedule A, the Contractor shall maintain crime insurance during the term of the Agreement in the minimum amounts listed in Schedule A. Such insurance shall include coverage, without limitation, for any and all acts of employee theft including employee theft of client property, forgery or alteration, inside the premises (theft of money and securities), inside the premises (robbery or safe burglary of other property), outside the premises, computer fraud, funds transfer fraud, and money orders and counterfeit money. The policy shall name the Contractor as named insured and shall list the City as loss payee as its interests may appear.

E. *Cyber Liability Insurance.* If indicated in Schedule A, the Contractor shall maintain cyber liability insurance covering losses arising from operations under this Agreement in the amounts listed in Schedule A. The City shall approve the policy (including exclusions therein), coverage amounts, deductibles or self-insured retentions, and premiums, as well as the types of losses covered, which may include but not be limited to: notification costs, security monitoring costs, losses resulting from identity theft, and other injury to third parties. If additional insured status is commercially available under the Contractor's cyber liability insurance, the insurance shall cover the City, together with its respective officials and employees, as additional insured.

F. *Other Insurance.* The Contractor shall provide such other types of insurance in the amounts specified in Schedule A.

#### **Section 7.04 General Requirements for Insurance Coverage and Policies**

A. Unless otherwise stated, all insurance required by Section 7.03 of this Agreement must:

1. be provided by companies that may lawfully issue such policies;
2. have an A.M. Best rating of at least A- / VII, a Standard & Poor's rating of at least A, a Moody's Investors Service rating of at least A3, a Fitch Ratings rating of at least A- or a similar rating by any other nationally recognized statistical rating organization acceptable to the New York City Law Department unless prior written approval is obtained from the New York City Law Department; and
3. be primary (and non-contributing) to any insurance or self-insurance maintained by the City (not applicable to professional liability insurance/errors and omissions insurance) and any other entity listed as an additional insured in Schedule A.

B. The Contractor shall be solely responsible for the payment of all premiums for all required insurance policies and all deductibles or self-insured retentions to which such policies are subject, whether or not the City is an insured under the policy.

C. There shall be no self-insurance program, including a self-insurance retention, exceeding \$10,000.00, with regard to any insurance required under Section 7.03 unless approved in writing by the Commissioner. Any such self-insurance program shall provide the City and any other additional insured listed on Schedule A with all rights that would be provided by traditional insurance required under this Article 7, including but not limited to the defense obligations that insurers are required to undertake in liability policies.

D. The limits of coverage for all types of insurance for the City, including its officials and employees, and any other additional insured listed on Schedule A that must be provided to such additional insured(s) shall be the greater of (i) the minimum limits set forth in Schedule A or (ii) the limits provided to the Contractor as named insured under all primary, excess, and umbrella policies of that type of coverage.

**Section 7.05 Proof of Insurance**

A. For each policy required under Section 7.03 and Schedule A of this Agreement, the Contractor shall file proof of insurance and, where applicable, proof that the City, including its officials and employees, is an additional insured with the Department within ten Days of award of this Agreement. The following proof is acceptable:

1. A certificate of insurance accompanied by a completed certification of insurance broker or agent (included in Schedule A of this Agreement) and any endorsements by which the City, including its officials and employees, have been made an additional insured; or

2. A copy of the insurance policy, including declarations and endorsements, certified by an authorized representative of the issuing insurance carrier.

B. Proof of insurance confirming renewals of insurance required under Section 7.03 must be submitted to the Department prior to the expiration date of the coverage. Such proof must meet the requirements of Section 7.05(A).

C. The Contractor shall provide the City with a copy of any policy required under this Article 7 upon the demand for such policy by the Commissioner or the New York City Law Department.

D. Acceptance by the Commissioner of a certificate or a policy does not excuse the Contractor from maintaining policies consistent with all provisions of this Article 7 (and ensuring that subcontractors maintain such policies) or from any liability arising from its failure to do so.

E. If the Contractor receives notice, from an insurance company or other person, that any insurance policy required under this Article 7 shall expire or be cancelled or terminated for any reason, the Contractor shall immediately forward a copy of such notice to both the address referred to in Section 14.04 and Schedule A and to the New York City Comptroller, Attn: Office

of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007.

**Section 7.06 Miscellaneous**

A. Whenever notice of loss, damage, occurrence, accident, claim, or suit is required under a policy required by Section 7.03 and Schedule A, the Contractor shall provide the insurer with timely notice thereof on behalf of the City. Such notice shall be given even where the Contractor may not be covered under such policy if this Agreement requires that the City be an additional insured (for example, where one of Contractor's employees was injured). Such notice shall expressly specify that "this notice is being given on behalf of the City of New York, including its officials and employees, as additional insured" (such notice shall also include the name of any other entity listed as an additional insured on Schedule A) and contain the following information to the extent known: the number of the insurance policy; the name of the named insured; the date and location of the damage, occurrence, or accident; the identity of the persons or things injured, damaged, or lost; and the title of the claim or suit, if applicable. The Contractor shall simultaneously send a copy of such notice to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007. If the Contractor fails to comply with the requirements of this paragraph, the Contractor shall indemnify the City, together with its officials and employees, and any other entity listed as an additional insured on Schedule A for all losses, judgments, settlements and expenses, including reasonable attorneys' fees, arising from an insurer's disclaimer of coverage citing late notice by or on behalf of the City together with its officials and employees, and any other entity listed as an additional insured on Schedule A.

B. The Contractor's failure to maintain any of the insurance required by this Article 7 and Schedule A shall constitute a material breach of this Agreement. Such breach shall not be waived or otherwise excused by any action or inaction by the City at any time.

C. Insurance coverage in the minimum amounts required in this Article 7 shall not relieve the Contractor or its subcontractors of any liability under this Agreement, nor shall it preclude the City from exercising any rights or taking such other actions as are available to it under any other provisions of this Agreement or Law.

D. With respect to insurance required by Section 7.03 and Schedule A (but not including professional liability/errors and omissions insurance), the Contractor waives all rights against the City, including its officials and employees, and any other entity listed as an additional insured on Schedule A for any damages or losses that are covered under any insurance required under this Article 7 (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of the Contractor and/or its subcontractors in the performance of this Agreement.

E. In the event the Contractor requires any subcontractor to maintain insurance with regard to any operations under this Agreement and requires such subcontractor to list the Contractor as an additional insured under such insurance, the Contractor shall ensure that such

entity also list the City, including its officials and employees, and any other entity listed as an additional insured on Schedule A as an additional insured. With respect to commercial general liability insurance, such coverage must be at least as broad as the most recently issued ISO form CG 20 26.

## **ARTICLE 8 - PROTECTION OF PERSONS AND PROPERTY AND INDEMNIFICATION**

### **Section 8.01 Reasonable Precautions**

The Contractor shall take all reasonable precautions to protect all persons and the property of the City and of others from injury, damage, or loss resulting from the Contractor's and/or its subcontractors' operations under this Agreement.

### **Section 8.02 Protection of City Property**

The Contractor assumes the risk of, and shall be responsible for, any loss or damage to City property, including property and equipment leased by the City, used in the performance of this Agreement, where such loss or damage is caused by negligence, any tortious act, or failure to comply with the provisions of this Agreement or of Law by the Contractor, its officers, employees, agents or subcontractors.

### **Section 8.03 Indemnification**

To the fullest extent permitted by Law, the Contractor shall defend, indemnify, and hold harmless the City, including its officials and employees, against any and all claims (even if the allegations of the claim are without merit), judgments for damages on account of any injuries or death to any person or damage to any property, and costs and expenses to which the City or its officials or employees, may be subject to or which they may suffer or incur allegedly arising out of any of the operations of the Contractor and/or its subcontractors under this Agreement to the extent resulting from any negligent act of commission or omission, any intentional tortious act, and/or the failure to comply with Law or any of the requirements of this Agreement. Insofar as the facts or Law relating to any of the foregoing would preclude the City or its officials or employees from being completely indemnified by the Contractor, the City and its officials and employees shall be partially indemnified by the Contractor to the fullest extent permitted by Law.

### **Section 8.04 Infringement Indemnification**

To the fullest extent permitted by Law, the Contractor shall defend, indemnify, and hold harmless the City, including its officials and employees, against any and all claims (even if the allegations of the claim are without merit), judgments for damages, and costs and expenses to which the City or its officials or employees, may be subject to or which they may suffer or incur allegedly arising out of any infringement, violation, or unauthorized use of any copyright, trade

secret, trademark or patent or any other property or personal right of any third party by the Contractor and/or its employees, agents, or subcontractors in the performance of this Agreement. To the fullest extent permitted by Law, the Contractor shall defend, indemnify, and hold harmless the City and its officials and employees regardless of whether or not the alleged infringement, violation, or unauthorized use arises out of compliance with the Agreement's scope of services/scope of work. Insofar as the facts or Law relating to any of the foregoing would preclude the City and its officials and employees from being completely indemnified by the Contractor, the City and its officials and employees shall be partially indemnified by the Contractor to the fullest extent permitted by Law.

**Section 8.05 Indemnification Obligations Not Limited By Insurance Obligation**

The Contractor's obligation to indemnify, defend and hold harmless the City and its officials and employees shall neither be (i) limited in any way by the Contractor's obligations to obtain and maintain insurance under this Agreement, nor (ii) adversely affected by any failure on the part of the City or its officials or employees to avail themselves of the benefits of such insurance.

**Section 8.06 Actions By or Against Third Parties**

A. If any claim is made or any action brought in any way relating to Agreement other than an action between the City and the Contractor, the Contractor shall diligently render to the City without additional compensation all assistance that the City may reasonably require of the Contractor.

B. The Contractor shall report to the Department in writing within five business days of the initiation by or against the Contractor of any legal action or proceeding relating to this Agreement.

**Section 8.07 Withholding of Payments**

A. If any claim is made or any action is brought against the City for which the Contractor may be required to indemnify the City pursuant to this Agreement, the City shall have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover the said claim or action.

B. If any City property is lost or damaged as set forth in Section 8.02, except for normal wear and tear, the City shall have the right to withhold payments under this Agreement for the purpose of set-off in sufficient sums to cover such loss or damage.

C. The City shall not, however, impose a set-off in the event that an insurance company that provided insurance pursuant to Section 7.03 above has accepted the City's tender of the claim or action without a reservation of rights.

D. The Department may, at its option, withhold for purposes of set-off any monies due to the Contractor under this Agreement up to the amount of any disallowances or questioned costs resulting from any audits of the Contractor or to the amount of any overpayment to the Contractor with regard to this Agreement.

E. The rights and remedies of the City provided for in this Section 8.07 are not exclusive and are in addition to any other rights and remedies provided by Law or this Agreement.

**Section 8.08 No Third Party Rights**

The provisions of this Agreement shall not be deemed to create any right of action in favor of third parties against the Contractor or the City or their respective officials and employees.

**ARTICLE 9 - CONTRACT CHANGES**

**Section 9.01 Contract Changes**

Changes to this Agreement may be made only as duly authorized by the ACCO or his or her designee and in accordance with the PPB Rules. Any amendment or change to this Agreement shall not be valid unless made in writing and signed by authorized representatives of both parties. The Contractor deviates from the requirements of this Agreement without a duly approved and executed change order document or written contract modification or amendment at its own risk.

**Section 9.02 Changes Through Fault of Contractor**

If any change is required in the data, documents, deliverables, or other services to be provided under this Agreement because of negligence or error of the Contractor, no additional compensation shall be paid to the Contractor for making such change, and the Contractor is obligated to make such change without additional compensation.

**ARTICLE 10 - TERMINATION, DEFAULT, REDUCTIONS IN FUNDING, AND LIQUIDATED DAMAGES**

**Section 10.01 Termination by the City Without Cause**

A. The City shall have the right to terminate this Agreement, in whole or in part, without cause, in accordance with the provisions of Section 10.05.

B. In its sole discretion, the City shall have the right to terminate this Agreement, in whole or in part, upon the request of the Contractor to withdraw from the Contract, in accordance with the provisions of Section 10.05.

C. If the City terminates this Agreement pursuant to this Section 10.01, the following provisions apply. The City shall not incur or pay any further obligation pursuant to this Agreement beyond the termination date set by the City pursuant to Section 10.05. The City shall pay for services provided in accordance with this Agreement prior to the termination date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of termination and falling due after the termination date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

**Section 10.02 Reductions in Federal, State, and/or City Funding**

A. This Agreement is funded in whole or in part by funds secured from the federal, State and/or City governments. Should there be a reduction or discontinuance of such funds by action of the federal, State and/or City governments, the City shall have, in its sole discretion, the right to terminate this Agreement in whole or in part, or to reduce the funding and/or level of services of this Agreement caused by such action by the federal, State and/or City governments, including, in the case of the reduction option, but not limited to, the reduction or elimination of programs, services or service components; the reduction or elimination of contract-reimbursable staff or staff-hours, and corresponding reductions in the budget of this Agreement and in the total amount payable under this Agreement. Any reduction in funds pursuant to this Section 10.02(A) shall be accompanied by an appropriate reduction in the services performed under this Agreement.

B. In the case of the reduction option referred to in Section 10.02(A), above, any such reduction shall be effective as of the date set forth in a written notice thereof to the Contractor, which shall be not less than 30 Days from the date of such notice. Prior to sending such notice of reduction, the Department shall advise the Contractor that such option is being exercised and afford the Contractor an opportunity to make within seven Days any suggestion(s) it may have as to which program(s), service(s), service component(s), staff or staff-hours might be reduced or eliminated, provided, however, that the Department shall not be bound to utilize any of the Contractor's suggestions and that the Department shall have sole discretion as to how to effectuate the reductions.

C. If the City reduces funding pursuant to this Section 10.02, the following provisions apply. The City shall pay for services provided in accordance with this Agreement prior to the reduction date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of reduction and falling due after the reduction date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

D. To the extent that the reduction in public funds is a result of the State determining that the Contractor may receive medical assistance funds pursuant to title eleven of article five of

the Social Services Law to fund the services contained within the scope of a program under this Agreement, then the notice and effective date provisions of this Section 10.02 shall not apply, and the Department may reduce such public funds authorized under this Agreement by informing the Contractor of the amount of the reduction and revising attachments to this Agreement as appropriate.

**Section 10.03 Contractor Default**

A. The City shall have the right to declare the Contractor in default:

1. Upon a breach by the Contractor of a material term or condition of this Agreement, including unsatisfactory performance of the services;

2. Upon insolvency or the commencement of any proceeding by or against the Contractor, either voluntarily or involuntarily, under the Bankruptcy Code or relating to the insolvency, receivership, liquidation, or composition of the Contractor for the benefit of creditors;

3. If the Contractor refuses or fails to proceed with the services under the Agreement when and as directed by the Commissioner;

4. If the Contractor or any of its officers, directors, partners, five percent or greater shareholders, principals, or other employee or person substantially involved in its activities are indicted or convicted after execution of the Agreement under any state or federal law of any of the following:

a. a criminal offense incident to obtaining or attempting to obtain or performing a public or private contract;

b. fraud, embezzlement, theft, bribery, forgery, falsification, or destruction of records, or receiving stolen property;

c. a criminal violation of any state or federal antitrust law;

d. violation of the Racketeer Influence and Corrupt Organization Act, 18 U.S.C. §§ 1961 *et seq.*, or the Mail Fraud Act, 18 U.S.C. §§ 1341 *et seq.*, for acts in connection with the submission of bids or proposals for a public or private contract;

e. conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any statute described in subparagraph (d) above; or

f. an offense indicating a lack of business integrity that seriously and directly affects responsibility as a City vendor.

5. If the Contractor or any of its officers, directors, partners, five percent or greater shareholders, principals, or other employee or person substantially involved in its activities are subject to a judgment of civil liability under any state or federal antitrust law for acts or omissions in connection with the submission of bids or proposals for a public or private contract; or

6. If the Contractor or any of its officers, directors, partners, five percent or greater shareholders, principals, or other employee or person substantially involved in its activities makes or causes to be made any false, deceptive, or fraudulent material statement, or fail to make a required material statement in any bid, proposal, or application for City or other government work.

B. The right to declare the Contractor in default shall be exercised by sending the Contractor a written notice of the conditions of default, signed by the Commissioner, setting forth the ground or grounds upon which such default is declared (“Notice to Cure”). The Contractor shall have ten Days from receipt of the Notice to Cure or any longer period that is set forth in the Notice to Cure to cure the default. The Commissioner may temporarily suspend services under the Agreement pending the outcome of the default proceedings pursuant to this Section 10.03.

C. If the conditions set forth in the Notice to Cure are not cured within the period set forth in the Notice to Cure, the Commissioner may declare the Contractor in default pursuant to this Section 10.03. Before the Commissioner may exercise his or her right to declare the Contractor in default, the Commissioner shall give the Contractor an opportunity to be heard upon not less than five business days’ notice. The Commissioner may, in his or her discretion, provide for such opportunity to be in writing or in person. Such opportunity to be heard shall not occur prior to the end of the cure period but notice of such opportunity to be heard may be given prior to the end of the cure period and may be given contemporaneously with the Notice to Cure.

D. After the opportunity to be heard, the Commissioner may terminate the Agreement, in whole or in part, upon finding the Contractor in default pursuant to this Section 10.03, in accordance with the provisions of Section 10.05.

E. The Commissioner, after declaring the Contractor in default, may have the services under the Agreement completed by such means and in such manner, by contract with or without public letting, or otherwise, as he or she may deem advisable in accordance with applicable PPB Rules. After such completion, the Commissioner shall certify the expense incurred in such completion, which shall include the cost of re-letting. Should the expense of such completion, as certified by the Commissioner, exceed the total sum which would have been payable under the Agreement if it had been completed by the Contractor, any excess shall be promptly paid by the Contractor upon demand by the City. The excess expense of such completion, including any and all related and incidental costs, as so certified by the Commissioner, and any liquidated damages assessed against the Contractor, may be charged against and deducted out of monies earned by the Contractor.

**Section 10.04 Force Majeure**

A. For purposes of this Agreement, a force majeure event is an act or event beyond the control and without any fault or negligence of the Contractor (“Force Majeure Event”). Such events may include, but are not limited to, fire, flood, earthquake, storm or other natural disaster, civil commotion, war, terrorism, riot, and labor disputes not brought about by any act or omission of the Contractor.

B. In the event the Contractor cannot comply with the terms of the Agreement (including any failure by the Contractor to make progress in the performance of the services) because of a Force Majeure Event, then the Contractor may ask the Commissioner to excuse the nonperformance and/or terminate the Agreement. If the Commissioner, in his or her reasonable discretion, determines that the Contractor cannot comply with the terms of the Agreement because of a Force Majeure Event, then the Commissioner shall excuse the nonperformance and may terminate the Agreement. Such a termination shall be deemed to be without cause.

F. If the City terminates the Agreement pursuant to this Section 10.04, the following provisions apply. The City shall not incur or pay any further obligation pursuant to this Agreement beyond the termination date. The City shall pay for services provided in accordance with this Agreement prior to the termination date. Any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of termination and falling due after the termination date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

**Section 10.05 Procedures for Termination**

A. The Department and/or the City shall give the Contractor written notice of any termination of this Agreement. Such notice shall specify the applicable provision(s) under which the Agreement is terminated and the effective date of the termination. Except as otherwise provided in this Agreement, the notice shall comply with the provisions of this Section 10.05 and Section 14.04. For termination without cause, the effective date of the termination shall not be less than ten Days from the date the notice is personally delivered, or 15 Days from the date the notice is either sent by certified mail, return receipt requested, delivered by overnight or same day courier service in a properly addressed envelope with confirmation, or sent by email and, unless the receipt of the email is acknowledged by the recipient by email, deposited in a post office box regularly maintained by the United States Postal Service in a properly addressed postage pre-paid envelope. In the case of termination for default, the effective date of the termination shall be as set forth above for a termination without cause or such earlier date as the Commissioner may determine. If the City terminates the Agreement in part, the Contractor shall continue the performance of the Agreement to the extent not terminated.

B. Upon termination or expiration of this Agreement, the Contractor shall comply with the City close-out procedures, including but not limited to:

1. Accounting for and refunding to the Department, within 45 Days, any unexpended funds which have been advanced to the Contractor pursuant to this Agreement;
2. Furnishing within 45 Days an inventory to the Department of all equipment, appurtenances and property purchased through or provided under this Agreement and carrying out any Department or City directive concerning the disposition of such equipment, appurtenances and property;
3. Turning over to the Department or its designees all books, records, documents and material specifically relating to this Agreement that the Department has requested be turned over;
4. Submitting to the Department, within 90 Days, a final statement and report relating to the Agreement. The report shall be made by a certified public accountant or a licensed public accountant, unless the Department waives, in writing, the requirement that a certified public accountant or licensed public accountant make such report; and
5. Providing reasonable assistance to the Department in the transition, if any, to a new contractor.

**Section 10.06 Miscellaneous Provisions**

A. The Commissioner, in addition to any other powers set forth in this Agreement or by operation of Law, may suspend, in whole or in part, any part of the services to be provided under this Agreement whenever in his or her judgment such suspension is required in the best interest of the City. If the Commissioner suspends this Agreement pursuant to this Section 10.06, the City shall not incur or pay any further obligation pursuant to this Agreement beyond the suspension date until such suspension is lifted. The City shall pay for services provided in accordance with this Agreement prior to the suspension date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of suspension and falling due during the suspension period shall be paid by the City in accordance with the terms of this Agreement.

B. Notwithstanding any other provisions of this Agreement, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of the Contractor's breach of the Agreement, and the City may withhold payments to the Contractor for the purpose of set-off in the amount of damages due to the City from the Contractor.

C. The rights and remedies of the City provided in this Article 10 shall not be exclusive and are in addition to all other rights and remedies provided by Law or under this Agreement.

**Section 10.07 Liquidated Damages**

If Schedule A or any other part of this Agreement includes liquidated damages for failure to comply with a provision of this Agreement, the sum indicated is fixed and agreed as the liquidated damages that the City will suffer by reason of such noncompliance and not as a penalty.

**ARTICLE 11 - PROMPT PAYMENT AND ELECTRONIC FUNDS TRANSFER**

**Section 11.01 Prompt Payment**

A. The prompt payment provisions of PPB Rule § 4-06 are applicable to payments made under this Agreement. With some exceptions, the provisions generally require the payment to the Contractor of interest on payments made after the required payment date, as set forth in the PPB Rules.

B. The Contractor shall submit a proper invoice to receive payment, except where the Agreement provides that the Contractor will be paid at predetermined intervals without having to submit an invoice for each scheduled payment.

C. Determination of interest due will be made in accordance with the PPB Rules and the applicable rate of interest shall be the rate in effect at the time of payment.

**Section 11.02 Electronic Funds Transfer**

A. In accordance with Admin. Code § 6-107.1, the Contractor agrees to accept payments under this Agreement from the City by electronic funds transfer. An electronic funds transfer is any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Prior to the first payment made under this Agreement, the Contractor shall designate one financial institution or other authorized payment agent and shall complete the "EFT Vendor Payment Enrollment Form" available from the Agency or at <http://www.nyc.gov/dof> in order to provide the commissioner of the Department of Finance with information necessary for the Contractor to receive electronic funds transfer payments through the designated financial institution or authorized payment agent. The crediting of the amount of a payment to the appropriate account on the books of a financial institution or other authorized payment agent designated by the Contractor shall constitute full satisfaction by the City for the amount of the payment under this Agreement. The account information supplied by the Contractor to facilitate the electronic funds transfer shall remain confidential to the fullest extent provided by Law.

B. The Agency Head may waive the application of the requirements of this Section 11.02 to payments on contracts entered into pursuant to Charter § 315. In addition, the

commissioner of the Department of Finance and the Comptroller may jointly issue standards pursuant to which the Department may waive the requirements of this Section 11.02 for payments in the following circumstances: (i) for individuals or classes of individuals for whom compliance imposes a hardship; (ii) for classifications or types of checks; or (iii) in other circumstances as may be necessary in the best interest of the City.

- C. This Section 11.02 is applicable to contracts valued at \$25,000.00 and above.

## **ARTICLE 12 - CLAIMS**

### **Section 12.01 Choice of Law**

This Agreement shall be deemed to be executed in the City and State of New York, regardless of the domicile of the Contractor, and shall be governed by and construed in accordance with the Laws of the State of New York (notwithstanding New York choice of law or conflict of law principles) and the Laws of the United States, where applicable.

### **Section 12.02 Jurisdiction and Venue**

Subject to Section 12.03, the parties agree that any and all claims asserted by or against the City arising under or related to this Agreement shall solely be heard and determined either in the courts of the United States located in the City or in the courts of the State located in the City and County of New York. The parties shall consent to the dismissal and/or transfer of any claims asserted in any other venue or forum to the proper venue or forum. If the Contractor initiates any action in breach of this Section 12.02, the Contractor shall be responsible for and shall promptly reimburse the City for any attorneys' fees incurred by the City in removing the action to a proper court consistent with this Section 12.02.

### **Section 12.03 Resolution of Disputes**

A. Except as provided in Subparagraphs (A)(1) and (A)(2) below, all disputes between the City and the Contractor that arise under, or by virtue of, this Agreement shall be finally resolved in accordance with the provisions of this Section 12.03 and PPB Rule § 4-09. This procedure shall be the exclusive means of resolving any such disputes.

1. This Section 12.03 shall not apply to disputes concerning matters dealt with in other sections of the PPB Rules or to disputes involving patents, copyrights, trademarks, or trade secrets (as interpreted by the courts of New York State) relating to proprietary rights in computer software, or to termination other than for cause.

2. For construction and construction-related services this Section 12.03 shall apply only to disputes about the scope of work delineated by the Agreement, the interpretation of Agreement documents, the amount to be paid for extra work or disputed work performed in connection with the Agreement, the conformity of the Contractor's

work to the Agreement, and the acceptability and quality of the Contractor's work; such disputes arise when the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head makes a determination with which the Contractor disagrees. For construction, this Section 12.03 shall not apply to termination of the Agreement for cause or other than for cause.

B. All determinations required by this Section 12.03 shall be clearly stated, with a reasoned explanation for the determination based on the information and evidence presented to the party making the determination. Failure to make such determination within the time required by this Section 12.03 shall be deemed a non-determination without prejudice that will allow application to the next level.

C. During such time as any dispute is being presented, heard, and considered pursuant to this Section 12.03, the Agreement terms shall remain in full force and effect and, unless otherwise directed by the ACCO or Engineer, the Contractor shall continue to perform work in accordance with the Agreement and as directed by the ACCO or City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head. Failure of the Contractor to continue the work as directed shall constitute a waiver by the Contractor of any and all claims being presented pursuant to this Section 12.03 and a material breach of contract.

D. Presentation of Dispute to Agency Head.

1. Notice of Dispute and Agency Response. The Contractor shall present its dispute in writing ("Notice of Dispute") to the Agency Head within the time specified herein, or, if no time is specified, within 30 Days of receiving written notice of the determination or action that is the subject of the dispute. This notice requirement shall not be read to replace any other notice requirements contained in the Agreement. The Notice of Dispute shall include all the facts, evidence, documents, or other basis upon which the Contractor relies in support of its position, as well as a detailed computation demonstrating how any amount of money claimed by the Contractor in the dispute was arrived at. Within 30 Days after receipt of the complete Notice of Dispute, the ACCO or, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, shall submit to the Agency Head all materials he or she deems pertinent to the dispute. Following initial submissions to the Agency Head, either party may demand of the other the production of any document or other material the demanding party believes may be relevant to the dispute. The requested party shall produce all relevant materials that are not otherwise protected by a legal privilege recognized by the courts of New York State. Any question of relevancy shall be determined by the Agency Head whose decision shall be final. Willful failure of the Contractor to produce any requested material whose relevancy the Contractor has not disputed, or whose relevancy has been affirmatively determined, shall constitute a waiver by the Contractor of its claim.

2. **Agency Head Inquiry.** The Agency Head shall examine the material and may, in his or her discretion, convene an informal conference with the Contractor and the ACCO and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, to resolve the issue by mutual consent prior to reaching a determination. The Agency Head may seek such technical or other expertise as he or she shall deem appropriate, including the use of neutral mediators, and require any such additional material from either or both parties as he or she deems fit. The Agency Head's ability to render, and the effect of, a decision hereunder shall not be impaired by any negotiations in connection with the dispute presented, whether or not the Agency Head participated therein. The Agency Head may or, at the request of any party to the dispute, shall compel the participation of any other contractor with a contract related to the work of this Agreement and that contractor shall be bound by the decision of the Agency Head. Any contractor thus brought into the dispute resolution proceeding shall have the same rights and obligations under this Section 12.03 as the Contractor initiating the dispute.

3. **Agency Head Determination.** Within 30 Days after the receipt of all materials and information, or such longer time as may be agreed to by the parties, the Agency Head shall make his or her determination and shall deliver or send a copy of such determination to the Contractor and ACCO and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, together with a statement concerning how the decision may be appealed.

4. **Finality of Agency Head Decision.** The Agency Head's decision shall be final and binding on all parties, unless presented to the Contract Dispute Resolution Board ("CDRB") pursuant to this Section 12.03. The City may not take a petition to the CDRB. However, should the Contractor take such a petition, the City may seek, and the CDRB may render, a determination less favorable to the Contractor and more favorable to the City than the decision of the Agency Head.

E. **Presentation of Dispute to the Comptroller.** Before any dispute may be brought by the Contractor to the CDRB, the Contractor must first present its claim to the Comptroller for his or her review, investigation, and possible adjustment.

1. **Time, Form, and Content of Notice.** Within 30 Days of receipt of a decision by the Agency Head, the Contractor shall submit to the Comptroller and to the Agency Head a Notice of Claim regarding its dispute with the Agency. The Notice of Claim shall consist of (i) a brief statement of the substance of the dispute, the amount of money, if any, claimed and the reason(s) the Contractor contends the dispute was wrongly decided by the Agency Head; (ii) a copy of the decision of the Agency Head; and (iii) a copy of all materials submitted by the Contractor to the Agency, including the Notice of Dispute. The Contractor may not present to the Comptroller any material not presented to the Agency Head, except at the request of the Comptroller.

2. Agency Response. Within 30 Days of receipt of the Notice of Claim, the Agency shall make available to the Comptroller a copy of all material submitted by the Agency to the Agency Head in connection with the dispute. The Agency may not present to the Comptroller any material not presented to the Agency Head, except at the request of the Comptroller.

3. Comptroller Investigation. The Comptroller may investigate the claim in dispute and, in the course of such investigation, may exercise all powers provided in Admin. Code §§ 7-201 and 7-203. In addition, the Comptroller may demand of either party, and such party shall provide, whatever additional material the Comptroller deems pertinent to the claim, including original business records of the Contractor. Willful failure of the Contractor to produce within 15 Days any material requested by the Comptroller shall constitute a waiver by the Contractor of its claim. The Comptroller may also schedule an informal conference to be attended by the Contractor, Agency representatives, and any other personnel desired by the Comptroller.

4. Opportunity of Comptroller to Compromise or Adjust Claim. The Comptroller shall have 45 Days from his or her receipt of all materials referred to in Paragraph (E)(3) above to investigate the disputed claim. The period for investigation and compromise may be further extended by agreement between the Contractor and the Comptroller, to a maximum of 90 Days from the Comptroller's receipt of all the materials. The Contractor may not present its petition to the CDRB until the period for investigation and compromise delineated in this Paragraph has expired. In compromising or adjusting any claim hereunder, the Comptroller may not revise or disregard the terms of the Agreement.

F. Contract Dispute Resolution Board. There shall be a Contract Dispute Resolution Board composed of:

1. the chief administrative law judge of the Office of Administrative Trials and Hearings ("OATH") or his or her designated OATH administrative law judge, who shall act as chairperson, and may adopt operational procedures and issue such orders consistent with this Section 12.03 as may be necessary in the execution of the CDRB's functions, including, but not limited to, granting extensions of time to present or respond to submissions;

2. the City Chief Procurement Officer ("CCPO") or his or her designee; any designee shall have the requisite background to consider and resolve the merits of the dispute and shall not have participated personally and substantially in the particular matter that is the subject of the dispute or report to anyone who so participated; and

3. a person with appropriate expertise who is not an employee of the City. This person shall be selected by the presiding administrative law judge from a prequalified panel of individuals, established, and administered by OATH, with appropriate background to act as decision-makers in a dispute. Such individuals may not

have a contract or dispute with the City or be an officer or employee of any company or organization that does, or regularly represent persons, companies, or organizations having disputes with the City.

G. Petition to CDRB. In the event the claim has not been settled or adjusted by the Comptroller within the period provided in this Section 12.03, the Contractor, within thirty (30) Days thereafter, may petition the CDRB to review the Agency Head determination.

1. Form and Content of Petition by the Contractor. The Contractor shall present its dispute to the CDRB in the form of a petition, which shall include (i) a brief statement of the substance of the dispute, the amount of money, if any, claimed, and the reason(s) the Contractor contends that the dispute was wrongly decided by the Agency Head; (ii) a copy of the decision of the Agency Head; (iii) copies of all materials submitted by the Contractor to the Agency; (iv) a copy of the decision of the Comptroller, if any, and (v) copies of all correspondence with, and material submitted by the Contractor to, the Comptroller's Office. The Contractor shall concurrently submit four complete sets of the petition: one to the Corporation Counsel (Attn: Commercial and Real Estate Litigation Division), and three to the CDRB at OATH's offices, with proof of service on the Corporation Counsel. In addition, the Contractor shall submit a copy of the statement of the substance of the dispute, cited in (i) above, to both the Agency Head and the Comptroller.

2. Agency Response. Within 30 Days of receipt of the petition by the Corporation Counsel, the Agency shall respond to the statement of the Contractor and make available to the CDRB all material it submitted to the Agency Head and Comptroller. Three complete copies of the Agency response shall be submitted to the CDRB at OATH's offices and one to the Contractor. Extensions of time for submittal of the Agency response shall be given as necessary upon a showing of good cause or, upon the consent of the parties, for an initial period of up to 30 Days.

3. Further Proceedings. The CDRB shall permit the Contractor to present its case by submission of memoranda, briefs, and oral argument. The CDRB shall also permit the Agency to present its case in response to the Contractor by submission of memoranda, briefs, and oral argument. If requested by the Corporation Counsel, the Comptroller shall provide reasonable assistance in the preparation of the Agency's case. Neither the Contractor nor the Agency may support its case with any documentation or other material that was not considered by the Comptroller, unless requested by the CDRB. The CDRB, in its discretion, may seek such technical or other expert advice as it shall deem appropriate and may seek, on its own or upon application of a party, any such additional material from any party as it deems fit. The CDRB, in its discretion, may combine more than one dispute between the parties for concurrent resolution.

4. CDRB Determination. Within 45 Days of the conclusion of all submissions and oral arguments, the CDRB shall render a decision resolving the dispute. In an unusually complex case, the CDRB may render its decision in a longer period of

time, not to exceed 90 Days, and shall so advise the parties at the commencement of this period. The CDRB's decision must be consistent with the terms of this Agreement. Decisions of the CDRB shall only resolve matters before the CDRB and shall not have precedential effect with respect to matters not before the CDRB.

5. Notification of CDRB Decision. The CDRB shall send a copy of its decision to the Contractor, the ACCO, the Corporation Counsel, the Comptroller, the CCPO, and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head. A decision in favor of the Contractor shall be subject to the prompt payment provisions of the PPB Rules. The required payment date shall be 30 Days after the date the parties are formally notified of the CDRB's decision.

6. Finality of CDRB Decision. The CDRB's decision shall be final and binding on all parties. Any party may seek review of the CDRB's decision solely in the form of a challenge, filed within four months of the date of the CDRB's decision, in a court of competent jurisdiction of the State of New York, County of New York pursuant to Article 78 of the Civil Practice Law and Rules. Such review by the court shall be limited to the question of whether or not the CDRB's decision was made in violation of lawful procedure, was affected by an error of Law, or was arbitrary and capricious or an abuse of discretion. No evidence or information shall be introduced or relied upon in such proceeding that was not presented to the CDRB in accordance with PPB Rules § 4-09.

H. Any termination, cancellation, or alleged breach of the Agreement prior to or during the pendency of any proceedings pursuant to this Section 12.03 shall not affect or impair the ability of the Agency Head or CDRB to make a binding and final decision pursuant to this Section 12.03.

#### **Section 12.04 Claims and Actions**

A. Any claim, that is not subject to dispute resolution under the PPB Rules or this Agreement, against the City for damages for breach of contract shall not be made or asserted in any action, unless the Contractor shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims, as provided in this Agreement.

B. No action shall be instituted or maintained on any such claims unless such action shall be commenced within six months after the final payment under this Agreement, or within six months of the termination or expiration of this Agreement, or within six months after the accrual of the cause of action, whichever first occurs.

#### **Section 12.05 No Claim Against Officials, Agents, or Employees**

No claim shall be made by the Contractor against any official, agent, or employee of the City in their personal capacity for, or on account of, anything done or omitted in connection with this Agreement.

**Section 12.06 General Release**

The acceptance by the Contractor or its assignees of the final payment under this Agreement, whether by check, wire transfer, or other means, and whether pursuant to invoice, voucher, judgment of any court of competent jurisdiction or any other administrative means, shall constitute and operate as a release of the City from any and all claims of and liability to the Contractor, of which the Contractor was aware or should reasonably have been aware, arising out of the performance of this Agreement based on actions of the City prior to such acceptance of final payment, excepting any disputes that are the subject of pending dispute resolution procedures.

**Section 12.07 No Waiver**

Waiver by either the Department or the Contractor of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless and until the same shall be agreed to in writing by the parties as set forth in Section 9.01.

**ARTICLE 13 - APPLICABLE LAWS**

**Section 13.01 PPB Rules**

This Agreement is subject to the PPB Rules. If there is a conflict between the PPB Rules and a provision of this Agreement, the PPB Rules shall take precedence.

**Section 13.02 All Legal Provisions Deemed Included**

Each and every provision required by Law to be inserted in this Agreement is hereby deemed to be a part of this Agreement, whether actually inserted or not.

**Section 13.03 Severability / Unlawful Provisions Deemed Stricken**

If this Agreement contains any unlawful provision not an essential part of the Agreement and which shall not appear to have been a controlling or material inducement to the making of this Agreement, the unlawful provision shall be deemed of no effect and shall, upon notice by either party, be deemed stricken from the Agreement without affecting the binding force of the remainder.

**Section 13.04 Compliance With Laws**

The Contractor shall perform all services under this Agreement in accordance with all applicable Laws as are in effect at the time such services are performed.

**Section 13.05 Unlawful Discrimination in the Provision of Services**

A. *Discrimination in Public Accommodations.* With respect to services provided under this Agreement, the Contractor shall not unlawfully discriminate against any person because of actual or perceived age, religion, creed, sex, gender, gender identity or gender expression, sexual orientation, partnership status, marital status, disability, presence of a service animal, race, color, national origin, alienage, citizenship status, or military status, or any other class of individuals protected from discrimination in public accommodations by City, State or Federal laws, rules or regulations. The Contractor shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities.

B. *Discrimination in Housing Accommodations.* With respect to services provided under this Agreement, the Contractor shall not unlawfully discriminate against any person because of actual or perceived age, religion, creed, sex, gender, gender identity or gender expression, sexual orientation, status as a victim of domestic violence, stalking, and sex offenses, partnership status, marital status, presence of children, disability, presence of a service or emotional support animal, race, color, national origin, alienage or citizenship status, lawful occupation, or lawful source of income (including income derived from social security, or any form of federal, state, or local public government assistance or housing assistance including Section 8 vouchers), or any other class of individuals protected from discrimination in housing accommodations by City, State or Federal laws, rules or regulations. The Contractor shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities.

C. *Admin. Code § 6-123.* In accordance with Admin. Code § 6-123, the Contractor will not engage in any unlawful discriminatory practice as defined in and pursuant to the terms of Title 8 of the Admin. Code. The Contractor shall include a provision in any agreement with a first-level subcontractor performing services under this Agreement for an amount in excess of \$50,000.00 that such subcontractor shall not engage in any such unlawful discriminatory practice.

D. *Immigration status.* In connection with the services provided under this Agreement, the Contractor shall not inquire about the immigration status of a recipient or potential recipient of such services unless (i) it is necessary for the determination of program, service or benefit eligibility or the provision of City services or (ii) the Contractor is required by law to inquire about such person's immigration status.

**Section 13.05 Americans with Disabilities Act (ADA)**

A. This Agreement is subject to the provisions of Subtitle A of Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131 *et seq.* ("ADA") and regulations promulgated pursuant thereto, see 28 CFR Part 35. The Contractor shall not discriminate against an individual with a disability, as defined in the ADA, in providing services, programs, or activities pursuant to this Agreement. If directed to do so by the Department to ensure the

Contractor's compliance with the ADA during the term of this Agreement, the Contractor shall prepare a plan ("Compliance Plan") which lists its program site(s) and describes in detail, how it intends to make the services, programs and activities set forth in the scope of services herein readily accessible and usable by individuals with disabilities at such site(s). If the program site is not readily accessible and usable by individuals with disabilities, contractor shall also include in the Compliance Plan, a description of reasonable alternative means and methods that result in making the services, programs or activities provided under this Agreement, readily accessible to and usable by individuals with disabilities, including but not limited to people with visual, auditory or mobility disabilities. The Contractor shall submit the Compliance Plan to the ACCO for review within ten Days after being directed to do so and shall abide by the Compliance Plan and implement any action detailed in the Compliance Plan to make the services, programs, or activities accessible and usable by the disabled.

B. The Contractor's failure to either submit a Compliance Plan as required herein or implement an approved Compliance Plan may be deemed a material breach of this Agreement and result in the City terminating this Agreement.

### **Section 13.06 Voter Registration**

A. *Participating Agencies.* Pursuant to Charter § 1057-a, if this Agreement is made by and through a participating City agency and the Contractor has regular contact with the public in the daily administration of its business, the Contractor must comply with the requirements of this Section 13.06. The participating City agencies are: the Administration for Children's Services; the City Clerk; the Civilian Complaint Review Board; the Commission on Human Rights; Community Boards; SBS; the Department of Citywide Administrative Services; the Department of Consumer Affairs; the Department of Correction; the Department of Environmental Protection; the Department of Finance; the Department of Health and Mental Hygiene; the Department of Homeless Services; the Department of Housing Preservation and Development; the Department of Parks and Recreation; the Department of Probation; the Taxi and Limousine Commission; the Department of Transportation; and the Department of Youth and Community Development.

B. *Distribution of Voter Registration Forms.* In accordance with Charter § 1057-a, the Contractor, if it has regular contact with the public in the daily administration of its business under this Agreement, hereby agrees as follows:

1. The Contractor shall provide and distribute voter registration forms to all persons together with written applications for services, renewal, or recertification for services and change of address relating to such services. Such voter registration forms shall be provided to the Contractor by the City. The Contractor should be prepared to provide forms written in Spanish or Chinese, and shall obtain a sufficient supply of such forms from the City.

2. The Contractor shall also include a voter registration form with any Contractor communication sent through the United States mail for the purpose of

supplying clients with materials for application, renewal, or recertification for services and change of address relating to such services. If forms written in Spanish or Chinese are not provided in such mailing, the Contractor shall provide such forms upon the Department's request.

3. The Contractor shall, subject to approval by the Department, incorporate an opportunity to request a voter registration application into any application for services, renewal, or recertification for services and change of address relating to such services provided on computer terminals, the World Wide Web or the Internet. Any person indicating that they wish to be sent a voter registration form via computer terminals, the World Wide Web or the Internet shall be sent such a form by the Contractor or be directed, in a manner subject to approval by the Department, to a link on that system where such a form may be downloaded.

4. The Contractor shall, at the earliest practicable or next regularly scheduled printing of its own forms, subject to approval by the Department, physically incorporate the voter registration forms with its own application forms in a manner that permits the voter registration portion to be detached therefrom. Until such time when the Contractor amends its form, the Contractor should affix or include a postage-paid City Board of Elections voter registration form to or with its application, renewal, recertification, and change of address forms.

5. The Contractor shall prominently display in its public office, subject to approval by the Department, promotional materials designed and approved by the City or State Board of Elections.

6. For the purposes of Paragraph A of this Section 13.06, the word "Contractor" shall be deemed to include subcontractors having regular contact with the public in the daily administration of their business.

7. The provisions of Paragraph A of this Section 13.06 shall not apply to services that must be provided to prevent actual or potential danger to life, health, or safety of any individual or of the public.

C. *Assistance in Completing Voter Registration Forms.* In accordance with Charter § 1057-a, the Contractor hereby agrees as follows:

1. In the event the Department provides assistance in completing distributed voter registration forms, the Contractor shall also provide such assistance, in the manner and to the extent specified by the Department.

2. In the event the Department receives and transmits completed registration forms from applicants who wish to have the forms transmitted to the City Board of Elections, the Contractor shall similarly provide such service, in the manner and to the extent specified by the Department.

3. If, in connection with the provision of services under this Agreement, the Contractor intends to provide assistance in completing distributed voter registration forms or to receive and transmit completed registration forms from applicants who wish to have the forms transmitted to the City Board of Elections, the Contractor shall do so only by prior arrangement with the Department.

4. The provision of Paragraph B services by the Contractor may be subject to Department protocols, including protocols regarding confidentiality.

D. *Required Statements.* In accordance with Charter § 1057-a, the Contractor hereby agrees as follows:

1. The Contractor shall advise all persons seeking voter registration forms and information, in writing together with other written materials provided by the Contractor or by appropriate publicity, that the Contractor's or government services are not conditioned on being registered to vote.

2. No statement shall be made and no action shall be taken by the Contractor or an employee of the Contractor to discourage an applicant from registering to vote or to encourage or discourage an applicant from enrolling in any particular political party.

3. The Contractor shall communicate to applicants that the completion of voter registration forms is voluntary.

4. The Contractor and the Contractor's employees shall not:

a. seek to influence an applicant's political preference or party designation;

b. display any political preference or party allegiance;

c. make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from registering to vote; or

d. make any statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that a decision to register or not to register has any bearing on the availability of services or benefits.

E. The Contractor, as defined above and in this Agreement, agrees that the covenants and representations in this Section 13.06 are material conditions of this Agreement.

F. The provisions of this Section 13.06 do not apply where the services under this Agreement are supported by a federal or State grant of funds and the source of funds prohibits the use of federal or State funds for the purposes of this Section.

**Section 13.07 Political Activity**

The Contractor's provision of services under this Agreement shall not include any partisan political activity or any activity to further the election or defeat of any candidate for public, political, or party office, nor shall any of the funds provided under this Agreement be used for such purposes.

**Section 13.08 Religious Activity**

There shall be no religious worship, instruction, or proselytizing as part of or in connection with the Contractor's provision of services under this Agreement, nor shall any of the funds provided under this Agreement be used for such purposes.

**Section 13.09 Participation in an International Boycott**

A. The Contractor agrees that neither the Contractor nor any substantially-owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the federal Export Administration Act of 1979, as amended, 50 U.S.C. Appendix. §§ 2401 *et seq.*, or the regulations of the United States Department of Commerce promulgated thereunder.

B. Upon the final determination by the Commerce Department or any other agency of the United States as to, or conviction of, the Contractor or a substantially-owned affiliated company thereof, of participation in an international boycott in violation of the provisions of the Export Administration Act of 1979, as amended, or the regulations promulgated thereunder, the Comptroller may, at his or her option, render forfeit and void this Agreement.

C. The Contractor shall comply in all respects, with the provisions of Admin. Code § 6-114 and the rules issued by the Comptroller thereunder.

**Section 13.10 MacBride Principles**

A. In accordance with and to the extent required by Admin. Code § 6-115.1, the Contractor stipulates that the Contractor and any individual or legal entity in which the Contractor holds a ten percent (10%) or greater ownership interest and any individual or legal entity that holds a ten percent (10%) or greater ownership interest in the Contractor either (a) have no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Principles, and shall permit independent monitoring of their compliance with such principles.

B. The Contractor agrees that the covenants and representations in Paragraph A above are material conditions to this Agreement.

C. This Section does not apply if the Contractor is a not-for-profit corporation.

**Section 13.11 Access to Public Health Insurance Coverage Information**

A. Participating Agencies. Pursuant to Charter § 1069, if this Agreement is with a participating City agency and the Contractor is one to whom this Section 13.11 applies as provided in Paragraph B of this Section 13.11, the Contractor hereby agrees to fulfill the obligations in Paragraph C of this Section 13.11. The participating City agencies are: the Administration for Children’s Services; the City Clerk; the Commission on Human Rights; the Department for the Aging; the Department of Corrections; the Department of Homeless Services; the Department of Housing Preservation and Development; the Department of Juvenile Justice; the Department of Health and Mental Hygiene; the Department of Probation; the Department of Social Services/Human Resources Administration; the Taxi and Limousine Commission; the Department of Youth and Community Development; the Office to Combat Domestic Violence; and the Office of Immigrant Affairs.

B. Applicability to Certain Contractors. This Section 13.11 shall be applicable to a Contractor operating pursuant to an Agreement which (i) is in excess of \$250,000.00 and (ii) requires such Contractor to supply individuals with a written application for, or written renewal or recertification of services, or request for change of address form in the daily administration of its contractual obligation to such participating City agency. “Contractors” to whom this Section 13.11 applies shall be deemed to include subcontractors if the subcontract requires the subcontractor to supply individuals with a written application for, or written renewal or recertification of services, or request for change of address form in the daily administration of the subcontractor’s contractual obligation.

C. Distribution of Public Health Insurance Pamphlet. In accordance with Charter § 1069, when the participating City agency supplies the Contractor with the public health insurance program options pamphlet published by the Department of Health and Mental Hygiene pursuant to Section 17-183 of the Admin. Code (hereinafter “pamphlet”), the Contractor hereby agrees as follows:

1. The Contractor will distribute the pamphlet to all persons requesting a written application for services, renewal or recertification of services or request for a change of address relating to the provision of services.

2. The Contractor will include a pamphlet with any Contractor communication sent through the United States mail for the purpose of supplying an individual with a written application for services, renewal or recertification of services or with a request for a change of address form relating to the provision of services.

3. The Contractor will provide an opportunity for an individual requesting a written application for services, renewal or recertification for services or change of address form relating to the provision of services via the Internet to request a pamphlet, and will provide such pamphlet by United States mail or an Internet address where such

pamphlet may be viewed or downloaded, to any person who indicates via the Internet that they wish to be sent a pamphlet.

4. The Contractor will ensure that its employees do not make any statement to an applicant for services or client or take any action the purpose or effect of which is to lead the applicant or client to believe that a decision to request public health insurance or a pamphlet has any bearing on their eligibility to receive or the availability of services or benefits.

5. The Contractor will comply with: (i) any procedures established by the participating City agency to implement Charter § 1069; (ii) any determination of the commissioner or head of the participating City agency (which is concurred in by the commissioner of the Department of Health and Mental Hygiene) to exclude a program, in whole or in part, from the requirements of Charter § 1069; and (iii) any determination of the commissioner or head of the participating City agency (which is concurred in by the commissioner of the Department of Health and Mental Hygiene) as to which Workforce Investment Act of 1998 offices providing workforce development services shall be required to fulfill the obligations under Charter § 1069.

D. Non-applicability to Certain Services. The provisions of this Section 13.11 shall not apply to services that must be provided to prevent actual or potential danger to the life, health or safety of any individual or to the public.

### **Section 13.12 Distribution of Personal Identification Materials**

A. Participating Agencies. Pursuant to City Executive Order No. 150 of 2011 (“E.O. 150”), if this Agreement is with a participating City agency and the Contractor has regular contact with the public in the daily administration of its business, the Contractor must comply with the requirements of this Section 13.12. The participating City agencies are: Administration for Children’s Services, Department of Consumer Affairs, Department of Correction, Department of Health and Mental Hygiene, Department of Homeless Services, Department of Housing Preservation and Development, Human Resources Administration, Department of Parks and Recreation, Department of Probation, and Department of Youth and Community Development.

B. Policy. As expressed in E.O. 150, it is the policy of the City to provide information to individuals about how they can obtain the various forms of City, State, and Federal government-issued identification and, where appropriate, to assist them with the process for applying for such identification.

C. Distribution of Materials. If the Contractor has regular contact with the public in the daily administration of its business, the Contractor hereby agrees to provide and distribute materials and information related to whether and how to obtain various forms of City, State, and Federal government-issued identification as the Agency directs in accordance with the Agency’s plans developed pursuant to E.O. 150.

## ARTICLE 14 - MISCELLANEOUS PROVISIONS

### Section 14.01 Conditions Precedent

A. This Agreement shall be neither binding nor effective unless and until it is registered pursuant to Charter § 328.

B. The requirements of this Section 14.01 shall be in addition to, and not in lieu of, any approval or authorization otherwise required for this Agreement to be effective and for the expenditure of City funds.

### Section 14.02 Merger

This written Agreement contains all the terms and conditions agreed upon by the parties, and no other agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either of the parties, or to modify any of the terms contained in this Agreement, other than a written change, amendment or modification duly executed by both parties pursuant to Article 9 of this Appendix A.

### Section 14.03 Headings

Headings are inserted only as a matter of convenience and therefore are not a part of and do not affect the substance of this Agreement.

### Section 14.04 Notice

A. The Contractor and the Department hereby designate the business addresses and email addresses specified in Schedule A (and if not specified in Schedule A, as specified at the beginning of this Agreement) as the places where all notices, directions, or communications from one such party to the other party shall be delivered, or to which they shall be mailed. Either party may change its notice address at any time by an instrument in writing executed and acknowledged by the party making such change and delivered to the other party in the manner as specified below.

B. Any notice, direction, or communication from either party to the other shall be in writing and shall be deemed to have been given when (i) delivered personally; (ii) sent by certified mail, return receipt requested; (iii) delivered by overnight or same day courier service in a properly addressed envelope with confirmation; or (iv) sent by email and, unless receipt of the e-mail is acknowledged by the recipient by email, deposited in a post office box regularly maintained by the United States Postal Service in a properly addressed, postage pre-paid envelope.

C. Nothing in this Section 14.04 shall be deemed to serve as a waiver of any requirements for the service of notice or process in the institution of an action or proceeding as provided by Law, including the New York Civil Practice Law and Rules.

**CERTIFICATES OF INSURANCE**

Instructions to New York City Agencies, Departments, and Offices

All certificates of insurance (except certificates of insurance solely evidencing Workers' Compensation Insurance, Employer's Liability Insurance, and/or Disability Benefits Insurance) must be accompanied by one of the following:

- (1) the Certification by Insurance Broker or Agent on the following page setting forth the required information and signatures;

-- OR --

- (2) copies of all policies as certified by an authorized representative of the issuing insurance carrier that are referenced in such certificate of insurance. If any policy is not available at the time of submission, certified binders may be submitted until such time as the policy is available, at which time a certified copy of the policy shall be submitted.

**CITY OF NEW YORK**  
**CERTIFICATION BY INSURANCE BROKER OR AGENT**

The undersigned insurance broker or agent represents to the City of New York that the attached Certificate of Insurance is accurate in all material respects.

\_\_\_\_\_  
[Name of broker or agent (typewritten)]

\_\_\_\_\_  
[Address of broker or agent (typewritten)]

\_\_\_\_\_  
[Email address of broker or agent (typewritten)]

\_\_\_\_\_  
[Phone number/Fax number of broker or agent (typewritten)]

\_\_\_\_\_  
[Signature of authorized official, broker, or agent]

\_\_\_\_\_  
[Name and title of authorized official, broker, or agent (typewritten)]

State of .....)

) ss.:

County of .....)

Sworn to before me this \_\_\_\_ day of \_\_\_\_\_ 20\_\_

\_\_\_\_\_  
NOTARY PUBLIC FOR THE STATE OF \_\_\_\_\_

**WHISTLEBLOWER PROTECTION EXPANSION ACT POSTER**



**REPORT**  
***CORRUPTION, FRAUD, UNETHICAL CONDUCT***  
**RELATING TO A NYC-FUNDED CONTRACT**  
**OR PROJECT**  
**CALL THE NYC DEPARTMENT OF INVESTIGATION**  
**212-825-5959**

DOI CAN ALSO BE REACHED BY MAIL  
OR IN PERSON AT:  
New York City Department of  
Investigation (DOI)  
80 Maiden Lane, 17th floor  
New York, New York 10038  
Attention: COMPLAINT BUREAU

OR FILE A COMPLAINT ON-LINE AT:  
[www.nyc.gov/doi](http://www.nyc.gov/doi)

All communications are confidential



Or scan the QR Code above  
to make a complaint

**THE LAW PROTECTS EMPLOYEES OF  
CITY CONTRACTORS WHO REPORT CORRUPTION**

- Any employee of a City contractor, or subcontractor of the City, or a City contractor with a contract valued at more than \$100,000 is protected under the law from retaliation by his or her employer if the employee reports wrongdoing related to the contract to the DOI.
- **To be protected by this law**, an employee must report to DOI – or to certain other specified government officials – information about fraud, false claims, corruption, criminality, conflict of interest, gross mismanagement, or abuse of authority relating to a City contract valued at more than \$100,000.
- Any employee who makes such a report and who believes he or she has been dismissed, demoted, suspended, or otherwise subject to an adverse personnel action because of that report is entitled to bring a lawsuit against the contractor and recover damages

**Appendix B:**

**Local Law 199 of 2019**

**LOCAL LAWS  
OF  
THE CITY OF NEW YORK  
FOR THE YEAR 2019**

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**No. 199**

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Introduced by Council Members Reynoso, the Speaker (Council Member Johnson), Lander, Chin, Brannan, Ayala, Levin, Rosenthal, Lancman, Constantinides, Powers, Kallos, Levine, Richards, Salamanca, Menchaca, Van Bramer, Rivera, Espinal, Dromm, Cohen, Rodriguez, Ampry-Samuel, Perkins, Treyger, Eugene, Rose, Adams and the Public Advocate (Mr. Williams).

**A LOCAL LAW**

**To amend the New York city charter and the administrative code of the city of New York, in relation to the establishment of commercial waste zones, and to repeal sections 16-523 and 16-524 of such code, relating to a pilot of special trade waste removal districts**

*Be it enacted by the Council as follows:*

Section 1. Legislative purpose. The Council hereby finds that the current system for collecting commercial waste from the City's businesses is plagued by dangerous driving and insufficient attention to public safety, harmful environmental impacts, and poor customer service. Since 2010, private waste collection trucks have killed dozens of people on New York City streets. Long, inefficient routes can take 12 hours or more to finish and can lead to driver fatigue and unsafe practices, endangering workers and the public.

The Council further finds that private carters often have customers throughout the five boroughs, currently resulting in millions of excess truck miles driven every year that harm the City's air quality, increase greenhouse gas emissions, and negatively impact public health. The current system also creates noise pollution within the City's neighborhoods, as dozens of private waste collection trucks may visit a single block in the course of one night. The industry lacks

strong customer service standards, and pricing remains opaque to most customers, putting small businesses at a significant disadvantage.

The Council finds that substantial reform of the commercial waste industry is necessary to protect public health and safety, and to improve the industry for the benefit of its customers. According to data from the federal Bureau of Labor Statistics, refuse and recycling collectors have one of the top five most dangerous jobs in the United States, and the Council finds that the safety risks inherent to private carting are exacerbated in New York City, where vehicles must navigate narrow, highly congested streets in variable traffic and weather conditions. The Council finds that a commercial waste zone system, where the City selects private carters through a competitive process, will result in a carting industry where carters are required to operate more responsibly and adequately train workers on the unique challenges of collecting commercial waste in New York City, leading to safer practices and safer streets.

The Council further finds that establishing a commercial waste zone collection system within the City would dramatically reduce truck traffic associated with this industry – by 50 percent, eliminating more than 18 million miles of truck traffic from New York City streets every year. With fewer miles traveled and fewer trucks on the streets, a zoned collection system will reduce incentives for unsafe working conditions, reduce the risks of unsafe driving behavior and worker fatigue, and make the City safer for all New Yorkers.

The Council further finds that the reduction in traffic resulting from a regulated zoned collection system would lead to commensurate reductions of air pollutant emissions, including greenhouse gases, particulate matter and other air pollutants, and would lead to less nighttime noise, less roadway wear and tear, and improved quality of life in neighborhoods across New York

City. The Council further finds that reducing the number of private carters operating within each of the City's neighborhoods and selecting carters through a competitive solicitation process will allow the City to ensure that private carters collect waste more efficiently, offer high quality waste collection services, and advance the City's efforts to reduce waste disposal and increase recycling.

The Council therefore finds and declares that commercial waste reform in New York City is necessary to promote the public health, safety and welfare of all New Yorkers. Therefore, the Council intends to authorize the commissioner of sanitation to establish commercial waste collection zones by dividing the City's geographic area into several zones and authorizing a small number of private carters to serve businesses within each zone through a competitive solicitation process. The application of this local law will create a safe and efficient collection system that provides high quality service, and reduces the harmful environmental impacts of the trade waste industry in New York City.

§ 2. Section 753 of the New York city charter is amended by adding a new subdivision e to read as follows:

*e. Except as otherwise authorized by section 16-1020 of the administrative code, the commissioner shall have the powers and duties set forth in this subdivision.*

*1. The commissioner, in the performance of his or her powers and duties pursuant to paragraph 2 of this subdivision and title 16-B of the administrative code, shall be authorized to receive complaints, conduct investigations, hold public and private hearings, administer oaths, take testimony, serve subpoenas, receive evidence, issue orders, and mediate disputes.*

*2. The commissioner shall have the power and duty to regulate the conduct of businesses authorized to collect commercial waste in commercial waste zones pursuant to title 16-B of the*

*administrative code and any other applicable law, including but not limited to, the power and duty to establish and enforce:*

*(a) environmental, safety and health standards;*

*(b) standards for service;*

*(c) requirements regarding contracts for commercial waste removal;*

*(d) requirements regarding billing forms and procedures;*

*(e) requirements regarding the maintenance and inspection of records;*

*(f) requirements regarding the maintenance of appropriate insurance; and*

*(g) requirements established in furtherance of the goals of reducing waste and promoting sustainability, safety and efficiency in the commercial waste zone system.*

*3. The commissioner shall have the power and duty to establish programs for the education of the public and commercial establishments regarding the commercial waste zone system established pursuant to title 16-B of the administrative code.*

§ 3. Subdivision a of section 2101 of the New York city charter, as amended by local law number 21 for the year 2002, is amended to read as follows:

a. The business integrity commission shall be responsible for the regulation of the trade waste industry, the shipboard gambling industry, the fulton fish market distribution area and other seafood distribution areas and the public wholesale markets. In regulating such industries, areas and markets, the commission shall have the powers and duties conferred by this chapter and such other powers and duties as are conferred by law, *except as provided by title 16-B of the administrative code and the local law that added such title.*

§ 4. Subdivision a of section 16-116 of the administrative code of the city of New York, as amended by local law number 42 for the year 1996, is amended to read as follows:

§ 16-116 Removal of commercial waste; posting of sign, registration number. a. 1. Every owner, lessee or person in control of a commercial establishment shall provide for the removal of waste by a business licensed by the New York city [trade waste] *business integrity* commission as required by subdivision a of section 16-505 of this code or register and obtain a registration number from the New York city [trade waste] *business integrity* commission as required by subdivision b of section 16-505 of this code to remove its own waste except as provided in subdivision c of this section, however nothing contained herein shall preclude the commissioner from providing for the removal of waste from any commercial establishment pursuant to the authority vested in the commissioner by section seven hundred fifty-three of the charter[; provided, further, that every].

2. *No later than the applicable final implementation date set forth in the rules of the department pursuant to subdivision e of section 16-1002, each owner, lessee or person in control of a commercial establishment [that is located in a special trade waste removal district designated by the New York city trade waste commission pursuant to section 16-523 of this code, except for an owner, lessee or person in control of a commercial establishment who has registered with the New York city trade waste commission as required by subdivision b of section 16-505 of this code and except as otherwise provided by subdivision g of section 16-523 of this code,] shall [provide] contract with an awardee selected by the department for the zone in which such establishment is located for the removal of commercial waste only by a [licensee with whom such commission has entered into an agreement pursuant to subdivision b of such section] designated carter pursuant to*

*the agreement entered into between such awardee and the department pursuant to title 16-B, as such terms are defined in section 16-1000, in accordance with the provisions of such title and any rules promulgated pursuant thereto, except as otherwise provided by such title, provided however, that an owner, lessee or person in control of a commercial establishment may contract for the removal of containerized commercial waste, as such term is defined in section 16-1000, with either an awardee selected for such zone or with an awardee selected for the removal of containerized commercial waste citywide pursuant to title 16-B, in accordance with the provisions of such title and any rules promulgated pursuant thereto.*

§ 5. Subdivision b of section 16-306 of the administrative code of the city of New York, as amended by local law number 32 for the year 2010, is amended to read as follows:

b. 1. The rules promulgated pursuant to subdivision a of this section shall require that generators of waste collected by businesses required to be licensed pursuant to section 16-505 of this code source separate the designated materials in such manner and to such extent as the commissioner determines to be necessary to minimize contamination and maximize the marketability of such materials. However, in promulgating such rules the commissioner shall not require source separation of a material unless the commissioner has determined that an economic market exists for such material. For the purpose of this section, the term "economic market" refers to instances in which the full avoided costs of proper collection, transportation and disposal of source separated materials are equal to or greater than the cost of collection, transportation and sale of said materials less the amount received from the sale of said materials. [The New York city business integrity commission shall adopt and implement rules requiring businesses licensed to remove, collect or dispose of trade waste to]

2. (a) *Any designated carter that collects source separated designated materials in a commercial waste zone pursuant to section 16-1002 shall provide for the collection of, and ensure the continued separation of, designated materials that have been source separated, provide for the separation of all other designated materials, and provide for recycling of all the designated materials in accordance with the rules of the department and the terms of any agreement entered into pursuant to section 16-1002 under which such designated carter is providing such service.* [Rules promulgated by the business integrity commission pursuant to this subdivision shall be enforced in the manner provided in section 16-517 of this code and violations of such rules shall be subject to the penalties provided in subdivision a of section 16-515 of this code for violation of the provisions of chapter one of title 16-A of this code. In addition, the]

(b) *Any person registered by the business integrity commission to remove, collect, or dispose of trade waste generated in the course of operation of such person's business pursuant to subdivision b section 16-505 shall provide for the collection of, and ensure the continued separation of, designated materials that have been source separated, provide for the separation of all other designated materials, and provide for recycling of all the designated materials in accordance with the rules promulgated by the business integrity commission pursuant to this section and subject to the penalties provided in subdivision a of section 16-515.*

3. *The commissioner and the chair of the business integrity commission shall have the authority to issue notices of violation for any violation of [such rule] any rules promulgated pursuant to this section and such notices of violation shall be returnable in a civil action brought in the name of the commissioner or the chair of the business integrity commission before the*

environmental control board which shall impose a penalty not to exceed ten thousand dollars for each such violation.

§ 6. Section 16-306 of the administrative code of the city of New York is amended by adding a new subdivision d to read as follows:

*d. Notwithstanding any other provision of law, nothing in this section shall be construed to (i) supersede, amend or eliminate any obligation of an awardee or designated carter, as such terms are defined in section 16-1000, to meet the requirements set forth in any applicable agreement entered into pursuant to section 16-1002, or (ii) otherwise amend or supersede any term of such agreement.*

§ 7. Subdivisions d through g of section 16-306.1 of the administrative code of the city of New York are relettered e through h, and paragraph 3 of subdivision c of such section, as added by local law number 146 for the year 2013, is amended to read as follows:

[3] *d.* Any private carter that collects source separated organic waste [from a covered establishment] shall either:

i. deliver collected organic waste to a transfer station that has represented that it will deliver such organic waste to a facility for purposes of composting, aerobic or anaerobic digestion, or any other method of processing organic waste that the department approves by rule; or

ii. deliver such organic waste directly to a facility for purposes of composting, aerobic or anaerobic digestion, or any other method of processing organic waste that the department approves by rule.

§ 8. Subdivision f of section 16-306.1 of the administrative code of the city of New York, as added by local law number 146 for the year 2013, and as relettered subdivision f by section 7 of this local law, is amended to read as follows:

f. The provisions of this section relating to private carters shall be enforced by the business integrity commission *and the department*. The provisions of this section relating to covered establishments shall be enforced by the department, the department of health and mental hygiene, and the department of consumer affairs.

§ 9. Section 16-504 of the administrative code of the city of New York, as added by local law number 42 for the year 1996, subdivision j as added by local law number 55 for the year 2019 and subdivisions a and d as amended by a local law for the year 2019, relating to regulating the trade waste industry, as proposed in introduction number 1573 for the year 2019, is amended to read as follows:

§ 16-504 Powers and duties. The powers and duties of the commission shall include but not be limited to:

a. To issue and establish standards for the issuance, suspension and revocation of licenses and registrations authorizing the operation of businesses engaged in the collection, removal or disposal of waste within the city and the operation of trade waste broker businesses, provided that unless otherwise provided herein, the commission may by resolution delegate to the chair the authority to make individual determinations regarding: issuance, suspension and revocation of such licenses and registrations; investigations of background and determinations of fitness in regard to employees of licensees; and the appointment of independent auditors and monitors in accordance with the provisions of this chapter;

b. [To] *Except with respect to commercial waste required to be collected by a designated carter pursuant to chapter 1 of title 16-B to establish maximum and minimum rates for the collection, removal, or disposal of such waste;*

c. To investigate any matter within the jurisdiction conferred by this chapter and to have full power to compel the attendance, examine and take testimony under oath of such persons as it may deem necessary in relation to such investigation, and to require the production of books, accounts, papers and other evidence relevant to such investigation;

d. To establish and enforce standards for service and for the regulation and conduct of businesses licensed or registered pursuant to this chapter, including but not limited to (i) requirements governing the level of service to be provided by licensees, (ii) contracts for trade waste removal, (iii) billing form and procedures, (iv) the maintenance and inspection of records, (v) the maintenance of appropriate insurance, and (vi) environmental, safety and health standards, including but not limited to traffic safety requirements and environmental and safety requirements for vehicles used in the collection, removal, transportation or disposal of trade waste; *provided that with respect to commercial waste required to be collected by a designated carter pursuant to chapter 1 of title 16-B, the authority set forth in this subdivision shall be limited to regulation and conduct of licensees with regard to character, honesty and integrity;*

e. To appoint, within the appropriations available therefor, such employees as may be required for the performance of the duties prescribed herein. In addition to such employees appointed by the commission, the commissioners of business services, investigation, consumer affairs, transportation, sanitation, health, finance, environmental protection and police may, at the request

of the chair, provide staff and other assistance to the commission in all matters under its jurisdiction;

f. To conduct studies or investigations into the needs of commercial and other enterprises for waste removal and the trade waste industry in the city and other jurisdictions in order to assist the city in formulating policies to provide for orderly and efficient trade waste removal at a fair and reasonable cost to businesses;

g. To establish, *in coordination with the department of sanitation*, programs for the education of customers, including but not limited to education of customers in the accurate assessment of the types and volume of waste and the rights of such customers in relationship to contracting, service and customer complaint procedures established pursuant to this chapter;

[h. To establish special trade waste removal districts pursuant to section 16-523 of this chapter; and

i.] *h.* To establish fees and promulgate rules as the commission may deem necessary and appropriate to effect the purposes and provisions of this chapter[.]; *and*

[j.] *i.* To issue and establish standards for the registration of labor unions or labor organizations representing or seeking to represent employees directly involved in the collection, removal, transportation or disposal of trade waste and for suspending or disqualifying officers of such unions or organizations.

§ 10. Section 16-509 of the administrative code of the city of New York is amended by adding a new subdivision l to read as follows:

*l. The commission may refuse to issue a license to an applicant when such applicant has been found to have violated any provision of title 16-B or any rules promulgated pursuant thereto or the*

*terms of any applicable agreement entered into pursuant to section 16-1002 or any provision of 16-306 or any rule promulgated pursuant thereto.*

§ 11. Section 16-513 of the administrative code of the city of New York, as added by local law number 42 for the year 1996, and subdivision a as amended by a local law for the year 2019, relating to regulating the trade waste industry, as proposed in introduction number 1573 for the year 2019, is amended to read as follows:

§ 16-513 Revocation or suspension of license or registration. a. In addition to the penalties provided in section 16-515 of this chapter, the commission may, after due notice and opportunity to be heard, revoke or suspend a license or registration issued pursuant to the provisions of this chapter when the registrant or licensee and/or its principals, employees and/or agents: (i) have been found to be in violation of this chapter or any rules promulgated pursuant thereto; (ii) have been found by a court or administrative tribunal of competent jurisdiction to have violated: (A) any provision of section 16-119 of this code, or any rule promulgated pursuant thereto, relating to illegal dumping, (B) any provision of section 16-120.1 of this code, or any rule promulgated pursuant thereto, relating to the disposal of regulated medical waste and other medical waste or (C) any provision of section 16-117.1 of this code, or any rule promulgated pursuant thereto, relating to the collection, removal, transportation or disposal of waste containing asbestos; (iii) has repeatedly failed to obey lawful orders of any person authorized by section 16-517 of this chapter to enforce the provisions hereof; (iv) has failed to pay, within the time specified by a court, the department of consumer affairs or an administrative tribunal of competent jurisdiction, any fines or civil penalties imposed pursuant to this chapter or the rules promulgated pursuant thereto; (v) has been found in persistent or substantial violation of any rule promulgated by the commission

pursuant to section 16-306 of this code or by the commissioner of consumer affairs pursuant to section 16-306 or former subchapter eighteen of title twenty of this code; (vi) has been found in persistent or substantial violation of any city, state, or federal law, rule or regulation regarding the collection, removal, transportation or disposal of trade waste, or any laws prohibiting deceptive, unfair or unconscionable trade practices; (vii) whenever, in relation to an investigation conducted pursuant to this chapter, the commission determines, after consideration of the factors set forth in subdivision a of section 16-509 of this code, that the licensee or registrant lacks good character, honesty and integrity; (viii) whenever there has been any false statement or any misrepresentation as to a material fact in the application or accompanying papers upon which the issuance of such license or registration was based; (ix) whenever the licensee or registrant has failed to notify the commission as required by subdivision b of section 16-507 or subdivision c of section 16-508 of this chapter of any change in the ownership interest of the business or other material change in the information required on the application for such license or registration, or of the arrest or criminal conviction of such licensee or registrant or any of his or her principals, employees and/or agents of which the licensee had knowledge or should have known; (x) whenever the licensee or registrant has been found by the commission or a court or administrative tribunal of competent jurisdiction to be in violation of the provisions of section 24-163.11 of the code, or any rule promulgated pursuant thereto; (xi) whenever the licensee or registrant has been found by the commission or a court or administrative tribunal of competent jurisdiction to be in violation of the provisions of section 16-526 of the code, or any rule promulgated pursuant thereto; [or] (xii) while engaged in any activity regulated by this chapter or title 16-b, have been found to be in violation of any city, state or federal law, rule or regulation relating to the safety of the

general public, including but not limited to traffic safety, or relating to the collection, removal, transportation or disposal of trade waste in a safe manner; *or (xiii) whenever the licensee or registrant has been found by the commission or a court or administrative tribunal of competent jurisdiction to be in violation of any provision of title 16-B or any rule promulgated pursuant thereto or the terms of any applicable agreement entered into pursuant to section 16-1002, or has failed to pay, within the time specified by a court or an administrative tribunal of competent jurisdiction, any fines or civil penalties imposed pursuant to such title or the rules promulgated pursuant thereto.*

b. [The] *Notwithstanding any other provision of law, the commission shall, in addition[: (1)], (i) suspend a license issued pursuant to this chapter for thirty days following determination that the licensee, or any of its principals, employees or agents has violated [subdivision a of section 16-524 of this chapter] any provision of section 16-1003 or 16-1004[:] and [(2)](ii) revoke a license issued pursuant to this chapter upon determination that the licensee, or any of its principals, employees or agents has violated [subdivision a of section 16-524 of this chapter] any provision of section 16-1003 or 16-1004* two times within a period of three years.

§ 12. Subdivisions b and e of section 16-515 of the administrative code of the city of New York, as added by local law number 42 for the year 1996, are amended to read as follows:

b. (i) Any person who violates subdivision a of section 16-505 [or section 16-524] of this chapter shall, upon conviction thereof, be punished for each violation by a criminal fine of not more than ten thousand dollars for each day of such violation or by imprisonment not exceeding six months, or both; and any such person shall be subject to a civil penalty of not more than five

thousand dollars for each day of such violation to be recovered in a civil action or returnable to the department of consumer affairs or other administrative tribunal of competent jurisdiction; and

e. (i) In addition to any other penalty prescribed in this section for the violation of subdivisions a or b of section 16-505 [or subdivision a of section 16-524] of this chapter, or when there have been three or more violations within a three year period of the provisions herein, the commission shall, after notice and the opportunity to be heard, be authorized: to order any person in violation of such provisions immediately to discontinue the operation of such activity at the premises from which such activity is operated; to order that any premises from which activity in violation of such provisions is operated shall be sealed, provided that such premises are used primarily for such activity; and to order that any vehicles or other devices or instrumentalities utilized in the violation of such provisions shall be removed, sealed, or otherwise made inoperable. An order pursuant to this paragraph shall be posted at the premises from which activity in violation of such provisions occurs.

(ii) Ten days after the posting of an order issued pursuant to paragraph (i) of this subdivision, this order may be enforced by any person so authorized by section 16-517 of this chapter.

(iii) Any vehicle or other device or instrumentality removed pursuant to the provisions of this section shall be stored in a garage, pound or other place of safety and the owner or other person lawfully entitled to the possession of such item may be charged with reasonable costs for removal and storage payable prior to the release of such item.

(iv) A premise ordered sealed or a vehicle or other device or instrumentality removed pursuant to this section shall be unsealed or released upon payment of all outstanding fines and all reasonable costs for removal and storage and, where the underlying violation is for unlicensed or

unregistered activity [or unauthorized activity in a special trade waste district], demonstration that a license has been obtained or a business registered or proof satisfactory to the commission that such premise or item will not be used in violation of subdivision a or b of section 16-505 [or subdivision a of section 16-524] of this chapter.

(v) It shall be a misdemeanor for any person to remove the seal from any premises or remove the seal from or make operable any vehicle or other device or instrumentality sealed or otherwise made inoperable in accordance with an order of the commission.

(vi) A vehicle or other device or instrumentality removed pursuant to this section that is not reclaimed within ninety days of such removal by the owner or other person lawfully entitled to reclaim such item shall be subject to forfeiture upon notice and judicial determination in accordance with provisions of law. Upon forfeiture, the commission shall, upon a public notice of at least five days, sell such item at public sale. The net proceeds of such sale, after deduction of the lawful expenses incurred, shall be paid into the general fund of the city.

§ 13. Section 16-519 of the administrative code of the city of New York, as added by local law number 42 for the year 1996, is amended to read as follows:

§ 16-519 Rate fixing; hearings and production of records. [The] *Except with respect to commercial waste required to be collected by a designated carter pursuant to chapter 1 of title 16-B, the* commission shall have the power to fix by rule and from time to time refix maximum and minimum rates, fixed according to weight or volume of trade waste, for the removal of waste by a licensee, which rates shall be based upon a fair and reasonable return to the licensees and shall protect those using the services of such licensees from excessive or unreasonable charges. The commission may compel the attendance at a public hearing held pursuant to a rate-fixing

rule-making of licensees and other persons having information in their possession in regard to the subject matter of such hearing and may compel the production of books and records in relation thereto, and may require licensees to file with the commission schedules of rates.

§ 14. Section 16-520 of the administrative code of the city of New York, as added by local law number 42 for the year 1996, and subdivision d as amended by a local law for the year 2019, relating to regulating the trade waste industry, as proposed in introduction number 1573 for the year 2019, is amended to read as follows:

§ 16-520 Conduct by licensees of trade waste collection, removal or disposal. a. Every licensee pursuant to this chapter shall provide to every recipient of its services a sign which the licensee shall obtain from the commission. In addition to the information printed on the sign by the commission, the licensee shall print the day and approximate time of pickup clearly and legibly on the sign. Such sign shall be conspicuously posted as prescribed in section 16-116(b) of this code by the owner, lessee or person in control of the commercial establishment which receives the licensee's services.

b. [Except as otherwise provided in subdivision d of section 16-523, a] A licensee shall not charge, exact or accept rates for the collection, removal or disposal of trade waste any amount greater than any maximum rates or less than any minimum rates that the commission may fix pursuant to section 16-519 of this chapter.

c. All licensees shall maintain audited financial statements, records, ledgers, receipts, bills and such other written records as the commission determines are necessary or useful for carrying out the purposes of this chapter. Such records shall be maintained for a period of time not to exceed five years to be determined by rule by the commission, provided however, that such rule may

provide that the commission may, in specific instances at its discretion, require that records be retained for a period of time exceeding five years. Such records shall be made available for inspection and audit by the commission at its request at either the licensee's place of business or at the offices of the commission.

d. A licensee shall be in compliance with all applicable state, federal and local laws, ordinances, rules and regulations pertaining to the collection, removal or disposal of trade waste, the maintenance, inspection and operation of vehicles that collect, remove, transport or dispose of trade waste and, while engaged in any activity regulated by this chapter, the safety of the general public, including but not limited to traffic safety.

e. (i) A contract for the collection, removal or disposal of trade waste shall not exceed two years in duration. All such contracts shall be approved as to form by the commission.

(ii) An assignee of contracts for the removal, collection or disposal of trade waste shall notify each party to a contract so assigned of such assignment and of the right of such party to terminate such contract within three months of receiving notice of such assignment upon thirty days' notice. Such notification shall be by certified mail with the receipt of delivery thereof retained by the assignee and shall be upon a form prescribed by the commission. Where no written contract exists with a customer for the removal, collection or disposal of trade waste, a company that assumes such trade waste removal from another company shall provide such customer with notice that a new company will be providing such trade waste removal and that the customer has the right to terminate such service. Such notice shall be by certified mail with the receipt of delivery thereof retained by the assignee.

f. A licensee shall bill commercial establishments for removal, collection or disposal of trade waste in a form and manner to be prescribed by the commission.

g. A licensee shall not refuse to provide service to a commercial establishment that is located within an area of ten blocks from an establishment served by such licensee unless such licensee has demonstrated to the commission a lack of capacity or other business justification for the licensee's refusal to service such establishment. For the purposes of this subdivision, the term "block" shall mean the area of a street spanning from one intersection to the next.

h. A licensee shall provide to the commission the names of any employees proposed to be hired or hired subsequent to the issuance of a license and such information regarding such employees as is required in regard to employees and prospective employees pursuant to subdivision a of section 16-508 of this chapter.

i. A licensee who provides services for a commercial establishment shall keep the sidewalk, flagging, curbstone and roadway abutting such establishment free from obstruction, garbage, refuse, litter, debris and other offensive material resulting from the removal by the licensee of trade waste.

j. (i) No licensee or principal thereof shall be a member or hold a position in any trade association: (aa) where such association, or a predecessor thereof as determined by the commission, has violated state or federal antitrust statutes or regulations, or has been convicted of a racketeering activity or similar crime, including but not limited to the offenses listed in subdivision one of section nineteen hundred sixty-one of the Racketeer Influenced and Corrupt Organizations statute (18 U.S.C. §1961 et seq.) or an offense listed in subdivision one of section 460.10 of the penal law, as such statutes may be amended from time to time; (bb) where a person

holding a position in such trade association, or a predecessor thereof as determined by the commission, has violated state or federal antitrust statutes or regulations, or has been convicted of a racketeering activity or similar crime, including but not limited to the offenses listed in subdivision one of section nineteen hundred sixty-one of the Racketeer Influenced and Corrupt Organizations statute (18 U.S.C. §1961 et seq.) or an offense listed in subdivision one of section 460.10 of the penal law, as such statutes may be amended from time to time; (cc) where a person holding a position in such trade association, or a predecessor thereof as determined by the commission, is a member or associate of an organized crime group as identified by a federal, state or city law enforcement or investigative agency; or (dd) where the trade association has failed to cooperate fully with the commission in connection with any investigation conducted pursuant to this chapter. The commission may determine, for purposes of this subdivision, that a trade association is a predecessor of another such trade association by finding that transfers of assets have been made between them or that all or substantially all of the persons holding positions in the two associations are the same. A licensee shall be in violation of this paragraph when the licensee knows or should know of a violation, conviction, association with organized crime or failure to cooperate set forth herein.

(ii) Notwithstanding the provisions of paragraph (i) of this subdivision, the commission may permit a licensee to be a member of such a trade association upon a determination by the commission that such association does not operate in a manner inconsistent with the purposes of this chapter.

*k. Notwithstanding any other provision of law, the provisions of subdivisions a, b, e, f, g and i of this section and any rules promulgated pursuant thereto shall not apply with regard to the*

*collection, removal or disposal of commercial waste in commercial waste zones established pursuant to title 16-B.*

§ 15. Section 16-522 of the administrative code of the city of New York, as added by local law number 42 for the year 1996, is amended to read as follows:

§ 16-522 Investigation of customer complaints. The commission shall by rule establish a procedure for the investigation and resolution of complaints by commercial establishments regarding overcharging and other problems relating to the collection, removal or disposal of waste. *Notwithstanding any other provision of law, the provisions of this section and any rules promulgated pursuant thereto shall not apply with regard to the collection, removal or disposal of commercial waste in commercial waste zones established pursuant to title 16-B.*

§ 16. Sections 16-523 and 16-524 of the administrative code of the city of New York and section 12 of local law number 42 for the year 1996 are REPEALED.

§ 17. Subdivision c of section 16-526 of the administrative code of the city of New York, as added by local law number 56 for the year 2015, is amended to read as follows:

c. Enforcement. 1. Any owner or operator of a trade waste hauling vehicle that violates any provision of this section shall be liable for a civil penalty of ten thousand dollars per vehicle that is in violation, returnable to the office of administrative trials and hearings, *pursuant to section 1049-a of the charter*. Each notice of violation shall contain an order of the chair of the commission directing the respondent to correct the condition constituting the violation and to file with the commission electronically, or in such other manner as the commission shall authorize, a certification that the condition has been corrected within thirty days from the date of the order. In

addition to such civil penalty, a separate additional penalty may be imposed of not more than five hundred dollars for each day that the violation is not corrected beyond thirty days from such order.

2. For the purposes of this section, if the office of administrative trials and hearings, *pursuant to section 1049-a of the charter*, finds that a certification of correction filed pursuant to this subdivision contained material false statements relating to the correction of a violation, such certification of correction shall be null and void, in addition to or as an alternative to any other penalties provided by law. It shall be an affirmative defense that the respondent neither knew nor should have known that such statements were false.

3. The commission shall have the authority to promulgate rules requiring the installation of side guards that are to be fit to the side of any trade waste hauling vehicle, and may establish rules establishing side guard specifications that depart from the default specifications outlined in subdivision a of this section when such departure is deemed necessary by the commission. The commission may further promulgate any rules necessary to enforce the provisions of this section, including but not limited to establishing procedures for owners and operators of trade waste hauling vehicles to demonstrate compliance with the requirements of this section.

4. *Notwithstanding any other provision of law, with respect to any vehicle that may be used to collect, remove or dispose of waste required to be collected by a designated carter pursuant to chapter 1 of title 16-B, the commissioner of sanitation shall have all powers and duties of the commission as set forth in this section.*

§ 18. The administrative code of the city of New York is amended by adding a new title 16-B to read as follows:

*TITLE 16-B COMMERCIAL WASTE ZONES*

*CHAPTER 1*

*COMMERCIAL WASTE ZONES*

§ 16-1000. *Definitions. As used in this title, the following terms shall have the following meanings:*

*Awardee. The term “awardee” means an entity with whom the department enters into an agreement for the provision of commercial waste collection services pursuant to section 16-1002.*

*Bicycle. The term “bicycle” means: (i) a two or three wheeled device upon which a person or persons may ride, propelled by human power through a belt, a chain or gears; (ii) a “pedal-assist bicycle” as defined in section 4-01 of title 34 of the rules of the city of New York or as otherwise defined by the department of transportation; or (iii) any other device upon which a person or persons may ride, as defined by the rules of the department.*

*Broker. The term “broker” or “trade waste broker” has the same meaning as such term is defined in subdivision g of section 16-501.*

*Change in control. The term “change in control” means the assignment of an awardee’s agreement with the department entered into pursuant to section 16-1002 from such awardee to a different entity. The effective date of a change in control shall be the date of such assignment.*

*Commercial waste. The term “commercial waste” means all trade waste, as defined in subdivision f of section 16-501, except for construction and demolition debris; fill material; medical waste; electronic waste; textiles; yard waste collected by landscapers; waste collected by a one-time, on-call bulk waste removal service; grease; paper that is collected for the purpose of shredding or destruction; or waste that is collected by a micro-hauler. References to “commercial*

waste” in this title shall be construed to also refer to “containerized commercial waste” unless otherwise specified.

*Commercial waste zone.* The term “commercial waste zone” or “zone” means a geographic area designated by the commissioner pursuant to section 16-1001.

*Commissioner.* The term “commissioner” means the commissioner of sanitation.

*Containerized commercial waste.* The term “containerized commercial waste” means commercial waste that: (i) is stored on the premises of the commercial establishment that generates such waste in a container that has a capacity of 10 cubic yards or more, and which may or may not be equipped with compaction ability and (ii) is transported directly in such container when such container is at or near capacity from such commercial establishment to a transfer, processing or disposal location.

*Department.* The term “department” means the department of sanitation.

*Designated carter.* The term “designated carter” or “carter” means a licensee that is authorized to provide commercial waste collection services pursuant to an agreement between an awardee and the department entered into pursuant to section 16-1002. The term “designated carter” may describe the awardee or another licensee that the awardee has designated to fulfill the terms of such agreement as specified therein, and provided further that notwithstanding any other provision of this section, the term “designated carter” may also include a person that the awardee has designated to fulfill the terms of such agreement as specified therein who is operating in accordance with the provisions of title 16-A and the rules promulgated pursuant to such title and who is authorized by the business integrity commission to collect certain categories of commercial waste without a license.

*Eligible employee. The term “eligible employee” means any person employed in the city of New York by an awardee to perform services under an agreement entered into between the department and such awardee pursuant to section 16-1002, and who has been employed by such awardee for a period of at least six months prior to the effective date of a change in control, provided that such term shall not include persons who are managerial, supervisory or confidential employees.*

*Global Positioning System The term “global positioning system” or “GPS” means a global positioning system, or a comparable location tracking technology, that uses navigational satellites to determine a user’s location and velocity in real time and is capable of collecting, storing and transmitting geographical data.*

*Incumbent employer. The term “incumbent employer” means any person that owns or controls an awardee prior to any change in control.*

*Licensee. The term “licensee” means any person licensed to collect trade waste pursuant to title 16-A.*

*Micro-hauler. The term “micro-hauler” means any person that is not a designated carter, does not dispose of waste at a solid waste transfer station and either:*

*(1) collects less than 2600 tons of source separated organic waste from commercial establishments per year and collects such waste exclusively using bicycles; or*

*(2) collects less than 500 tons of source separated organic waste from commercial establishments per year and collects such waste using exclusively (i) a zero emissions vehicle that has a gross vehicle weight rating of not more than 14,000 pounds or (ii) any other mode of transport specified in the rules of the department.*

*Organic waste. The term “organic waste” has the same meaning as such term is defined in subdivision a of section 16-306.1.*

*Successor employer. The term “successor employer” means any person that owns or controls an awardee after any change in control.*

*Trade waste. The term “trade waste” has the same meaning as such term is defined in subdivision f of section 16-501.*

*Transitional employment period. The term “transitional employment period” means a 90 day period beginning upon the effective date of a change in control of an awardee.*

*§ 16-1001 Commercial waste zones; designation. Notwithstanding any other provision of law, no later than 120 days after the effective date of the local law that added this section, the commissioner shall divide the geographic area of New York city into no less than twenty commercial waste zones. The commissioner may amend the boundaries of such zones or establish additional zones as deemed appropriate by the commissioner and consistent with the purposes of this title. In establishing such commercial waste zones, the commissioner may consider:*

- 1. The number and types of commercial establishments within the proposed zone;*
- 2. The amount and types of waste generated by commercial establishments within the proposed zone and the potential for achieving the city’s commercial waste reduction goals;*
- 3. Existing service patterns within the proposed zone and the potential for traffic and noise reduction;*
- 4. The types and estimated amounts of recyclable materials generated by commercial establishments within the proposed zone that are required to be recycled, reused or sold for reuse pursuant to section 16-306 and any rules promulgated pursuant thereto;*

5. *The estimated amount of organic waste collected within the proposed zone;*
6. *The rates being charged by persons licensed pursuant to title 16-A to commercial establishments within the proposed zone;*
7. *The history of complaints concerning commercial waste collection from commercial establishments within the proposed zone; and*
8. *Any other information or criteria the commissioner deems relevant.*

*§ 16-1002 Agreements. a. For each area designated as a commercial waste zone pursuant to section 16-1001, the department shall be authorized to select and to enter into agreements with no more than three awardees per zone, permitting each awardee to provide for the collection, transport and removal of commercial waste within such zone as set forth in such agreement. The department shall be further authorized to select and enter into agreements with no more than five awardees permitting each awardee to provide for the collection, transport and removal of containerized commercial waste from any commercial establishment within the city of New York as set forth in such agreement. The department shall only enter into an agreement pursuant to this subdivision with an awardee that has obtained a license issued by the business integrity commission pursuant to subdivision a of section 16-505 on or before the date of such agreement. A proposer that responds to the request for proposals authorized pursuant to subdivision b of this section that does not hold such a license at the time a proposal is submitted pursuant to this section must submit an application for such a license to the business integrity commission no later than the date such proposal is submitted to the department. The initial term of any such agreement shall include authorization to collect, transport and remove commercial waste for ten years in each zone covered by such agreement. The department shall have the option, at its sole discretion, to*

*renew any such agreement for no more than two additional terms of no more than five years each, provided that prior to the expiration of any agreement entered into pursuant to this section, the commissioner shall provide the awardee with adequate written notice of whether it intends to renew such agreement. The department shall not enter into any such agreement with an awardee that results in such awardee providing services in more than fifteen commercial waste zones, provided that any agreement to provide for the collection, transport and removal of containerized commercial waste citywide shall not count toward such limit.*

*b. No later than one year after the effective date of the local law that added this section, the department shall issue one or more requests for proposals to conduct commercial waste removal in a commercial waste zone and to collect containerized commercial waste citywide and, based upon the review and evaluation of responses thereto, may negotiate and enter into such agreements pursuant to subdivision a of this section, as the department, in its discretion, determines will best provide for the efficient and orderly removal of commercial waste, consistent with the provisions of this title. Whenever necessary to ensure the ongoing efficient and orderly removal of commercial waste, the department may issue additional requests for proposals and, based upon the review and evaluation of responses thereto, may negotiate and enter into agreements in accordance with the provisions of this section. Any requests for proposals issued pursuant to this subdivision shall solicit information regarding the qualifications of proposers. Where a proposer intends to arrange for designated carters other than the proposer to provide all or some portion of the services requested, such proposal shall provide the requested information with respect to each designated carter being proposed. When evaluating proposals*

*pursuant to the procedures described in this subdivision, the department shall consider the following factors:*

*1. The rate or rates to be charged to establishments for such services, including the proposer's commitment to providing lower rates for organics and recycling collection than for refuse collection services, the proposer's plan for covering costs of third party waste audits, and any extra service fees or supplemental charges the proposer plans on including in the pricing structure, except that in the case of a proposal to provide for the collection, transport and removal of containerized commercial waste citywide, a description of the proposer's commitment to providing lower rates for organics and recycling collection shall only be required where such proposal includes organics or recycling collection, transport and removal services;*

*2. The nature and frequency of the commercial waste removal services to be provided and the proposer's plan for ensuring that the proposer has the ability and adequate capacity to provide such services within the zone, including but not limited to, a description of the proposer's fleet and other relevant infrastructure, the proposer's plans, if any, for the set-out of commercial waste in a matter that promotes the city's goals of improving cleanliness, rodent mitigation, order and safety on city sidewalks, and a staffing plan to ensure continuity and safety in the delivery of services;*

*3. The proposer's submission of a customer service plan detailing customer service support tools, customer service standards, a mechanism for receiving and addressing customer complaints, performance metrics or other methods of addressing customer service, and the proposer's plan for addressing the language access needs of customers in the zone;*

*4. The proposer's submission of a plan describing practices to support waste reduction, reuse and recycling among commercial establishments within the zone, such as partnerships with local*

*organizations, waste reduction or diversion targets, plans for offering organics collection services to a broad range of establishments within the zone, customer outreach and education or other practices to further such goals;*

*5. The proposer's submission of a waste management plan describing practices for disposal of commercial waste collected, including but not limited to, a description of the transfer, processing or final disposal locations for all materials collected, and specific practices or investments designed to promote the goals of sustainability, reliability and equity in the delivery of waste management services. In evaluating waste management plans submitted by proposers pursuant to this paragraph, the commissioner shall consider: (i) the total vehicle miles expected to be traveled as a result of the proposer's services, including but not limited to, consideration of the proximity of such locations to the zone, as applicable; (ii) whether such commercial waste will be transported to or from a solid waste transfer station by a sustainable mode of transport, such as rail or barge; (iii) whether, after considering a solid waste transfer station's history of compliance with applicable local, state and federal laws, the proposer's use of such solid waste transfer station is likely to have an impact on public health or safety; and (iv) any other factors that the commissioner deems relevant to promoting the goals of sustainability, reliability and equity in the delivery of waste management services;*

*6. The proposer's plan, if any, to reduce air pollution and greenhouse gas emissions from commercial waste vehicles, including but not limited to, any plans to: provide commercial waste collection, removal and disposal services with a fleet comprised of at least 50 percent zero emissions vehicles by 2030, or for any request for proposals issued after 2030, 100 percent zero*

*emissions vehicles by 2040; implement operational best practices; or otherwise utilize zero emissions vehicles in the provision of commercial waste collection, removal and disposal services;*

*7. The proposer's plan, if any, to reduce air pollution and greenhouse gas emissions through infrastructure investments, adoption of technologies or other sustainable solutions, including but not limited to, any plans to invest in sustainable facilities or infrastructure for organics and recycling processing;*

*8. The proposer's submission of a health and safety plan detailing compliance with applicable federal, state and local laws and specific practices to further the goals of promoting health and safety;*

*9. The proposer's history of compliance with existing federal, state and local laws, including but not limited to, laws relating to waste collection, removal and disposal, environmental protection, antitrust, consumer protection, health and safety, labor and employment, and anti-discrimination protections;*

*10. Submission of a plan describing the customer communication efforts the proposer intends to undertake during the transition to the commercial waste zone system and other communication efforts that will support and supplement the public outreach and education efforts of the department conducted pursuant to section 16-1010;*

*11. The proposer's plan, if any, to subcontract with any other designated carter, which shall include a description of how such subcontracting is consistent with the purposes of this chapter, including but not limited to, how such subcontracting will enhance public safety, minimize harmful environmental impacts and improve customer service;*

*12. The proposer's history of operating in New York city and the proposer's history of operating within the geographic area of each commercial waste zone for which such proposer has submitted a proposal;*

*13. The proposer's financial statements, including available capital, access to credit, and physical assets, including number of available commercial waste vehicles; and*

*14. Any other information the department deems appropriate.*

*c. Except as otherwise provided in subdivision d of this section, any agreement entered into pursuant to subdivision b of this section shall include:*

*1. A requirement that the awardee may not refuse commercial waste collection service to any commercial establishment within the commercial waste zone required to provide for the removal of such waste pursuant to the provisions of section 16-116, provided that such agreement may include provisions authorizing termination of service, refusal of service for good cause or setting forth other allowable measures to address default or non-payment by a commercial establishment;*

*2. A description of the maximum rate or rates that the awardee may charge customers for waste collection services, including any extra service fees or supplemental charges the awardee plans on including in the pricing structure, provided that extra service fees shall not be allowed for locking or unlocking gates or the rental of containers or dumpsters other than compactors and roll-offs;*

*3. A process by which awardees may petition the department for changes to the maximum rates described in paragraph 2 of this subdivision, which may include the opportunity for public comment, as set forth in such agreement;*

4. *A requirement that the awardee provide each customer with a written service agreement, which shall be negotiated between the customer and the awardee, specifying rates, standards of service and such other provisions as may be set forth in the agreement entered into between the awardee and the department pursuant to this section or as otherwise specified in the rules of the department;*

5. *A requirement that the awardee provide organic waste collection services to all commercial establishments that: (i) are located within the commercial waste zone for which the awardee has been awarded an agreement pursuant to this section; (ii) are not designated covered establishments pursuant to subdivision b of section 16-306.1; (iii) select such awardee for removal of commercial waste or have been assigned such awardee pursuant to paragraph 4 of subdivision e of this section; and (iv) request organic waste collection services, provided that such agreement may authorize the awardee to implement such requirement on a graduated schedule or may otherwise set forth circumstances in which such provision of such services shall not be required, consistent with the purposes of this chapter;*

6. *Specifications regarding the GPS devices, capable of collecting, storing and transmitting geographical data, to be installed on commercial waste vehicles, and requirements regarding periodic reporting of data collected by such devices to the department for purposes consistent with this title;*

7. *Any additional reporting requirements that the department deems necessary to further the goals of this title, including but not limited to, (i) waste generation estimates or waste characterization studies; (ii) collection routes; (iii) rates charged to customers; (iv) investments in*

*sustainable vehicles, facilities or infrastructure; (v) any warnings or violations issued from agencies for violating local, state or federal law; and (vi) workplace injuries and accidents;*

*8. A requirement that the awardee and any of its designated carters comply with the terms of the awardee's air pollution and greenhouse gas emission reduction plan, if any, customer service plan, waste reduction plan, waste management plan and health and safety plan as described in subdivision b of this section;*

*9. A requirement that the awardee and any of its designated carters ensure that employees receive periodic training relating to health and safety, as set forth in the agreement;*

*10. A requirement that the awardee and any of its designated carters comply with the provisions of this title and all other applicable laws;*

*11. A requirement that the awardee prepare for submission and review by the department an emergency action plan detailing procedures to be deployed in emergency situations, including but not limited to, fires, evacuations, spills or weather emergencies, and addressing continuity and restoration of service;*

*12. Provisions addressing contingency planning to ensure (i) the orderly transition of services to a subsequent awardee upon the conclusion of the agreement, (ii) continuity of service in the case of an awardee or any of its designated carters being unable to provide commercial waste collection services or any other default by the awardee or any of its designated carters, and (iii) continuity of service in the case of a default by another awardee or designated carter;*

*13. The option for the awardee to subcontract with no more than two designated carters in each zone for services in order to meet the requirements of the agreement, provided that: (i) any such designated carter must fully comply with all terms of such agreement and must be licensed by*

*the business integrity commission or otherwise authorized to collect trade waste in accordance with the provisions of title 16-A and rules promulgated pursuant thereto; (ii) the agreement shall include a requirement that the department review and approve all contracts between the awardee and all designated carters for purposes of ensuring that the terms of such contracts are in accordance with the provisions of this chapter; and (iii) a subcontracting arrangement with a designated carter that collects waste exclusively using bicycles shall not count toward the numerical limit on designated carters as subcontractors provided in this paragraph;*

*14. A requirement that the awardee engage in public outreach and education efforts to address the transition to the commercial waste zone system;*

*15. A requirement that the awardee and any of its designated carters utilize existing programs or resources developed by the department of small business services or any other relevant agency designed to promote employment opportunities for New York city residents, where applicable and appropriate; and*

*16. A requirement that the awardee pay liquidated damages as deemed appropriate by the department and set forth in the agreement.*

*d. Paragraphs 1 and 5 of subdivision c of this section shall not apply to an agreement to provide for the collection, transport and removal containerized commercial waste citywide.*

*e. 1. On or after the implementation start date for a commercial waste zone, no person other than an awardee authorized to operate within such commercial waste zone pursuant to an agreement entered into pursuant to this section may enter into a new contract or renew an existing contract with a commercial establishment located within such zone to provide for the collection, removal or disposal of commercial waste.*

2. *By the final implementation date for a commercial waste zone, every owner, lessee or person in control of a commercial establishment must contract with an awardee selected for such zone in which such establishment is located for the removal of such establishment's commercial waste by a designated carter pursuant to the terms of the agreement entered into between such awardee and the department pursuant to this section, provided however, that an owner, lessee or person in control of a commercial establishment may, by such final implementation date, contract for the removal of containerized commercial waste with either an awardee selected for such zone or with an awardee selected for the removal of containerized commercial waste citywide pursuant to this section.*

3. *The commissioner shall promulgate rules setting forth an implementation start date and a final implementation date for each commercial waste zone established pursuant to section 16-1001. The commissioner may select different implementation start dates and final implementation dates for different commercial waste zones.*

4. *Such rules may also set forth a procedure whereby the commissioner shall assign an awardee to a commercial establishment that has failed to select an awardee by the final implementation date established pursuant to such rules, provided that in such a case, the owner, lessee or person in control of a commercial establishment shall have 30 days after the assignment is made by the commissioner to select a different awardee authorized to operate in such commercial waste zone.*

*f. Any agreement entered into pursuant to subdivision b of this section may include any other terms or provisions deemed appropriate by the department.*

*§ 16-1003 Unauthorized conduct within commercial waste zones.*

*a. Except as provided in subdivision c of this section and notwithstanding any other provision of law, it shall be unlawful for any person to operate a business for the purpose of the collection, transport or removal of commercial waste from the premises of a commercial establishment required to provide for the removal of such waste pursuant to section 16-116 or to engage in, conduct or cause the operation of such a business, or to solicit commercial establishments to engage such a business for such purpose, except as authorized pursuant to an agreement with the department entered into pursuant to section 16-1002 and in accordance with the provisions of this title and any rules promulgated pursuant thereto.*

*b. Notwithstanding any other provision of law, it shall be unlawful for any trade waste broker to broker agreements between a commercial establishment located in a commercial waste zone required to provide for the removal of commercial waste pursuant to the provisions of section 16-116 and a provider of commercial waste removal, collection or disposal services, except where such provider is authorized to provide such services within such zone pursuant to an agreement with the department entered into pursuant to section 16-1002.*

*c. The provisions of this section shall not apply to a person registered by the business integrity commission to remove, collect or dispose of trade waste that is generated in the course of operation of such person's business pursuant to subdivision b of section 16-505, or to a commercial establishment, owner or managing agent of a building, or owner of an establishment exempt from the requirement to obtain a registration pursuant to such subdivision.*

*d. Any awardee that has entered into an agreement with the department pursuant to section 16-1002 permitting such awardee to provide for the collection, transport and removal of*

*containerized commercial waste citywide shall be deemed to be authorized to operate within any commercial waste zone in the city of New York.*

*e. 1. Notwithstanding any other provision of this title, it shall be unlawful for any person to collect, transport or remove waste, as defined in paragraph 2 of this subdivision, from any premises that is not required to provide for the removal of waste pursuant to section 16-116, unless such person is a designated carter authorized to collect, transport or remove commercial waste from commercial establishments in the zone in which such premises is located pursuant to an agreement with the department entered into pursuant to section 16-1002, or such person is an authorized employee or agent of a city agency. Nothing in this subdivision shall be deemed to amend, alter or supersede the provisions of chapter 4-C of title 16 and any rules promulgated pursuant thereto.*

*2. For the purposes of this subdivision, the term “waste” shall mean all putrescible materials or substances that are discarded or rejected by the owners or occupants of such premises as being spent, useless, worthless or in excess to such owners or occupants at the time of such discard or rejection, including recyclable materials as defined in section 16-303 of this code, except that such term shall not include: sewage; industrial wastewater discharges; irrigation return flows; radioactive materials that are source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended, 42 U.S.C. § 2011 et seq.; materials subject to in-situ mining techniques that are not removed from the ground as part of the extraction process; hazardous waste as defined in section 27-0901 of the environmental conservation law; construction and demolition debris; fill material; medical waste; electronic waste; textiles; yard waste collected by landscapers; waste collected by a one-time, on-call bulk waste removal service;*

*grease; paper that is collected for the purpose of shredding or destruction; or waste that is collected by a micro-hauler.*

*§ 16-1004 Interference with commercial waste zone agreements. No person shall make false, falsely disparaging or misleading oral or written statements or other representations to the owners or operators of a commercial establishment that have the capacity, tendency or effect of misleading such owners or operators, for the purpose of interfering with the performance of the terms of any agreement between the department and an awardee entered into pursuant to section 16-1002. No person shall interfere or attempt to interfere by threats, intimidation, or coercion, or by destruction or damage of property or equipment, with performance of the terms of an agreement entered into pursuant to section 16-1002.*

*§ 16-1005 Conduct by awardees and designated carters within commercial waste zones.*

*a. 1. Each awardee shall only charge, exact or accept rates for the collection, removal or disposal of commercial waste within the commercial waste zone for which the awardee has been awarded an agreement pursuant to section 16-1002, or for the collection, removal or disposal of containerized commercial waste citywide under an agreement pursuant to such section, as set forth in such agreement and any rules promulgated by the department pursuant to this chapter.*

*2. No awardee shall refuse commercial waste collection service to any commercial establishment required to provide for the removal of such waste pursuant to the provisions of section 16-116 within the commercial waste zone for which the awardee has been awarded an agreement pursuant to section 16-1002, except as otherwise set forth in such agreement.*

*3. Each awardee shall provide recyclable materials collection services to all commercial establishments that: (i) are located within the commercial waste zone for which the awardee has*

*been awarded an agreement pursuant to section 16-1002; (ii) are required to provide for the removal of such materials in accordance with the provisions of section 16-306 and any rules promulgated pursuant thereto; and (iii) select such awardee for removal of commercial waste or have been assigned such awardee pursuant to paragraph 4 of subdivision e of section 16-1002.*

*4. Each awardee shall provide organic waste collection services to all commercial establishments that: (i) are located within the commercial waste zone for which the awardee has been awarded an agreement pursuant to section 16-1002; (ii) are designated covered establishments pursuant to subdivision b of section 16-306.1 that have elected collection by a private carter of organic waste pursuant to subdivision c of such section; and (iii) select such awardee for removal of commercial waste or have been assigned such awardee pursuant to paragraph 4 of subdivision e of section 16-1002.*

*5. Each awardee and any of its designated carters shall ensure proper disposal of all commercial waste collected, consistent with the terms of any applicable agreement entered into pursuant to section 16-1002, and all applicable laws and rules, and retain for five years and make available for inspection by the department any records provided by a waste transfer station that document disposal of commercial waste collected, and each awardee shall report to the department the amount of commercial waste collected, transported or removed, disaggregated by zone, as applicable, designated carter, material type, and the destination of each material.*

*6. Each awardee and any of its designated carters shall comply with all terms of such awardee's health and safety plan as set forth in the agreement entered into pursuant to section 16-1002, and any rules promulgated by the department related to public health and safety.*

7. As set forth in the agreement entered into pursuant to section 16-1002 and any rules promulgated by the department, each awardee and designated carter shall maintain: (i) audited financial statements, (ii) ledgers, (iii) receipts, (iv) audits, (v) bills, (vi) customer complaints and other records related to the delivery of commercial waste removal, collection or disposal services, (vii) records related to vehicle maintenance and inspection, (viii) records related to health and safety planning, and (ix) such other written records as the department determines are necessary for demonstrating compliance with the requirements of this chapter and any rules promulgated pursuant thereto. Such records shall be maintained for a period of time to be determined by rule by the department. Such records shall be made available for inspection and audit by the department.

8. Each awardee and designated carter shall comply with all operational requirements regarding the collection, removal and disposal of commercial waste as set forth in the rules of the department promulgated in the furtherance of public health and safety.

9. No awardee shall enter into a subcontracting agreement with a designated carter without obtaining prior approval by the department.

10. Each awardee and designated carter shall report any employees hired as a result of the displaced employees list pursuant to section 16-1007.

11. As set forth in the agreement entered into pursuant to section 16-1002, and any rules promulgated by the department, each awardee shall:

- (a) Comply with the terms of their customer service plan;
- (b) Enter into written service agreements with all customers;
- (c) Provide a consolidated monthly bill to all customers;
- (d) Offer third party waste audit services to all customers;

*(e) Comply with all other requirements as set forth in such rules related to standards for service; and*

*(f) Accept only non-cash payment from customers, except as otherwise provided in such agreement and such rules.*

*12. Each awardee and each designated carter shall comply with all applicable reporting requirements as set forth in the agreement entered into pursuant to section 16-1002 and any rules promulgated by the department requiring reporting of information related to the collection of commercial waste in commercial waste zones.*

*b. Notwithstanding any other provision of this section, paragraphs 2, 3 and 4 of subdivision a of this section shall not apply to an awardee or designated carter operating pursuant to an agreement to provide for the collection, removal and disposal of containerized commercial waste citywide.*

*§ 16-1006. Employee retention. a. No less than thirty calendar days before the effective date of any change in control of an awardee, the incumbent employer shall:*

*1. provide to the successor employer a full and accurate list containing the name, address, phone number, date of hire, and job category of each eligible employee;*

*2. post a notice in the same location and manner that other statutorily required notices to employees are posted, which shall include: (i) the effective date of such change in control; (ii) the name and contact information for the successor employer; and (iii) an explanation of the rights provided pursuant to this section, in a form prescribed by the department; and*

3. *post such explanation of rights in any language spoken as a primary language by any eligible employee, provided that the department has made a translation available in such language.*

*b. The successor employer shall retain each eligible employee for the transitional employment period and, except as otherwise provided in this section, the successor employer shall not discharge an eligible employee retained pursuant to this section during the transitional employment period without cause.*

*c. If at any time during the transitional employment period, the successor employer determines that it requires fewer employees than were employed by the incumbent employer, such successor employer shall retain such eligible employees by seniority within each job category. During the transitional employment period, the successor employer shall maintain a preferential hiring list of any eligible employees not retained by such successor employer who shall, by seniority within their job category, be given a right of first refusal to any jobs that become available during such transitional employment period within such job category.*

*d. The successor employer shall retain written verification of any offer of employment made by such successor employer to any eligible employee for a period of no less than three years from the date such offer was made. Such verification shall include the name, address, date of offer and job category of each eligible employee.*

*e. By the end of the transitional employment period, the successor employer shall have a record of a written performance evaluation for each eligible employee retained pursuant to this section and may offer such eligible employee continued employment. The successor employer shall retain a record of the written performance evaluation for a period of no less than three years.*

*f. The provisions of this section shall not apply to any successor employer that, on or before the effective date of the transfer of control from an incumbent employer to the successor employer, enters into a collective bargaining agreement covering the eligible employees or agrees to assume, or to be bound by, the collective bargaining agreement of the incumbent employer covering the eligible employees, provided that such collective bargaining agreement provides terms and conditions regarding the discharge or laying off of employees.*

*§ 16-1007 Displaced employees list. a. The department shall maintain a list containing the names and contact addresses or telephone numbers of persons formerly employed by a business either currently engaged in the collection, removal or disposal of commercial waste, or that was engaged in the collection, removal or disposal of commercial waste prior to the implementation of this chapter, whose employment with such business has ended. The addition or deletion of information on such list shall be made only upon the request of such a former employee. At the time a former employee requests to be added to such list, the department shall provide the employee with information regarding employment programs and initiatives administered by the department of small business services or other city agencies.*

*b. The department shall provide a copy of such list to an applicant or licensee pursuant to section 16-508 or an awardee or designated carter upon request. Additionally, the department shall provide a copy of such list to an awardee within six months of entering into an agreement with such awardee pursuant to section 16-1002 and every six months thereafter for a period of five years.*

*c. The maintenance or provision of such list shall in no way be construed as a recommendation by the city regarding the employment of any person on such list, nor shall the city be responsible for the accuracy of the information set forth therein.*

*§16-1008 Worker safety training. a. In addition to any other applicable requirements pursuant to local, state or federal laws or rules, no later than 180 days after the date on which an awardee enters into an agreement with the department pursuant to section 16-1002, each designated carter that will be operating pursuant to such agreement shall be responsible for ensuring that all workers, including but not limited to, vehicle operators, laborers, helpers, mechanics, supervisors and managers, employed by such designated carter as of such date have received worker safety training as required by this section. For workers employed by such designated carter after an awardee enters into an agreement with the department pursuant to section 16-1002, such worker safety training shall be provided within 90 days after the start of employment or prior to the initial assignment of a worker to a job or task, whichever is earlier.*

*b. Each designated carter shall provide for a worker safety training program at no cost to workers to ensure its workers are properly trained for each assigned job or task to be performed and use of related equipment. The worker safety program shall include a review of any hazardous activities of the job that are relevant to the tasks and activities to be performed. For vehicle operators, laborers and helpers who are directly assigned to the collection, removal, transport or disposal of trade waste on or about the public right of way, such training shall consist of no less than 40 hours, of which no fewer than 16 hours shall be dedicated to classroom instruction. For all other workers, such training shall consist of no less than 8 hours.*

*c. 1. Such worker safety training program shall be tailored for individual operations, hazards or potential hazards present, and the type of equipment utilized including detailed equipment-specific training for drivers, equipment operators and loaders, as well as maintenance personnel and supervisors. Training shall include a practical demonstration of equipment operation, the knowledge and skills needed by the employee to operate such equipment and the consequences for failure to operate the equipment properly, as appropriately related to the requirements of the worker's job duties.*

*2. (a) All training shall include, at a minimum, educating workers on workplace safety requirements, operational instruction on each specific type of equipment used by the employee, and training to address specific public safety hazards associated with collecting, transporting and removing commercial waste, including but not limited to, training, as applicable, on:*

*(1) collision avoidance, including defensive driving and best practices to avoid collisions with pedestrians, cyclists and other sensitive road users;*

*(2) pre-trip vehicle and equipment inspections;*

*(3) state and local traffic laws, including speed limits, yielding, and bus and bicycle lane restrictions;*

*(4) preventing distracted driving;*

*(5) navigating intersections and turns;*

*(6) backing up a commercial waste vehicle;*

*(7) best practices for safe collection stops;*

*(8) container management;*

*(9) hopper operation;*

*(10) fire prevention and response; and*

*(11) transporting and disposing of specialized waste or hazardous materials.*

*(b) All such training shall be consistent with all applicable laws, rules and regulations, including but not limited to, requirements administered by the United States occupational safety and health administration, the United States department of transportation, the New York state department of transportation, the United States department of labor, and the New York state department of labor.*

*d. The worker safety training program required by this section shall include a language access plan to ensure that the needs of workers with limited English proficiency are adequately addressed by the designated carter's worker safety training program. Such language access plan shall include, at a minimum, a description of the language access needs of the designated carter's workforce and specific language assistance tools to be used in the administration of the worker safety training program designed to meaningfully address such needs. Such language access plan shall be updated annually and made available for inspection upon request by the department.*

*e. Each designated carter shall provide re-training of employees as follows:*

*1. An annual refresher training class to all workers;*

*2. No less 90 days after a change in the worker's job assignment or a change in equipment used by the worker that presents a new hazard;*

*3. No less than 90 days after an inspection by the department reveals, or the designated carter has reason to believe, that there are material deviations from workplace safety requirements or inadequacies in worker knowledge of workplace safety requirements.*

*f. Each designated carter shall refer workers to, and have readily available, the manufacturer's, installer's or modifier's instructions to ensure that correct operating and maintenance procedures and work practices are understood and followed.*

*g. Upon each worker's completion of the worker safety program required by this section, the designated carter shall issue to each such worker a safety training card evidencing the completion of such safety training which such worker shall carry with him or her during the performance of his or her duties.*

*h. Each designated carter shall maintain training records, including the name of each worker, date or dates of training, the type of training received by each worker, and the language in which such training was provided. Records shall be maintained for a period of three years and be made available for inspection upon request by the department.*

*i. A designated carter shall certify to the department that it has met the requirements of this section, in the form and manner as the commissioner may prescribe, no later than 180 days after the date of the agreement between an awardee and the department pursuant to section 16-1002 under which the designated carter will first provide commercial waste collection services or, for subcontractors, the date on which the department approves the designated carter as a subcontractor of the awardee, and annually thereafter.*

*j. No later than 180 days after the effective date of the local law that added this section, the commissioner shall convene a commercial waste zone safety task force to monitor industry conditions in order to make recommendations regarding improving worker safety training and other ways to protect the public from potential dangers posed by commercial waste hauling activities. Such task force shall be composed of the commissioner, who shall serve as the*

*chairperson of such task force, the chair of the business integrity commission, the speaker of the council, or the designees of any of these such members, and eight additional members, four of which shall be appointed by the mayor and four of which shall be appointed by the speaker of the council. Such task force shall include members who are representative of the commercial waste hauling industry and persons having expertise in workplace safety.*

*1. Such task force shall meet at least quarterly each year for the first two years of its existence and at least annually for three years thereafter.*

*2. Such task force shall periodically on its own initiative, or upon request of the commissioner, provide the commissioner with recommendations relating to improving the worker safety training required by this section and other ways to protect the public from potential dangers posed by commercial waste hauling activities. Any such recommendations shall be made available to the commissioner, the chair of the business integrity commission, and all awardees and designated carters within one year of the first meeting of the task force and annually for four years thereafter. In making such recommendations, such task force shall consider, but need not be limited to considering, the following:*

*(a) Personal protection equipment;*

*(b) Safely working with and operating vehicle equipment and machines;*

*(c) Handling heavy materials and proper lifting techniques;*

*(d) Working with hazardous chemicals or other materials;*

*(e) Emergency action plans, fire prevention and fire protection;*

*(f) Hazard communication;*

*(g) Drug and alcohol awareness;*

*(h) First aid, including cardiopulmonary resuscitation (CPR) and automated external defibrillator (AED) use; and*

*(i) Whether and under what circumstances a person would be permitted to transfer safety training acquired or obtained under one employer to another employer.*

*§ 16-1009 Whistleblower protections. It shall be unlawful for an awardee or designated carter or the agent of an awardee or designated carter to take or threaten to take a retaliatory personnel action, as defined by section 740 of the labor law, against an employee of such awardee or designated carter for reporting to the officer or employee of any city agency information concerning the conduct of such awardee or designated carter or such agent, which the employee knows or reasonably believes to involve a violation of the provisions of this title or any rules promulgated pursuant thereto or the terms of any applicable agreement entered into pursuant to section 16-1002.*

*§ 16-1010 Outreach and education. a. The commissioner, together with the chair of the business integrity commission and any other agency designated by the mayor, shall establish an outreach and education program aimed at educating commercial establishments on the implementation of the commercial waste zone collection system, instructions for arranging for collection of commercial waste, and the environmental, health and safety benefits to be yielded through such system. This outreach and education program shall include but not be limited to, seminars, webinars, conferences, and a multilingual public education program.*

*b. The commissioner may seek the assistance of for-profit and not-for-profit corporations in providing education to commercial establishments pursuant to subdivision a of this section.*

*c. No later than 90 days following the selection of awardees within a commercial waste zone pursuant to section 16-1002, the commissioner shall distribute a multilingual letter to all commercial establishments within such zone informing them of their obligations to comply with the provisions of this chapter and any rules promulgated pursuant thereto. Failure to receive a letter pursuant to this subdivision shall not eliminate or otherwise affect the obligations of a commercial establishment pursuant to this chapter and any rules promulgated pursuant thereto.*

*d. The commissioner, together with the chair of the business integrity commission and any other agency designated by the mayor, shall also conduct an outreach and education program aimed at educating businesses within the commercial waste industry about the requirements and procedures for those interested in operating as awardees or designated carters pursuant to this title. Such program shall include but not be limited to, targeted outreach to minority and women-owned business enterprises and the facilitation of information exchange between such business enterprises and other businesses within the commercial waste industry.*

*§ 16-1011. Agency reporting. On or before September 30, 2020, and annually thereafter, the commissioner shall issue a report to the speaker of the council and the mayor and post such report on the agency's website. Such report shall include but not be limited to, information regarding the implementation of the commercial waste zone program for each month during the previous fiscal year, disaggregated by zone and further disaggregated by awardee, as applicable, on: (i) the cost and volume of solid waste and recyclables collection and disposal; (ii) feedback from commercial establishments; (iii) the number and types of complaints received regarding commercial waste removal; (iv) outreach and education conducted, including the number of trainings and the number of individuals who have participated in such trainings, if applicable, and materials*

*provided; (v) the number of vehicle miles traveled by trucks used to collect, transport or remove commercial waste within commercial waste zones and any change to such number as compared to the previous fiscal year; (vi) diversion of commercial waste from landfill and any change to such diversion as compared to the previous fiscal year; (vii) any recommendations for improving the commercial waste zone collection system; (viii) the feasibility of accepting commercial waste at marine transfer stations; and (ix) the amount and proportion of commercial waste received at marine transfer stations.*

*§ 16-1012 Reporting by micro-haulers. On or before February 1, 2022 and each February 1 thereafter, any micro-hauler operating within a commercial waste zone shall submit to the department and the business integrity commission the following information for the previous calendar year in a form and in a manner prescribed by the department:*

*(i) the amount of source separated organic waste collected from commercial establishments, disaggregated by quarter year;*

*(ii) the mode of transport of all source separated organic waste collected from commercial establishments, disaggregated by quarter year;*

*(iii) the disposal location of all source separated organic waste collected from commercial establishments, disaggregated by quarter year; and*

*(iv) a list of commercial establishments from which source separated commercial waste was collected, disaggregated by zone.*

*§ 16-1013 Fees. The commissioner shall promulgate rules establishing fees to be collected from any awardee selected pursuant to section 16-1002 for the administration of the commercial waste zone program.*

*§ 16-1014 Minimum rates. The department may fix by rule and periodically refix minimum rates for the collection, removal or disposal of commercial waste. Such minimum rates shall be based upon a fair and reasonable return to the awardee and consideration of the purposes of this chapter.*

*§ 16-1015 Penalties, injunction and equitable remedies. a. Any person who violates any provision of section 16-1003 or 16-1004, or any rules promulgated pursuant to such sections or any order issued by the commissioner or chair of the business integrity commission pursuant to such sections shall be liable for a civil penalty of \$10,000 for each violation, or, in the case of a continuing violation, \$10,000 for each day of such violation.*

*b. 1. Any person who violates any provision of paragraphs 1 through 9 of subdivision a of section 16-1005 shall be liable for a civil penalty of \$2,500 for the first violation, and, for subsequent violations that occur within a two-year period of any previous violation, \$5,000 for the second violation and \$10,000 for any subsequent violation.*

*2. Any person who violates any provision of paragraphs 10 through 12 of subdivision a of section 16-1005 shall be liable for a civil penalty of \$500 for the first violation, and, for subsequent violations that occur within a two year period of any previous violation, \$750 for the second violation and \$1,000 for any subsequent violation.*

*c. 1. Any person who violates any provision of subdivision c of section 16-1005 shall be liable for a civil penalty of \$10,000 per vehicle that is in violation. Each notice of violation shall contain an order of the commissioner or chair of the business integrity commission directing the respondent to correct the condition constituting the violation and to file with the department electronically, or in such other manner as the commissioner shall authorize, a certification that*

*the condition has been corrected within thirty days from the date of the order. In addition to such civil penalty, a separate additional penalty shall be imposed of \$500 for each day that the violation is not corrected beyond thirty days from such order.*

*2. For the purposes of this section, if a court of competent jurisdiction or the office of administrative trials and hearings, pursuant to section 1049-a of the charter, finds that a certification of correction filed pursuant to this subdivision contained material false statements relating to the correction of a violation, such certification of correction shall be null and void. It shall be an affirmative defense that the respondent neither knew nor should have known that such statements were false.*

*d. The civil penalty for each violation of section 16-1008 shall be \$1,000. A violation of section 16-1008 shall be computed on a per employee basis. Notwithstanding any other provision of this section, any penalty imposed for a violation of subdivision i of section 16-1008 shall be mitigated to zero dollars if, on or before the initial return date stated on the notice of violation, a designated carter who fails to provide the certification required pursuant to subdivision i of section 16-1008 submits proof of having cured such violation at the hearing of such notice of violation.*

*e. Any person who violates any provision of section 16-1012 shall be liable for a civil penalty of \$1,000, except that such penalty shall be mitigated to zero dollars if on or before the initial return date stated on the notice of violation, a micro-hauler who fails to file the report required pursuant to section 16-1012 submits proof of having cured the violation at the hearing of such notice of violation.*

*f. All civil penalties imposed pursuant to this section may be recovered in a civil action in any court of competent jurisdiction or in a proceeding before the office of administrative trials and hearings, pursuant to section 1049-a of the charter.*

*g. The corporation counsel is authorized to commence a civil action on behalf of the city for civil penalties or for injunctive relief to restrain or enjoin any activity in violation of this chapter.*

*h. In addition to or as an alternative to any civil penalty pursuant to subdivision a of this section, any person who violates section 16-1003 or 16-1004 or any of the rules promulgated pursuant thereto shall, upon conviction thereof, be punished for each violation by a criminal fine of not more than \$10,000, or in the case of a continuing violation, not more than \$10,000 for each day of such violation, or by imprisonment not exceeding six months, or both such criminal fine and imprisonment.*

*i. Any employee that has been the subject of a retaliatory personnel action or the threat of a retaliatory personnel action in violation of section 16-1009 or any rules promulgated pursuant thereto shall be entitled to all relief necessary to make the employee whole. Such relief may include but not be limited to: (i) an injunction to restrain the retaliatory action or threat of retaliatory action, (ii) reinstatement to the position such employee would have had but for the retaliatory action or to an equivalent position, (iii) reinstatement of full fringe benefits and seniority rights, (iv) payment of two times back pay, plus interest, and (v) compensation for any special damages sustained as a result of the retaliatory action or threat of retaliatory action, including litigation costs and reasonable attorneys' fees. Such an employee may bring an action in any court of competent jurisdiction for the relief provided in this subdivision.*

*§ 16-1016 Impoundment and forfeiture. a. Any vehicle that has been used or is being used in the violation of section 16-1003 shall be impounded by the department or the business integrity commission and shall not be released until either all removal charges and storage fees and the applicable fine have been paid or a bond has been posted in an amount satisfactory to the commissioner or as otherwise provided in subdivision c of this section. The commissioner shall have the power to establish rules concerning the impoundment and release of vehicles and the payment of removal charges and storage fees for such vehicles, including the amounts and rates thereof.*

*b. In addition to any other penalties provided in this section, the interest of an owner in any vehicle impounded pursuant to subdivision a of this section shall be subject to forfeiture upon notice and judicial determination thereof if such owner has been convicted of or found liable for a violation of section 16-1003 in a civil or criminal proceeding or in a proceeding before the office of administrative trials and hearings, pursuant to section 1049-a of the charter two or more times, if at least two of such violations were committed within an eighteen-month period.*

*c. Except as hereinafter provided, the city agency having custody of a vehicle, after judicial determination of forfeiture, shall no sooner than 30 days after such determination upon a notice of at least five days, sell such forfeited vehicle at public sale. Any person, other than an owner whose interest is forfeited pursuant to this section, who establishes a right of ownership in a vehicle, including a part ownership or security interest, shall be entitled to delivery of the vehicle if such person:*

*(1) Redeems the ownership interest which was subject to forfeiture by payment to the city of the value thereof;*

*(2) Pays the reasonable expenses of the safekeeping of the vehicle between the time of seizure and such redemption; and*

*(3) Asserts a claim within thirty days after judicial determination of forfeiture.*

*d. Notwithstanding the foregoing provisions, establishment of a claim shall not entitle such person to delivery of the vehicle if the city establishes that the unlawful conduct for which the vehicle was seized was expressly or impliedly permitted by such person.*

*§ 16-1017 Liability for violations. a. A designated carter shall be liable for violations of any of the provisions of this chapter or any rules promulgated pursuant hereto committed by any of its employees or agents.*

*b. An awardee shall be liable for violations of any of the provisions of this chapter or any rules promulgated pursuant hereto committed by any designated carter or other subcontractor performing services pursuant to any agreement entered into pursuant to section 16-1002.*

*§ 16-1018 Enforcement. Notices of violation for violations of any provision of this chapter or any rule promulgated hereunder may be issued by the department or the business integrity commission. In addition, such notices of violation may be issued by any other agency of the city as designated by the commissioner.*

*§ 16-1019 Labor and wage violations. Where the commissioner has reasonable cause to believe that a designated carter has engaged in or is engaging in actions: (i) involving egregious or habitual nonpayment or underpayment of wages, or (ii) that constitute a significant violation of city, state or federal labor or employment law, the commissioner shall inform the New York state attorney general, the New York state department of labor, the United States department of labor or other relevant city, state or federal law enforcement agency of such actions.*

*§ 16-1020 Administration of commercial waste zones. a. Notwithstanding any inconsistent provision of law, the business integrity commission may, upon approval by a majority of its members, elect to assume, in whole or in part, the powers and duties of the commissioner and the department assigned by the local law that added this section, provided that such commission notifies the mayor, the council and the commissioner in writing of such election either (i) within 30 days of the enactment of the local law that added this section, or (ii) subsequently, no less than six months prior to the date that the assumption of powers and duties pursuant to such election takes effect. In the event of an election that is made pursuant to clause (ii) of the preceding sentence, such commission and the department shall take measures to effect an orderly transfer of such powers and duties. Such commission and the department shall make all necessary arrangements with respect to any relevant property, contracts, personnel, funding, administration, enforcement and pending matters. No judicial or administrative action or proceeding, civil or criminal, pending at the time of such election, or any contract in effect at the time of such election, shall be affected or abated by such assumption; all such actions, proceedings or contracts may be continued, but upon the effective date of the assumption of powers and duties by such commission, the same may be prosecuted, defended or enforced by such commission. Any rules promulgated by the department pursuant to the local law that added this section shall remain in effect as rules of such commission until such time as they are repealed or amended by such commission.*

*b. Subsequent to any election made pursuant to subdivision a of this section, such commission may elect for the department to assume, in whole or in part, powers and duties assumed by the commission pursuant to such subdivision, provided that such assumption shall take effect no less than six months after such election. In such event, the transitional provisions applicable to the*

*initial assumption by such commission in subdivision a of this section shall apply in a similar manner to the assumption by the department pursuant to this subdivision.*

§ 19. Subdivision m of section 24-163.5 of the administrative code of the city of New York, as amended by local law 38 for the year 2015, is amended to read as follows:

m. This section shall not apply to any solid waste contract or recyclable materials contract entered into or renewed prior to September 9, 2005 *or to any agreement entered into pursuant to title 16-B.*

§ 20. Subdivision c of section 24-163.11 of the administrative code of the city of New York, as amended by local law 38 for the year 2015, is amended to read as follows:

c. Waivers; financial hardship. The chairperson of the business integrity commission may issue a waiver of the requirements of paragraph one of subdivision b of this section if the chairperson finds that the applicant for such waiver has demonstrated that compliance with such requirements would cause undue financial hardship on the applicant. An application for such waiver must be filed with the business integrity commission on or before January 1, 2019, or in the case of an applicant that applies for a license or registration with the business integrity commission pursuant to section 16-505 of the code for the first time after January 1, 2019, an application for such waiver shall be filed no later than the date on which such license or registration application is filed with the commission. An application for renewal of an existing waiver must be filed no later than one hundred eighty days before the expiration of such waiver. Any waiver issued pursuant to this paragraph shall expire no later than two years after issuance. All waivers issued pursuant to this subdivision shall expire no later than January 1, 2025. The provisions of paragraph one of subdivision b of this section shall not apply to an applicant that has submitted an application for a

waiver in accordance with the provisions of this subdivision while such application is pending with the commission, nor for ninety days after the date of a denial of such waiver. *Notwithstanding any other provision of law, the business integrity commission shall not issue or renew a waiver pursuant to this subdivision to any applicant with respect to a vehicle that will be used to collect, remove or dispose of waste required to be collected by a designated carter pursuant to chapter 1 of title 16-B.*

§ 21. Subdivision d of section 24-163.11 of the administrative code of the city of New York is amended by adding a new paragraph (6) to read as follows:

*(6) Notwithstanding any other provision of law, with respect to any vehicle that may be used to collect, remove or dispose of waste required to be collected by a designated carter pursuant to chapter 1 of title 16-B, the commissioner of sanitation shall have all the powers and duties of the business integrity commission as set forth in this section.*

§ 22. Notwithstanding any other provision of law, upon the final implementation date for a commercial waste zone established by the commissioner of sanitation pursuant to paragraph 3 of subdivision e of section 16-1002 of the administrative code of the city of New York, as added by section 18 of this local law, any contract between a commercial establishment and a person other than an awardee authorized to operate within such zone pursuant to an agreement entered into pursuant to section 16-1002 of such code, as added by section 18 of this local law, to provide for the collection, removal or disposal of commercial waste, as such term is defined in section 16-1000 of such code, as added by section 18 of this local law, within such commercial waste zone shall be considered terminated. Any contract for the collection, removal or disposal of commercial waste generated by a commercial establishment within a commercial waste zone entered into prior to

such final implementation date shall contain prominent notice that such contract is subject to termination upon such date and the procedures for such termination.

§ 23. No action or proceeding, civil or criminal, pending at the time when this local law takes effect, brought by or against the city or any agency or officer, and no administrative proceeding brought by the business integrity commission, shall be affected or abated by the adoption of this local law or by anything herein contained; but all such actions or proceedings may be continued notwithstanding that powers and duties of any agency or officer party thereto may be assigned or transferred to another agency or officer or otherwise affected by this local law.

§ 24. The enactment of this local law shall not affect or impair any act done, offense committed or right accruing, accrued or acquired, or liability, penalty, forfeiture or punishment incurred prior to the time such enactment takes effect, but the same may be enjoyed, asserted, enforced, prosecuted or inflicted, as fully and to the same extent as if such local law had not been enacted.

§ 25. a. This local law takes effect immediately, except as otherwise provided in this section.

b. Sections 5 through 17 of this local law take effect 18 months after it becomes law, provided however that:

1. Notwithstanding any other provision of law, until the final implementation date for a commercial waste zone established by the commissioner of sanitation pursuant to paragraph 3 of subdivision e of section 16-1002 of the administrative code of the city of New York, as added by section 18 of this local law, the business integrity commission may, within such zone, continue to enforce the provisions of sections 16-306, 16-306.1, 16-504, 16-519, 16-520 and 16-522 of the administrative code of the city of New York and any rules promulgated pursuant thereto, including but not limited to, the rates for the removal, collection or disposal of commercial waste, as they

were in effect prior to the effective date of sections 5 through 15 of this local law, with respect to persons who are not designated carters operating within such zone pursuant to an agreement entered into pursuant to section 16-1002 of such code, as added by section 18 of this local law; and

2. Notwithstanding any other provision of law, until the final implementation date for a commercial waste zone established by the commissioner of sanitation pursuant to paragraph 3 of subdivision e of section 16-1002 of the administrative code of the city of New York, as added by section 18 of this local law, no enforcement of the provisions of paragraph 2 of subdivision a of section 16-116 of such code, as amended by section 4 of this local law, shall take place within such commercial waste zone.

c. Notwithstanding any other provision of law, until the implementation start date for a commercial waste zone established by the commissioner of sanitation pursuant to paragraph 3 of subdivision e of section 16-1002 of the administrative code of the city of New York, as added by section 18 of this local law, no enforcement of the provisions of paragraph 2 of subdivision b of section 16-306 of such code, as amended by section 5 of this local law, subdivision l of section 16-509 of such code, as added by section 10 of this local law, paragraph xiii of subdivision a of section 16-513 of such code, as added by section 11 of this local law, subdivision b of section 16-513 of such code, as amended by section 11 of this local law, or sections 16-1003, 16-1004 or 16-1005 of such code, as added by section 18 of this local law, shall take place within such commercial waste zone, and provided further that a licensee, as such term is used in title 16-A of the administrative code of the city of New York, operating within such zone pursuant to a contract with a commercial establishment entered into prior to such implementation start date may continue to provide commercial waste collection, removal or disposal services pursuant to such contract in

accordance with the provisions title 16-A and any rules promulgated thereunder until the final implementation date for such zone established by the commissioner of sanitation pursuant to paragraph 3 of subdivision e of section 16-1002 of the administrative code of the city of New York, as added by section 18 of this local law.

d. The commissioner of sanitation may take such measures as are necessary for the implementation of this local law, including the promulgation of rules, immediately.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:

I hereby certify that the foregoing is a true copy of a local law of The City of New York, passed by the Council on October 30, 2019 and approved by the Mayor on November 20, 2019.

MICHAEL M. McSWEENEY, City Clerk, Clerk of the Council.

CERTIFICATION OF CORPORATION COUNSEL

I hereby certify that the form of the enclosed local law (Local Law No. 199 of 2019, Council Int. No. 1574-A of 2019) to be filed with the Secretary of State contains the correct text of the local law passed by the New York City Council and approved by the Mayor.

STEPHEN LOUIS, Acting Corporation Counsel.

**Appendix C:**

**The Rules of the City of New York, Title 16: Department of Sanitation,**  
**Chapter 20: Commercial Waste Zone Rules**  
**(Rules promulgated thus far)**

## Subchapter A: General

### § 20-02 Commercial waste zones.

a. The geographic area of the city of New York shall be divided into 20 commercial waste zones as follows:

<b>Zone name</b>	<b>Zone geographic area</b>
Lower Manhattan	Community district 101
Manhattan Southwest	Community district 102
Manhattan Southeast	Community districts 103, 106
Midtown South	The geographic area of community district 105 south of 37th Street
Midtown North	The geographic area of community district 105 north of 37th Street
Manhattan West	Community districts 104, 107, and commercial establishments located on Central Park West
Manhattan Northeast	Community district 108, excluding Roosevelt Island, community district 111, and Central Park (Joint Interest Area 64), excluding commercial establishments located on Central Park West
Upper Manhattan	Community districts 109, 110, 112
Bronx West	Community districts 201, 203, 204, 205, 206, 207, 208, Van Cortlandt Park (Joint Interest Area 26), and Bronx Park (Joint Interest Area 27)
Bronx East	Community districts 202, 209, 210, 211, 212, and Pelham Bay Park (Joint Interest Area 28)
Brooklyn North	Community districts 301, 303, 304
Brooklyn West	Community districts 302, 306, 307
Brooklyn East	Community districts 305, 308, 309, 316, 317, 318, Prospect Park (Joint Interest Area 55), and Brooklyn Gateway National Recreation Area (Joint Interest Area 56)
Brooklyn Southwest	Community districts 310, 311, 312
Brooklyn South	Community districts 313, 314, 315
Queens West	Community districts 401, 402, and Roosevelt Island
Queens Central	Community districts 403, 404, 405, 406, LaGuardia Airport (Joint Interest Area 80), and Forest Park (Joint Interest Area 82)
Queens Northeast	Community districts 407, 408, 411, and Flushing Meadows-Corona Park (Joint Interest Area 81)
Queens Southeast	Community districts 409, 410, 412, 413, 414, JFK International Airport (Joint Interest Area 83), and Queens Gateway National Recreation Area (Joint Interest Area 84)
Staten Island	Community districts 501, 502, 503, and Staten Island Gateway National Recreation Area (Joint Interest Area 95)

(Added City Record 2/14/2020, eff. 3/15/2020)