

COMMERCIAL WASTE ZONES AWARD AGREEMENT

COMMERCIAL WASTE ZONES AWARD AGREEMENT

Between

THE CITY OF NEW YORK,

ACTING BY AND THROUGH ITS DEPARTMENT OF SANITATION

AND

[NAME OF AWARDEE]

RELATING TO COMMERCIAL WASTE ZONE(S):

[Identify Designated Zones]

PIN: 82720AD0038[---]

DATED: []

Table of Contents:

Article I: Definitions and Interpretation	7
Article II: Term	20
Article III: Award of Rights	22
Article IV: Transition Periods	26
Article V: Delivery of Commercial Waste Collection Services	30
Article VI: Rates and Charges.....	33
Article VII: Customer Service	36
Article VIII: CWZ Plans	37
Article IX: Waste Management and Zero Waste Goals.....	39
Article X: Protection of Property	41
Article XI: Commercial Waste Vehicles	41
Article XII: Health and Safety.....	43
Article XIII: Emergency Action Planning	45
Article XIV: Professional Conduct.....	45
Article XV: Maintenance of BIC License	47
Article XVI: Subcontracting.....	48
Article XVII: Maintenance of Existence	52
Article XVIII: Notices.....	53
Article XIX: Insurance; Security for Performance	55
Article XX: Recordkeeping.....	60
Article XXI: Reporting.....	61
Article XXII: City Right of Inspection	63
Article XXIII: Whistleblower Protections.....	63
Article XXIV: Assignment of Additional Zones During the Term.....	65
Article XXV: Defaults and Remedies.....	66

Appendices:

- Appendix A: Additional City Contract Terms
- Appendix B: Hiring and Employment Rider: HireNYC and Reporting Requirements
- Appendix C: Commercial Waste Zones Rules
- Appendix D: Local Law 199 for the Year 2019
- Appendix E: Earned Safe and Sick Time Act Rider

Exhibits:

- Exhibit A-1: Map of All Commercial Waste Zones
- Exhibit A-2: List of Designated Zones
- Exhibit B: Customer Pricing Schedule for Designated Zones
- Exhibit C-1: Subcontracting Plan

Exhibits (continued):

- Exhibit C-2: List of Designated Carters
- Exhibit D: Customer Transition Plan
- Exhibit E: Education and Outreach Plan
- Exhibit F: Customer Service Plan
- Exhibit G: Zero Waste Plan
- Exhibit H: Waste Management Plan
- Exhibit I: Health and Safety Plan
- Exhibit J: Air Pollution Reduction Plan

COMMERCIAL WASTE ZONES AWARD AGREEMENT

This Commercial Waste Zones Award Agreement (the “Agreement”) is entered into by and between the City of New York, New York, a municipal corporation organized and existing under the laws of the State of New York (the “City”), acting by and through the Department of Sanitation (“Department”), and [Name of Awardee], a [type of entity] organized and existing under the laws of the State of [State of organization] (the “Company”) as of [date of execution by both parties].

WHEREAS, the City has determined that the current system for collecting Commercial Waste from the City’s businesses is an inefficient and chaotic network of overlapping operations that has been plagued by dangerous driving and insufficient attention to public safety, harmful environmental impacts resulting from inefficient routes, and poor customer service; and

WHEREAS, the City has developed a plan to improve Commercial Waste carting by implementing a Commercial Waste Zones program throughout the City, consisting of 20 Zones with a limited number of private carters authorized to operate per Zone; and

WHEREAS, the City, acting through the Department as lead agency, has performed a review and analysis and prepared a Draft Generic Environmental Impact Statement in accordance with the State Environmental Quality Review Act (“SEQRA”) and the City Environmental Quality Review (“CEQR”) procedure; and

WHEREAS, following notices, public hearings and review, the City has adopted a Final Generic Environmental Impact Statement in accordance with SEQRA and CEQR; and

WHEREAS, following notices, public hearings and review, New York City has enacted Local Law No. 199 of 2019 (the “Act”), authorizing and requiring the implementation of the Commercial Waste Zones program, among other things by amending the City charter, amending Title 16 of the Administrative Code, and adding a new Title 16-B titled “Commercial Waste Zones” to the Administrative Code (“Title 16-B”); and

WHEREAS, the adoption of the new Commercial Waste Zones system will dramatically reduce truck traffic associated with this industry by more than 50 percent, improve the quality of life of all New Yorkers, serve the needs of the City’s local businesses, and support the City’s short and long-term goals for a cleaner, safer, and more sustainable city; and

WHEREAS, pursuant to the Act, the City has the following goals and objectives for the Commercial Waste Zones program:

- Zero Waste: Reduce commercial waste disposal and increase recycling and organic waste collection.
- Environmental Benefits: Reduce environmental impacts, including 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, operational improvements, and infrastructure investment.
- Pricing Structure: Provide transparent pricing to customers and financial incentives for waste reduction and diversion.
- Customer Service: Strengthen customer service standards such as guaranteed levels of service, service accountability, waste assessments, and language access.
- Health and Safety: Improve industry safety standards, track industry performance and accountability, and make streets safer for the public.
- Disposal: Ensure disposal of waste is sustainable, reliable, and equitable.
- Infrastructure: Ensure truck upgrade compliance and encourage further modernization of fleet and facilities; and

WHEREAS, the Act, among other things, grants the Commissioner (as defined in Section 1.1 (Definitions)) the power and duty to regulate the conduct of businesses authorized to collect Commercial Waste in Commercial Waste Zones created pursuant to Title 16-B; and

WHEREAS, pursuant to Title 16-B, the Commissioner has divided the geographic area of the City into twenty Commercial Waste Zones as set forth in 16 RCNY § 20-02, and as represented on the map in Exhibit A-1 (Map of All Commercial Waste Zones), and the Department retains authority to amend the boundaries of such Zones from time to time; and

WHEREAS, the Act, among other things, grants the Commissioner the power and duty to regulate the conduct of businesses authorized to collect Commercial Waste in Commercial Waste Zones created pursuant to the Act 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 form 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 collection system for Commercial Waste; and

WHEREAS, pursuant to the Act, the Department has promulgated rules implementing the Commercial Waste Zones program as Chapter 20 of title 16 of the Rules of the City of New York (Appendix C); and

WHEREAS, the Act requires the Department to issue a request for proposals for the collection, transport and removal of Commercial Waste, and for the collection of Containerized Commercial Waste, Citywide in a Commercial Waste Zone, and, based upon a review and evaluation of responses to such requests for proposals, to negotiate and enter into agreements as the Department determines will best provide for the efficient and orderly removal of Commercial Waste in such Zone, and of Containerized Commercial Waste within the City; and

WHEREAS, the Act authorizes the Department to enter into agreements with no more than three Awardees (as defined in Section 1.1 (Definitions)) for each Zone, permitting the Awardee to provide for the collection, transport and removal of Commercial Waste within such Zone, as set forth in the applicable agreement; and

WHEREAS, the Act authorizes the Department to enter into agreements with no more than five Awardees (as defined in Section 1.1 (Definitions)), permitting the Awardee to provide for the collection, transport and removal of Containerized Commercial Waste within the City, as set forth in the applicable agreement; and

WHEREAS, pursuant to the Act, the Department issued a Request For Proposals (Procurement Identification Number: 82720AD0038) (as amended or supplemented from time to time the “RFP”) soliciting proposals from potential Awardees to provide commercial waste hauling services for 20 established Commercial Waste Zones (“CWZ”) and containerized commercial waste Citywide, including Refuse, Recycling and Organic Waste collection, transport and removal from commercial establishments; and

WHEREAS, following receipt and review of proposals in response to the RFP (as amended or supplemented from time to time between the initial proposal submission date and the issuance by the Department of Notices of Award, the “Proposals”), the Department has issued Notices of Award to those proposers that the Department determined best met the requirements and selection criteria set forth in the RFP; and

WHEREAS, this Agreement is being entered into with the Company following determination of the Department that the Company submitted a Proposal that, following evaluation and review, entitles the Company to be an Awardee in Zones identified as Designated Zones in this Agreement;

NOW THEREFORE, in consideration of the rights and privileges granted pursuant to this Agreement, the Company, intending to be legally bound, agree as follows:

ARTICLE I

DEFINITIONS AND INTERPRETATION

SECTION 1.1. DEFINITIONS. All definitions provided in Section 16-1000 of the New York City Administrative Code and in Section 20-01 of title 16 of the Rules of the City of New York, as may be amended from time to time, are incorporated as definitions in this Agreement, entered into pursuant to Local Law Number 199 for the year 2019. As used in this Agreement, the following terms shall have the meanings set forth in this Section; however, if any of the definitions in this Section conflict with the definitions in Section 16-1000 of the Administrative Code or Section 20-01 of title 16 of the Rules of the City of New York, the definitions in such local law and such rule shall take precedence:

“Act” means Local Law Number 199 for the year 2019, signed into law by the Mayor on November 20, 2019, as such Act or any of the provisions therein may be amended or supplemented from time to time.

“Administrative Code” means the Administrative Code of the City, as it may be amended or supplemented from time to time.

“Air Pollution Reduction Plan” means the plan set forth in Exhibit J, as such plan may be updated from time to time in accordance with the procedures described in Section 8.1(C) (Amendments to CWZ Plans).

“API” means an Application Programming Interface used by a telematics system installed in a Commercial Waste Vehicle.

“Applicable Law” means: (i) any applicable federal, state or local law, statute, code or regulation; (ii) any formally adopted and generally applicable rule, requirement, determination, standard, policy, implementation schedule, or other order of any Governmental Body having appropriate jurisdiction; and (iii) any Governmental Approval, in each case having the force of law and applicable from time to time to the Services or the transactions contemplated hereby.

“Award” means a determination by the Department that a proposer has been selected to provide Commercial Waste Collection Services within a particular Zone or has been selected to provide Citywide Containerized Commercial Waste Collection Services.

“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. The term “Awardee” includes entities that have been selected for Awards for Commercial Waste Collection Services within one or more Zones and entities that have been selected for Awards to provide Citywide Containerized Commercial Waste Collection Services, or both.

“Business Integrity Commission” or “BIC” means the New York City Business Integrity Commission.

“City” means the City of New York.

“City Charter” means the New York City Charter, as it may be amended or supplemented from time to time.

“City Notice of Renewal” shall have the meaning set forth in Section 2.2(B) (Renewal Terms).

“City’s Recycling Laws” means all Applicable Laws and rules related to Recyclable Materials and Source Separated Organic Waste that pertain to Commercial Establishments, including but not limited to Administrative Code Sections 16-306 and 16.306.1 and 16 RCNY §§ 1-10, 20-31, 20-32.

“Collection Route” means a trip by a Commercial Waste Vehicle that: (i) begins at either the garage or yard where such Commercial Waste Vehicle is parked while not in use, or at a waste transfer station, processing facility or other location where waste is dumped from such Commercial Waste Vehicle; (ii) includes pick-ups of Commercial Waste from Customers; and (iii) terminates either at such garage or yard, or with the delivery of such Commercial Waste to such a waste transfer station, processing facility or other location where such waste is dumped.

“Commercial Establishment” means an entity required to provide for the removal of Commercial Waste pursuant to the provisions of Section 16-116 of the Administrative Code.

“Commercial Waste” means all Trade Waste, as defined in subdivision f of section 16-501 of the Administrative Code, 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.

“Commercial Waste Collection Services” shall mean services for the collection, transport, removal and disposal of commercial waste from Commercial Establishments within a Designated Zone, as authorized pursuant to this Agreement.

“Commercial Waste Vehicle” means any vehicle used to perform Commercial Waste Collection Services under this Agreement.

“Commercial Waste Zone” or “Zone” means any of the twenty Commercial Waste zones identified in 16 RCNY § 20-02, as represented on the map in Exhibit A-1 (Map of All Commercial Waste Zones), as such Zones may be modified from time to time in accordance with the Act.

“Commercial Waste Zones Plans”, “CWZ Plans” or “Plans” means the Subcontracting Plan, the Customer Transition Plan, the Education and Outreach Plan, the Customer Service Plan, the Zero Waste Plan, the Waste Management Plan, the Health and Safety Plan and the Air Pollution Reduction Plan, incorporated herein as Exhibits C through J, as such plans may be updated from time to time in accordance with the procedures described in Section 8.1(C) (Amendments to CWZ Plans). Such Plans shall only apply to the Designated Zones, notwithstanding references to other Zones in the Proposal.

“Commercial Waste Zones Rules” or “CWZ Rules” means the rules adopted by the Department pursuant to the Act relating to implementation of the Commercial Waste Zones program, codified in Chapter 20 of Title 16 of the Rules of the City of New York, as such rules may be amended or supplemented from time to time. The CWZ Rules as in effect as of the date of this Agreement are appended hereto as Appendix C.

“Commission” means the Business Integrity Commission.

“Commissioner” means the Commissioner of the Department or his or her designee.

“Company” means [_____] and its permitted successors and assigns. The Company shall constitute the Awardee with respect to this Agreement. If the Awardee is a joint venture, then “Company” means the joint venture.

“Container” means a bin, dumpster, compactor or other receptacle for the storage or collection of Commercial Waste.

“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.

“Customer” means a Commercial Establishment that is located within a Designated Zone and that has selected the Company for removal of Commercial Waste or has been assigned to the Company pursuant to paragraph 4 of subdivision e of Section 16-1002 of the Administrative Code, or pursuant to this Agreement.

“Customer Service Plan” means the plan set forth in Exhibit F, as such plan may be updated from time to time in accordance with the procedures described in Section 8.1(C) (Amendments to CWZ Plans).

“Customer Transition Plan” means the plan set forth in Exhibit D, as such plan may be updated from time to time, in accordance with the procedures described in Section 8.1(C) (Amendments to CWZ Plans).

“Department” means the New York City Department of Sanitation.

“Designated Carter” means the Company and any Subcontractor of the Company that is authorized to provide Commercial Waste Collection Services pursuant to this Agreement and in accordance with the Act and the Commercial Waste Zones Rules, as identified in the Subcontracting Plan, as set forth in Exhibit C.

“Designated Zone” means each of the Commercial Waste Zones described in Exhibit A-2 hereto, including for the collection, transport, and removal of Citywide Containerized Commercial Waste, (as such Exhibit A-2 may be modified from time to time in connection with the deletion of an existing Designated Zone or addition of a new Designated Zone in accordance with the terms of this Agreement) in which the Company is authorized to provide Commercial Waste collection, transport, removal and disposal services pursuant to this Agreement.

“Director of Commercial Waste” shall be the Department representative that oversees of the Commercial Waste Zones program.

“Education and Outreach Plan” means the plan set forth in Exhibit E, as such plan may be updated from time to time, in accordance with the procedures described in Section 8.1(C) (Amendments to CWZ Plans).

“Effective Date” shall have the meaning set forth in Section 2.1(A) (Definition of Effective Date).

“Excluded Waste” means all forms of waste excluded from the definition of “Commercial Waste,” as follows: 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.

“Execution Date” means the date on which this Agreement first bears the signatures of each of the parties hereto and such signatures have been confirmed by each executing party as having been delivered to the other (either electronically, in person, or on a telephone or similar conference call).

“Final Implementation Date” of a Zone means the last day of the Transition Period for such Zone, as set forth in the Department’s rules with respect to each of the Company’s

Designated Zones.

“Fiscal Year” means the City’s fiscal year, which starts on July 1st and ends on June 30th.

“Governmental Approval” means any permit, license, authorization, consent, certification, exemption, ruling, entitlement, variance or approval issued by a Governmental Body of whatever kind and however described, which is required under Applicable Law to be obtained or maintained by any Person with respect to performing the obligations of the Company under this Agreement.

“Governmental Body” means any federal, state, regional or local legislative, executive, judicial or other governmental board, agency, authority, commission, administration, court or other body, or any official thereof having jurisdiction in any way over or in respect of any aspect of the performance of the obligations of the Company under this Agreement.

“Health and Safety Plan” means the plan set forth in Exhibit I, as such plan may be updated from time to time in accordance with the procedures described in Section 8.1(C) (Amendments to CWZ Plans).

“Heavy Duty Commercial Waste Vehicle” shall have the same meaning as “heavy duty trade waste hauling vehicle” as such term is defined by Administrative Code Section 163.11(a).

“Implementation Start Date” of a Zone means the first day of the Transition Period for such Zone, as set forth in the Department’s rules, with respect to each of the Company’s Designated Zones. “Initial Term” has the meaning set forth in Section 2.2(A) (Initial Term).

“Licensee” means any Person licensed to collect Trade Waste pursuant to Title 16-A.

“Maximum Rates” means the maximum rates for the Commercial Waste Collection Services that are set forth in Exhibit B (Customer Pricing Schedule for Designated Zones), as such schedules may be amended from time to time in accordance with the terms of this Agreement. Maximum Rates may differ by Designated Zone.

“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.

“Notice to Proceed” shall have the meaning set forth in Section 3.2 (Notice to Proceed).

“Organic Waste” shall have the same meaning as defined in subdivision a of section 16-306.1 of the Administrative Code.

“Organic Waste Collection Services” means Services provided by the Company to a Commercial Establishment involving the collection, transport, removal or disposal of Source Separated Organic Waste pursuant to this Agreement.

“Person” shall have the meaning set forth in Section 1.2(B) (Interpretation).

“Proposal” has the meaning set forth in the preamble clauses.

“Recyclable Materials” shall have the same meaning as defined in Section 16-303 of the Administrative Code.

“Renewal Term” shall have the meaning set forth in Section 2.2(B) (Renewal Terms).

“RFP” has the meaning set forth in the preamble clauses.

“Services” means, with respect to this Agreement, the collection, transport, removal or disposal of Commercial Waste, and all other services permitted or required to be provided by the Company pursuant to this Agreement.

“Source Separation” means the separation of designated Recyclable Materials from each other or the separation of designated Recyclable Materials from solid waste at the point of generation.

“State” means the State of New York.

“Subcontracting Plan” means the plan set forth in Exhibit C-1, as such plan may be updated from time to time in accordance with the procedures described in Section 8.1(C) (Amendments to CWZ Plans).

“Subcontractor” means any secondary entity that has contracted directly with the Company to provide a specific subset of Commercial Waste Collection Services or any key required services under this Agreement; this includes any Designated Carter that the Company subcontracts with, or any other entity hired to perform any other services under this Agreement. This excludes suppliers of goods.

“Term” means collectively, the Initial Term and any Renewal Terms.

“Title 16” means Title 16 of the Administrative Code.

“Title 16-A” means Title 16-A of the Administrative Code.

“Title 16-B” means Title 16-B of the Administrative Code.

“Trade Waste” means all putrescible and non-putrescible materials or substances that are discarded or rejected by a Commercial Establishment required to provide for the removal of its waste pursuant to Section 16-116 of the Administrative Code as being spent, useless, worthless or in excess to the owners at the time of such discard or rejection, including but not limited to garbage, refuse, street sweepings, rubbish, tires, ashes, contained gaseous material, incinerator residue, construction and demolition debris, medical waste, offal and any other offensive or noxious material. Such term shall also include Recyclable Materials that are generated by such Commercial Establishments. The following are not “trade waste” or “waste” for the purposes of this Agreement: 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, 41 U.S.C. §2011 et seq.; materials subject to in-situ mining techniques which are not removed from the ground as part of the extraction process; and hazardous waste as defined in Section 27-0901 of the New York State Environmental Conservation Law.

“Transition Period” of a Zone means the period starting on the Implementation Start Date for such Zone and ending on the Final Implementation Date for such Zone.

“Waste Management Plan” means the plan set forth in Exhibit H, as such plan may be updated from time to time in accordance with the procedures described in Section 8.1(C) (Amendments to CWZ Plans).

“Written Service Agreement” means a written contract between the Company and a Commercial Establishment located within a Designated Zone relating to Commercial Waste Collection Services, as required pursuant to 16 RCNY § 20-20, that meets the requirements of 16 RCNY § 20-26, the Act, the Commercial Waste Zone Rules, and this Agreement.

“Zero Waste Plan” means the plan set forth in Exhibit G, as such plan may be updated from time to time in accordance with the procedures described in Section 8.1(C) (Amendments to CWZ Plans).

SECTION 1.2. INTERPRETATION. In this Agreement notwithstanding any other provision hereof:

A. Gender and Plurality. Gender includes actual or perceived sex, gender identity, and gender expression, including a person's actual or perceived gender-related self-image, appearance, behavior, expression, or other gender-related characteristic, regardless of the sex assigned to that person at birth. Words importing the singular number mean and include the plural number and vice versa.

B. Persons. Words importing Persons include firms, companies, associations, joint ventures, general partnerships, limited partnerships, limited liability companies, trusts, business trusts, corporations and other legal entities, including public bodies, as well as individuals.

C. Headings. The table of contents and any headings preceding the text of the Articles, Sections and subsections of this Agreement shall be solely for convenience of reference and shall not affect its meaning, construction or effect.

D. Entire Agreement. This Agreement, including the Appendices and Exhibits hereto, contains the entire agreement between the parties hereto with respect to the transactions contemplated by this Agreement. Without limiting the generality of the foregoing, this Agreement shall completely and fully supersede all other understandings and agreements between the parties with respect to such transactions, including those contained in the RFP or the proposal of the Company submitted in response thereto.

E. Liquidated Damages. This Agreement provides for the payment of liquidated damages in certain circumstances of nonperformance, breach, and/or default by the Company, as set forth in Section 25.6. Each party agrees that the damaged party's actual damages in each such circumstance would be difficult or impossible to ascertain, and that the liquidated damages provided for herein with respect to each such circumstance are a fair and reasonable estimate of fair compensation for the intended circumstance, do not constitute a penalty and are intended to place the damaged party in the same economic position as it would have been in had the circumstance not occurred. The Company is expressly estopped from claiming, and waives any right to claim, that the imposition by the Department of any such liquidated damages amounts to a penalty or is not enforceable. The Department's imposition of any such liquidated damages shall constitute damages payable by the Company to the Department to compensate the Department for the damages or losses resulting from the specific circumstances contemplated by such liquidated damages; provided that, such limitation is without prejudice to:

- (1) Any entitlement of the Department to specific performance of any

obligation of the Company under this Agreement;

(2) Any entitlement of the Department to injunctive relief;

(3) The Company's indemnification obligations under Article 8 of Appendix A to this Agreement in respect of third-party claims;

(4) Any civil or criminal penalties, injunctive relief, restitution (including for property damage), or seizure or forfeiture of property that the City may impose on the Company pursuant to its authority under Applicable Law; or

(5) Any other express right of the Department pursuant to this Agreement or Applicable Law.

The Department's failure to assess liquidated damages in a particular circumstance does not waive the Department's right to assess liquidated damages in a similar circumstance in the future.

F. Causing Performance. A party shall itself perform, or shall cause to be performed, the obligations affirmatively undertaken by such party under this Agreement, subject to any limitations specifically imposed hereby with respect to Subcontractors or otherwise.

G. Approvals and Consents. Any approval, consent, or satisfaction required of either party hereunder shall not unreasonably be withheld, delayed or conditioned, except where such approval, consent, or satisfaction may be given in the sole discretion of the approving or consenting party under an express provision hereof.

H. Delivery of Documents in Digital Format. The Company is obligated to deliver agreements, reports, records, plans, proposals and other documentary submittals (collectively referred to as documents) in connection with the performance of its duties hereunder, in accordance with the Department's CWZ Rules. The Company agrees that all such documents shall be submitted to the Department in digital form, unless the Department expressly requests print copies. Electronic copies shall consist of computer readable data submitted in any standard interchange format which the Department may reasonably request to facilitate the administration and enforcement of this Agreement.

I. Incorporation of the Act, and the Department's CWZ Rules. The Act (Appendix D) and the Department's Commercial Waste Zones Rules (Appendix C) are incorporated herein as requirements of this Agreement, and any future amendments to such Act or such Rules shall be incorporated herein. If there is any conflict between any provision of this Agreement and the Act or between this Agreement and the Department's Commercial Waste Zones Rules, such Act and such Rules shall govern.

J. Legal Provisions Deemed Included. Notwithstanding subsection (D) of this Section, it is the intent and understanding of the parties to this Agreement that each and every provision of law required to be inserted in this Agreement shall be and is inserted herein. Furthermore, it is hereby stipulated that every such provision is to be deemed to be inserted herein, and if, through mistake or otherwise, any such provision is not inserted, or is not inserted in correct form, then this Agreement shall forthwith upon the application of either party be amended by such insertion so as to comply strictly with the law and without prejudice to the rights of either party hereunder.

K. Severability. If any clause, provision, subsection, Section or Article of this Agreement shall be ruled invalid by any court of competent jurisdiction, then the parties shall: (1) promptly negotiate a substitute for such clause, provision, subsection, Section or Article which shall, to the greatest extent legally permissible, effectuate the intent of the parties in the invalid clause, provision, subsection, Section or Article; (2) if necessary or desirable to accomplish item (1) of this subsection, apply to the court having declared such invalidity for a judicial construction of the invalidated portion of this Agreement; and (3) negotiate such changes, in substitution for or addition to the remaining provisions of this Agreement, as may be necessary in addition to and in conjunction with items (1) and (2) of this subsection to effect the intent of the parties in the invalid provision. The invalidity of such clause, provision, subsection, Section or Article shall not affect any of the remaining provisions hereof, and this Agreement shall be construed and enforced as if such invalid portion did not exist.

L. Interpretation of this Agreement. The Company shall be obligated to comply only with those requirements and obligations hereunder which are applicable in any particular case. Where more than one requirement or obligation applies to any particular performance by the Company hereunder, each such applicable requirement or obligation shall be complied with by the Company. In the event there are different levels of stringency among such applicable requirements or obligations, the most stringent of the applicable requirements or obligations shall govern. In the event of any inconsistency among the requirements or obligations set forth herein, the City's determination as to the applicable standard shall be binding.

M. Drafting Responsibility. Notwithstanding the City's having assumed primary drafting responsibility for the main body and certain Appendices and Exhibits to this Agreement, or the Company's having assumed primary drafting responsibility for certain Appendices and Exhibits to this Agreement, neither party shall be held to a higher standard than the other party in the interpretation or enforcement of this Agreement as a whole or any portion hereof as a result of having assumed such drafting responsibility.

N. No Third-Party Rights. This Agreement is exclusively for the benefit of the City and the Company and shall not provide any third parties with any remedy, claim, liability, reimbursement, cause of action, or other rights.

O. References to Days, Weeks or Years. Except as otherwise provided herein, all references to days, weeks or years are references to calendar days, calendar weeks or calendar years.

P. References to Including. All references to “include” or “including” herein shall be interpreted as meaning “include without limitation” or “including without limitation.”

Q. References to Knowledge. All references to “knowledge,” “knowing,” “know” or “knew” shall be interpreted as references to a party having actual knowledge.

R. Counterparts. This Agreement may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Agreement.

S. Governing Law. This Agreement shall be governed by and construed in accordance with the applicable laws of the United States, the State and the City.

T. Defined Terms. The definitions set forth in Section 1.1 shall control in the event of any conflict with the definitions used in the recitals hereto.

U. Rights of the City. Nothing in this Agreement shall be interpreted as limiting any other right that the City or the Department may have under Applicable Law.

V. General Provisions Governing City Contracts for Consultants, Professional and Technical Services. The parties to this Agreement understand and intend to be bound by the terms set forth in the General Provisions (Appendix A), as amended for Commercial Waste Zones Award Agreement, except that when the terms of the General Provisions conflict with terms of the other portions of this Agreement, the terms of other portions of this Agreement shall supersede the terms in the Provisions.

W. Violation of Law; Third-Party Privilege. No provision of this Agreement shall be construed as requiring a party to violate any Applicable Law in the performance of its duties hereunder, or to waive any legal privilege recognized by the courts of the State.

X. Delivery of Notices and Deliverables. Any notice or deliverable delivered in accordance with Section 18.1 (Notices) shall be sufficient to satisfy any requirement of providing such notice or delivery to the City.

Y. References to Section Numbers. All references in this Agreement to chapter, title, section, subdivision, paragraph or similar numbered provision in the Administrative

Code or the Commercial Waste Zones Rules shall apply to any corresponding provision notwithstanding a renumbering or reorganization of such provision.

SECTION 1.3. COMPANY REPRESENTATIONS AND WARRANTIES. The Company represents and warrants that:

A. Existence and Powers. The Company is a [] duly organized, validly existing and in good standing under the laws of the State of [] and authorized to do business in the State, with the full legal right, power and authority to enter into and perform its obligations under this Agreement.

B. Due Authorization and Binding Obligation. This Agreement has been duly authorized, executed and delivered by all necessary action of the Company and constitutes a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except to the extent that its enforceability may be limited by the Bankruptcy Code or by equitable principles of general application.

C. No Conflict. Neither the execution and delivery by the Company of this Agreement nor the performance by the Company of its obligations in connection with the transactions contemplated hereby or the fulfillment by the Company of the terms or conditions hereof: (1) conflicts with, violates or results in a breach of any constitution, law or governmental regulation applicable to the Company; or (2) conflicts with, violates or results in a breach of any order, judgment or decree, or any contract, agreement or instrument to which the Company is a party or by which the Company or any of its properties or assets are bound, or constitutes a default under any of the foregoing.

D. No Litigation. To the best of its knowledge, there is no legal proceeding before or by any Governmental Body pending, overtly threatened or publicly announced against the Company, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the execution and delivery of this Agreement by the Company, or the validity, legality or enforceability of this Agreement against the Company or any other agreement or instrument entered into by the Company in connection with the transactions contemplated hereby, or on the ability of the Company to perform its obligations hereunder or under any such other agreement or instrument.

E. Applicable Law Compliance. To the best of its knowledge, neither the Company nor any Subcontractor is in material violation of any law, order, rule or regulation that is applicable to the conduct of its business under this Agreement and would adversely affect the Company's ability to conduct its business in accordance with this Agreement.

F. Claims or Demands. To the best of its knowledge, there are no material and

adverse claims or demands based in environmental, contract or tort law pending or threatened against the Company or any of its affiliates that (1) would materially adversely affect the Company's ability to perform the Contract Services, or (2) if continuing beyond any applicable notice and cure period under this Agreement, would constitute a default hereunder.

G. Procurement of Agreement. No Person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage fee, contingent fee, or any other compensation that is conditioned on securing this Agreement. No payment, gift or thing of value has been made, given or promised to obtain this Agreement.

H. Information Supplied by the Company. The information supplied and representations and warranties made by the Company in all submittals made in response to the RFP (as amended) and in all post-proposal submittals with respect to the Company (and, to the best of its knowledge, all information supplied in such submittals with respect to any Subcontractor) are true, correct and complete in all material respects.

I. Conflict of Interest. Neither the Company nor any of its directors, officers, members, partners or employees, has any interest nor shall they acquire any interest, directly or indirectly, which would or may conflict in any manner or degree with the conducting of its business in accordance with this Agreement and no Person having such interest or possible interest shall be employed by it.

J. Fair Practices. Under penalty of perjury, to the best of the Company's knowledge:

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

(2) Unless otherwise required by Applicable Law, the Maximum Rates and other material terms set forth in this Agreement which have been quoted in this Agreement and on the proposal submitted by the Company in response to the RFP have not been knowingly disclosed by the Company prior to the proposal opening, directly or indirectly, to any other proposer or to any competitor; and

(3) No attempt has been made or will be made by the Company to induce any other Person, partnership, corporation or other entity to submit or not to submit a proposal for the purpose of restricting competition.

K. BIC License.

(1) The Company has a license issued by the Business Integrity Commission pursuant to subdivision a of Section 16-505 of the Administrative Code and such license is in full force and effect as of the Execution Date of this Agreement; and

(2) Every Subcontractor authorized to perform Commercial Waste Collection Services as a Designated Carter under this Agreement has a license issued by the BIC pursuant to subdivision a of Section 16-505 of the Administrative Code and such license is in full force and effect as of the Execution Date of this Agreement.

ARTICLE II

TERM

SECTION 2.1. AGREEMENT EFFECTIVE DATE.

A. Definition of Effective Date. This Agreement shall be effective on _____ provided that the following have occurred:

- (1) The Agreement has been approved by the Corporation Counsel of the City of New York;
- (2) The Agreement has been executed and delivered by the Company;
- (3) The Agreement has been executed and delivered by the City; and
- (4) The Agreement has been registered by the New York City Comptroller.

If any of the items in (1) through (4) has not occurred prior to _____, the Effective Date shall be deemed to have occurred when all such items have occurred.

B. Rights and Obligations. This Agreement becomes legally binding on the parties hereto as of the Effective Date. With respect to each Designated Zone covered by the Agreement, rights and obligations begin on the Notice to Proceed Date, which shall precede the Implementation Start Date for such Designated Zone(s), except as otherwise provided herein.

SECTION 2.2. TERM.

A. Initial Term. The Initial Term shall be ten (10) years, beginning on the Implementation Start Date, unless terminated earlier pursuant to Article XXV (Defaults and Remedies). The Agreement may be renewed pursuant to subsection (B) of this Section.

B. Renewal Terms. The Department shall have the option, at its sole discretion, to renew this Agreement with respect to each Designated Zone for two additional periods of up to five (5) years each (each a “Renewal Term”).

(1) City Notice of Exercise of Renewal Option. In order to exercise such renewal right with respect to a Designated Zone, the Commissioner, not later than 270 days prior to the expiration of the then-applicable Term for such Designated Zone (the Initial Term or any Renewal Term), shall give the Company notice (a “City Notice of Renewal”) of its intent to exercise the City’s renewal option with respect to such Designated Zone. Such City Notice of Renewal shall provide the length of such Renewal Term. If the City delivers the City Notice of Renewal, this Agreement as it relates to the applicable Designated Zone shall remain in effect during the Renewal Term. Renewal options available to the City may be exercised (or not exercised) separately for each Designated Zone. The Company acknowledges and agrees that such City Notice of Renewal constitutes “adequate” notice within the meaning of Subdivision a of Section 16-1002 of the Administrative Code.

(2) Company Option to Request City to Waive Renewal Option. The Company must inform the City in writing not less than two (2) years (730 days) prior to the end of the Initial Term of a Designated Zone if it does not want the Agreement to be renewed with respect to such Designated Zone. Upon receipt of such notice, the City may in its sole discretion, but may not be required to, irrevocably waive its right of renewal with respect to such Designated Zone.

ARTICLE III

AWARD OF RIGHTS

SECTION 3.1. AWARD.

A. Award of Rights. The City hereby grants the Company the rights and obligations set forth in this Agreement with respect to the Designated Zones set forth in Exhibit A-2 (List of Designated Zones) for the durations determined as set forth in this Agreement, as Exhibit A-2 may be adjusted in accordance with this Agreement, and, as applicable, for the collection, transport and removal of Citywide Containerized Commercial Waste, as set forth in Exhibit A-2. The Company acknowledges that pursuant to the Act, the Commissioner may amend the boundaries of a Zone or establish additional Designated Zones, or otherwise amend the Company's obligations under the CWZ Rules, as deemed appropriate by the Commissioner and consistent with the purposes of the Act, which may affect the Company's award of rights with respect to one or more Designated Zones.

B. Scope of Services. The key required Services to be provided by the Company under this Agreement include, but are not limited to Commercial Waste Collection Services from Customers within the Designated Zones. The Company must provide continuous Services and must meet all obligations required under and performed in accordance with the Agreement, the Act, the Department's CWZ Rules, and Applicable Law for the duration of the Term. The Company recognizes that the Department may amend the CWZ Rules in accordance with the Act at any time during the duration of the Term, and that the Company shall be required to meet such updated requirements in performance of this Agreement.

C. Acceptance of Rights. The Company hereby accepts the rights and obligations granted by the City to the Company in this Agreement and agrees to faithfully comply with the terms and conditions set forth herein.

D. Award Not Exclusive. The rights granted under this Agreement are not exclusive, and the Company acknowledges that up to two (2) additional Awards may be granted by the City to other Awardees granting rights substantially similar to the rights granted to the Company under this Agreement in each Designated Zone, and, as applicable, for the collection, transport and removal of Citywide Containerized Commercial Waste, up to four (4) additional Awards may be granted by the City to other Awardees granting rights substantially similar to the Company under this Agreement for the collection, transport, removal and disposal of Citywide Containerized Commercial Waste. By accepting the rights and obligations granted hereunder the Company agrees that it will not challenge or in any way contest such other Awards as the City may make in implementing the provisions of the Act.

E. Subsequent Zone Awards. The Company acknowledges that at any time before the Effective Date of this Agreement or during the entire term of the Agreement, including any Renewal Term, the City may offer the Company the right to be designated as an Awardee in one or more Zones in addition to or in lieu of any of the Designated Zones identified in Exhibit A-2. The Company further acknowledges that the City may require the Company to assume such additional Zone(s), if it is in the best interests of the City, subject to the terms of this Agreement and consistent with the purposes of the Act. Such additional Zones will become Designated Zones for all purposes of this Agreement, after following the procedures described in Article XXIV (Assignment of New Zones).

F. Right to Conduct Business. The Company's business relationships with Commercial Establishments and Subcontractors are independent of this Agreement, and there is no City responsibility to any Subcontractors or Commercial Establishments.

G. Conditions of Award.

(1) The rights granted by and obligations set forth in this Agreement with respect to a Designated Zone shall commence only upon issuance by the Department of a Zone Notice to Proceed for the applicable Designated Zone; and

(2) The rights granted by this Agreement shall be conditioned on compliance by the Company with the terms and conditions of this Agreement.

H. Revocation of Award. The rights granted pursuant to this Agreement with respect to all Designated Zones or any individual Designated Zone shall be terminable by the City in accordance with the provisions of Article XXV (Defaults and Remedies).

SECTION 3.2. NOTICE TO PROCEED.

A. Zone Notice to Proceed. The rights and obligations granted under this Agreement with respect to any Designated Zone shall begin on the Notice to Proceed Date, which shall precede the Implementation Start Date for such Zone, unless as otherwise provided herein.

SECTION 3.3. CONDITIONS TO ISSUANCE OF A NOTICE TO PROCEED. Prior to the City issuing a Notice to Proceed, the following shall be met:

A. Approval of Emergency Action Plan. The Company shall have prepared and delivered an Emergency Action Plan for each Designated Zone satisfactory to the Department and obtained Department approval thereof in accordance with Section 13.1 (Emergency Action Plan).

B. Approval of Telematics System. The Company must have received approval

for the telematics system or systems that will be used on all Commercial Waste Vehicles in accordance with Section 11.1(D) (Telematics).

C. Preparedness Report. Prior to the Implementation Start Date for each Designated Zone, the Company must prepare and submit to the Department:

(1) A summary of the Company's preparedness to meet all requirements for Awardees contained in the Act and the Department's CWZ Rules on the first day of the Transition Period and all contractual obligations that commence on the Implementation Start Date;

(2) Adequate assurances to the Department that the Company will be able to meet such requirements on the Implementation Start Date; and

(3) Adequate assurances regarding availability of required collection equipment to commence the Transition Period and the assurances that additional collection equipment will become available as the Company acquires Customers during the Transition Period. The Company shall demonstrate that it will have all necessary equipment as of the Final Implementation Date.

D. License Remains Effective. The Company, as well as each Subcontractor authorized to perform Commercial Waste Collection Services as a Designated Carter under this Agreement, must have a valid license issued by BIC pursuant to subdivision a of Section 16-505 of the Administrative Code, and such license must be in full force and effect during the term of this Agreement, including any renewals thereof, or in the case of Designated Carters, for the entire time that such Designated Carter is authorized to collect Commercial Waste under the Subcontracting Plan, except as authorized in Section 15.1(B.2).

E. Evidence of Insurance. The Company must provide evidence of all insurance that is required in Section 19.1 (Insurance) in the timeframe and manner specified therein.

F. Plans. The Company shall have certified to the City that each of the CWZ Plans, as they apply to such Designated Zone is complete and accurate in all material respects with respect to the applicable Designated Zone. Any updates to such plans that the Company must make to ensure completeness and accuracy should be submitted to the Department for approval pursuant to the procedures set forth in Section 8.1(C) (Amendments to CWZ Plans), and must be approved by the Department prior to the Agreement Effective Date, except as otherwise directed by the Department.

G. Worker Safety Training. The Company and each of its Designated Carters

shall have provided any certifications of worker safety training required pursuant to Administrative Code Section 16-1008 that are due to be submitted on or before the Implementation Start Date.

H. Standard Contract Form. The Company shall have submitted a standard contract form that meets the requirements of 16 RCNY § 20-26 within 60 days of entering into this Agreement, received Department approval thereof, and submitted any subsequent changes to such form in accordance with 16 RCNY § 20-26.

I. Certification of Accuracy of Information Submitted. Prior to the Agreement Effective Date, the Company must notify the Department of any material change to the information that the Company submitted in response to the Request for Proposals regarding the Company or any of the Company's Subcontractors, including but not limited to conflicts of interests, violations of law or pending charges or investigations, changes to principals or organizational structure, or changes to the Company's or the Subcontractor's financial or operational capacity. The Department reserves the right to withhold or delay the Notice to Proceed on the basis of any such change. Prior to the Agreement Effective Date, the Company must certify to the Department that any material change to the information that the Company submitted in response to the Request for Proposals regarding the Company or any of the Company's Subcontractors has been submitted to the Department for the Department's review and approval.

ARTICLE IV

TRANSITION PERIODS

SECTION 4.1. TRANSITION PERIOD.

A. Transition Periods. Pursuant to paragraph 3 of subdivision e of section 16-1002 of the Administrative Code, the City has promulgated or will promulgate rules establishing a Transition Period for each Commercial Waste Zone and a Transition Period for Citywide Containerized Commercial Waste Collection Services. Such rules establish or will establish a start date for each Transition Period (Implementation Start Date) and an end date for each Transition Period (Final Implementation Date).

B. Notice to Proceed and Implementation Start Date. The Department will issue a Notice to Proceed that will set forth the Implementation Start Date for the Designated Zone(s) covered by this Agreement. Nothing in this Agreement shall preclude the City from modifying an Implementation Start Date in accordance with the requirements and procedures of the Act.

SECTION 4.2. COMPANY DUTIES DURING TRANSITION PERIOD.

During any Designated Zone Transition Period, the Company shall fulfill the following duties:

A. Compliance with Customer Transition Plan. The Company shall operate during each applicable Transition Period in conformity with the Company's Customer Transition Plan, the Act, the Department's CWZ Rules, and Applicable Law. Any changes to the Customer Transition Plan must be submitted for Department approval pursuant to Section 8.1(C) (Amendments to CWZ Plans).

B. Education and Outreach.

(1) The Company must comply with all provisions of the Company's Outreach and Education Plan applicable to the Transition Period.

(2) The Company must comply with all Department directives to distribute education and outreach notices and other informational materials regarding the Commercial Waste Zones program to Commercial Establishments within the Designated Zones, and any directives to engage in additional forms of communication with Commercial Establishments within the Designated Zones, including but not limited to communications with particular Commercial Establishments or categories of Commercial Establishments within the Zone in the form and manner directed by the Department.

C. Offer to Provide Services. The Company shall offer to provide Commercial Waste Collection Services to all Commercial Establishments within a Designated Zone.

D. Ongoing Communication With the Department. A designated representative of the Company identified in the Company's Customer Transition Plan shall attend regular meetings with the Department (virtual or in person), at least twice per month during the duration of Transition Period. The Department will provide the schedule of such meetings with as much advance notice to the Company as practicable, but in no event shall the notice be provided to the Company less than 72 hours in advance, unless such prior notice is not feasible. The Department reserves the right to increase or decrease the frequency of such meetings, or to convene such meetings on an ad hoc basis, as issues related to the Transition Period may arise. Such meetings may be one-on-one with the Department or may include other Awardees, at the Department's discretion. The purpose of such meetings shall be for:

(1) The Company to update the Department on information relating to the Company's transition to the Commercial Waste Zones program, including but not limited to regular updates regarding onboarding of Customers, scaling up of Company operations, procurement of necessary equipment, education and outreach efforts, and the Company's preparedness to service Customers that may be assigned to the Company pursuant to Administrative Code section 16-1002(e), in accordance with the procedures outlined in Section 4.3(C) (Assignment of Customers);

(2) The Department to relay important program implementation information to the Company, including, but not limited to, information regarding Commercial Establishments that have not yet selected an Awardee within the Designated Zone;

(3) The Company and the Department to identify and troubleshoot emerging issues related to implementation to ensure a smooth and orderly transition to the Commercial Waste Zones program; and

(4) The Company and the Department to discuss additional Transition Period Deliverables described in Section 4.2(E) below.

E. Transition Period Deliverables. The Department may require the Company to provide the Department with additional deliverables during the Transition Period, including but not limited to additional reporting to the Department, additional communications with Commercial Establishments within the Designated Zone, or additional actions relating to scaling up or adjusting the Company's operations to ensure the Company's capacity to reliably service Customers within the Zone. In such a case, the Department will provide reasonable notice to the Company in writing of such deliverables, and the timeframe by which such deliverables must be performed. The Department will be available to discuss such deliverables during the recurring meetings described in Section 4.2(D).

F. No Collusion or Interference. The Company shall not engage in collusion with other Awardees or interfere with any lawful agreement between a Licensee or Awardee and a Commercial Establishment in violation of Section 14.2 (No Collusion or Interference), Section 16-1004 of the Administrative Code, the Act, the Department's rules or Applicable Law.

G. Customer Register. During the entire duration of the Transition Period, the Company shall submit true and accurate Customer lists to the Department on a daily basis in accordance with the procedures described in Section 21.3(A) (Transition Period). Pursuant to 16 RCNY § 20-26, a Commercial Establishment may only be considered a Customer and reported on such a list after the Company has entered into a Written Service Agreement with the Customer in accordance with the Department's rules.

SECTION 4.3. END OF TRANSITION PERIOD AND CUSTOMER ASSIGNMENT.

A. The Transition Period for each Designated Zone shall end on the Final Implementation Date for the Zone.

B. Completion of Transition Period Deliverables. On or before the Final Implementation Date for each Designated Zone, the Company shall notify the City in writing that it has completed any Transition Period deliverables (as set forth in Section 4.2) for each Designated Zone, unless the deadline for such deliverables has been extended by the Department. The City shall then confirm whether the information submitted by the Company is accurate and shall notify the Company of such confirmation. If the City determines that there are additional tasks that the Company must complete, then the City shall notify the Company of such additional tasks. After the Company completes the tasks in question, the Company shall re-submit its notification that it has completed the Transition Period deliverables; the City shall then confirm the information as described above.

C. Assignment of Customers. Pursuant to subdivision (e) of Section 16-1002 of the Administrative Code and the Department's Rules, if a Commercial Establishment fails to enter into a Written Service Agreement with a Zone Awardee selected for the Zone in which such Commercial Establishment is located (and/or a Citywide Containerized Commercial Waste Awardee in accordance with the Department's Rules) by the Final Implementation Date for such Zone, the Department will assign such Commercial Establishment to a Zone Awardee and the processes and terms of service set forth in 16 RCNY § 20-26(e) shall apply, unless the Commercial Establishment selects a different Zone Awardee for Commercial Waste Collection Services. The Company acknowledges that the Department may assign one or more customers to the Company pursuant to such process in accordance with the Act and the Department's Rules, and may assign a Customer at any time, including after the Final Implementation Date. The Company must follow the requirements in 16 RCNY § 20-26(e) and all applicable provisions of the Act, the Department's rules, and all Department directives regarding provision of service to such customer(s), including adding such customer to the Company's customer register.

ARTICLE V

DELIVERY OF COMMERCIAL WASTE COLLECTION SERVICES

SECTION 5.1. GENERAL COMMERCIAL WASTE COLLECTION SERVICES.

A. Compliance with Legal Requirements. The Company must perform Commercial Waste Collection Services in full compliance with the Act, the Department's Commercial Waste Zones Rules, all Department directives, and all applicable laws. The Company must ensure that all Subcontractors perform their duties under this Agreement in full compliance with the Act, the Department's Commercial Waste Zones Rules, all Department directives, and all applicable laws.

B. Denial of Service Generally Prohibited. The Company shall not deny, suspend, or terminate Commercial Waste Collection Service to any Commercial Establishment within a Designated Zone, except as provided in 16 RCNY § 20-22, as such rule may be amended, or as otherwise expressly provided in the Department's Rules.

C. Obligation to Provide Designated Recyclables Collection Service. The Company shall provide collection services for designated Recyclable Materials, as set forth in 16 RCNY §1-08(a) to every customer, unless such customer is not required to arrange with a private carter for the collection of designated Recyclable Materials pursuant to 16 RCNY §1-10 and section 16-306 of the Administrative Code. Such service must be provided in accordance with 16 RCNY § 20-31, and all Applicable Laws and rules. This subsection shall not apply to Awards, as applicable, for the collection, transport, and removal of Citywide Containerized Commercial Waste.

D. Obligation to Provide Organic Waste Collection Service.

(1) The Company shall provide Organic Waste Collection Services to any customer that is a designated covered establishment pursuant to subdivision b of Section 16-306.1 of the Administrative Code and that has elected collection of Organic Waste by a private carter.

(2) The Company shall provide Organic Waste Collection Services to Customers that are not designated covered establishments pursuant to subdivision b of section 16-306.1 of the Administrative Code as specified in the Zero Waste Plan (Exhibit G). Such Organic Waste Collection Services must be provided in accordance with 16 RCNY § 20-32, and all applicable laws and rules.

(3) This subsection shall not apply to Awards, as applicable, for the collection, transport, and removal of Citywide Containerized Commercial Waste.

SECTION 5.2. CITYWIDE CONTAINERIZED COMMERCIAL WASTE COLLECTION SERVICES (IF APPLICABLE).

A. If the Company's Designated Zones include collection, transport, and removal of Citywide Containerized Waste, it shall adhere to all applicable requirements in this Agreement, the Act, and the Commercial Waste Zone Rules pertaining to the collection, transport, and removal of Citywide Containerized Commercial Waste.

B. If the Company's Designated Zones include collection, transport, and removal of Citywide Containerized Waste, it shall be authorized to operate in any Commercial Waste Zone to provide for the collection, transport and removal of Citywide Containerized Commercial Waste.

SECTION 5.3 OFFER OF MINIMUM LEVEL OF SERVICE.

A. The Company must offer to provide each Commercial Establishment in each Designated Zone the following minimum level of service:

(1) At least two days of refuse collection per week;

(2) At least one day of designated Recyclable Materials collection per week; and

(3) If the Commercial Establishment is a designated covered establishment, at least one day of Organics Waste Collection Services per week.

B. Nothing in this section shall prevent the Company and a Commercial Establishment from mutually agreeing on terms of service that include less frequent collection than the minimum level of service described in this section, provided that all other requirements of the Act, the Department's CWZ Rules, and this Agreement are met.

C. This Section 5.3 shall not apply to Awards, as applicable, for the collection, transport and removal of Citywide Containerized Commercial Waste.

SECTION 5.4. RESTRICTIONS ON OPERATION IN COMMERCIAL WASTE ZONES.

A. The Company may only provide Commercial Waste Collection Services to Customers located in a Designated Zone. The Company is prohibited from providing Commercial Waste Collection Services to any Commercial Establishment that is not located in a Designated Zone.

B. Neither the Company, nor any of the Company's Designated Carters shall operate a Collection Route with pick-ups of Commercial Waste from Customers in more than one Designated Zone, except as authorized by 16 RCNY § 20-30, or as otherwise

directed by the Department.

SECTION 5.5. EXCLUDED WASTE.

A. The rights granted under this Agreement do not grant any rights with respect to Excluded Waste.

B. If the Company collects Excluded Waste from a Customer within a Commercial Waste Zone, the Company must comply with all applicable laws, rules and regulations governing the collection, transport, removal and disposal of such waste.

C. Notwithstanding anything herein to the contrary: (a) the Company shall have no obligation to collect Excluded Waste, and (b) if the Company finds what reasonably appears to be discarded Excluded Waste, the Company shall promptly notify the City and the producer of the Excluded Waste, if the producer can be readily identified.

SECTION 5.6. OWNERSHIP OF WASTE. The Company accepts ownership of the Commercial Waste properly placed outdoors for collection by a Customer, unless otherwise agreed to in the applicable Customer Written Service Agreement. If the Company fails to properly pick up, transfer or dispose of a Customer's Commercial Waste, the City has the right, but not the obligation, to remedy such defect if not cured by the Company within four hours after receipt of written notice by email, notwithstanding the provisions of Section 25.1. The cost of any remedial action so taken by the City shall be borne by the Company, and the Company indemnifies the City against any costs and liabilities so incurred by the City. Any such remedial action taken by the City shall not constitute a change in ownership of the materials the Company failed to pick up, transfer or dispose of from the Company or Customer, as applicable, to the City.

ARTICLE VI
RATES AND CHARGES

SECTION 6.1. MAXIMUM RATES; PRICING STRUCTURE; FEES.

A. Maximum Rates. The Company shall not charge or accept rates or fees for the collection of Commercial Waste from a Customer in a Designated Zone above the Maximum Rates or maximum fees for such Designated Zone as set forth in Exhibit B (Customer Pricing Schedule for Designated Zones).

B. Negotiation of Rates. The Company shall have the right to negotiate rates and fees with Commercial Establishments within the Designated Zone(s) for Commercial Waste Collection Services below the maximum rate or maximum fee for such service set forth in Exhibit B hereto. In all cases, actual rates charged to Customers must be consistent with the requirements of the Act, the Department's CWZ Rules, and this Agreement, and the Company must only charge a customer in accordance with the pricing structure set forth in Exhibit B.

C. General Pricing Structure. In all cases, the actual rates charged to Customers for collection of Commercial Waste must reflect the following pricing structure:

(1) A separately itemized charge based on frequency of collection by waste stream: refuse, designated Recyclable Materials and Source Separated Organic Waste; and

(2) A separately itemized charge based on weight or volume of waste collected by waste stream: refuse, designated Recyclable Materials and Source Separated Organic Waste.

D. Fees.

(1) The Company must not impose additional fees or charges beyond the two base components listed in the required pricing structure detailed in Section 6.1(C), except where such fees or charges are:

(a) Expressly authorized by 16 RCNY § 20-21, as such rule may be amended; and

(b) Expressly listed in Exhibit B, as such Exhibit may be amended in accordance with the procedures described in Section 6.1(E.2).

(2) The Company may seek Department approval to add additional fees to Exhibit B. Such request must be made in writing to the Department, with a description of the proposed fee and the proposed maximum fee amount. The

Department will review such requests on an individual basis and will notify the Company in writing of its decision within a reasonable time period. If the Department approves such request, Exhibit B shall be amended to reflect such change.

E. The Company shall make available to Commercial Establishments within each Designated Zone the menu of services and the schedule of Maximum Rates and fees set forth in Exhibit B.

SECTION 6.2. RATE ADJUSTMENTS.

A. Automatic Adjustments to Maximum Rates. Starting on July 1, 2025, the Company's Maximum Rates as set forth in Exhibit B (excluding fees) shall be adjusted, and shall be adjusted every year thereafter on July 1st. The rate adjustments shall be calculated as follows, using the percent change of the indices in the table below. The percent change in each index shall be calculated by dividing the previous full calendar year's average index (from January 1 to December 31) by the full calendar year's average index (from January 1 to December 31) of the year before.

<u>Category</u>	<u>Weight</u>	<u>Index</u>
<u>Labor</u>	34%	<u>Employment Cost Index: Total compensation for Private industry workers in Administrative and support and waste management and remediation services (U.S. Bureau of Labor Statistics Series ID: CIU201560000000I)</u>
<u>Fuel</u>	4%	<u>Energy Information Agency East Coast (PADD 1) Annual Retail Diesel Price Series</u>
<u>Truck Maintenance</u>	9%	<u>Consumer Price Index for All Urban Consumers: Motor Vehicle Parts and Equipment in U.S. City Average (U.S. Bureau of Labor Statistics Series ID: CUUR0000SETC)</u>
<u>Other</u>	53%	<u>Consumer Price Index for All Urban Consumers: All Items in New York-Newark-Jersey City, NY-NJ-PA (CBSA) (U.S. Bureau of Labor Statistics Series ID: CUURA101SA0)</u>

Adjustments to the Company's Maximum Rates as set forth in Exhibit B shall be made in units of one cent (\$0.01). Fractions less than one cent (\$0.01) shall not be considered when making adjustments.

The City shall provide the calculated annual percent change of the blended indices for use by the Company. If there is a delay in the publication of indices, the City will use the latest available indices to calculate the annual percent change in the indices. The City will provide this calculation no later than May 1st of the year of the applicable July 1st rate adjustment, so that the Company can notify Customers accordingly.

The Company must provide each Customer at least 14 days written notice of any rate change in accordance with 16 RCNY § 20-26(b).

B. Adjustments to Maximum Rates as a Result of Company Petition. In addition to automatic maximum rate adjustments described in Section 6.2(A), the Company has the right to petition the Department for an adjustment to the Company's Maximum Rates or maximum fees at any time during the course of this Agreement, by following the procedures described in 16 RCNY § 20-21(d).

ARTICLE VII

CUSTOMER SERVICE

SECTION 7.1. COMPLIANCE WITH CUSTOMER SERVICE RULES. The Company must comply with Subchapter B of Chapter 20 of Title 16 of the Rules of the City of New York, and all other applicable laws and requirements of this Agreement related to customer service, including but not limited to requirements to:

A. Enter into a Written Service Agreement with each Customer in accordance with the requirements in 16 RCNY § 20-26;

B. Submit a standard contract form that meets the requirements of 16 RCNY § 20-26 within 60 days of entering into this Agreement, and submit any subsequent changes to such form in accordance with 16 RCNY § 20-26;

C. Provide a consolidated bill at least monthly to each customer in accordance with the requirements in 16 RCNY § 20-27;

D. Follow procedures regarding non-collection of waste set forth in 16 RCNY §§ 20-23, 20-24;

E. Follow the requirements regarding Commercial Waste generation audits provided in 16 RCNY § 20-29; and

F. Provide required notifications to Customers as directed by the Department in accordance with 16 RCNY § 20-28.

SECTION 7.2. CUSTOMERS ASSIGNED AFTER THE FINAL IMPLEMENTATION DATE. The provisions of Section 7.1 shall apply to any Customers assigned by the Department to the Company after the Final Implementation Date. The Company shall meet the service requirements of Subchapter B of Chapter 20 of the CWZ Rules (Customer Service Requirements) with respect to such Customers.

SECTION 7.3. COMPLIANCE WITH CUSTOMER SERVICE PLAN. The Company must comply with the terms of the Customer Service Plan in Exhibit F.

ARTICLE VIII

CWZ PLANS

SECTION 8.1. CWZ PLAN REQUIREMENTS.

A. Performance in Accordance with CWZ Plans. In performing Services under this Agreement, the Company shall comply with the Company's CWZ Plans. All CWZ Plans shall require operation in accordance with the Act, the Department's CWZ Rules, this Agreement, and all Applicable Law, whether such language is expressly stated therein.

B. Obligation to Review and Maintain Accuracy of CWZ Plans. The Company shall periodically review all CWZ Plans to ensure that each Plan reflects a true and accurate description of the Company's practices, protocols and operations. If a CWZ Plan differs materially from the Company's actual practices, protocols or operations, the Company must either conform its actions to comply with such Plan or must seek an amendment to the Plan pursuant to Section 8.1(C). During such periodic review, the Company shall also consider whether to propose an amendment to a CWZ Plan by following the procedures in Section 8.1(C) for any of the reasons described in Section 8.1(C.2).

C. Amendments to CWZ Plans.

(1) At any time during the Term, the Company may request an amendment to a CWZ Plan for any reason described in Section 8.1(C.2) by following the procedures in this section. The request must be made in writing to the Director of Commercial Waste and must include:

- (a) A detailed description of the proposed change;
- (b) The reason that the proposed change is needed; and
- (c) Any documentation supporting the need for the change that the Company deems relevant.

(2) All proposed amendments to CWZ Plans must be consistent with the Act, the Department's CWZ Rules, this Agreement and Applicable Law. The Department will consider amendments to a CWZ Plan for any of the following reasons:

- (a) The change is necessary to comply with a change in Applicable Law or improve the Company's compliance with the Act, the Department's CWZ Rules, this Agreement or Applicable Law;
- (b) The change is being proposed to provide better Commercial Waste Collection Service to customers, to maintain or improve operational

efficiency, to ensure continuity of service, or otherwise provide better service under this Agreement;

(c) The change is being proposed to promote the City's Goals and Objectives and the overall purposes of the Act;

(d) The change is being proposed to reflect changes in market or economic conditions, changes in the Company's finances, changes regarding Commercial Establishments in the Designated Zone(s), changes regarding the amount or types of Commercial Waste generated in the Designated Zone(s), advances in technology, or other relevant changed circumstances;

(e) Any other reason that is consistent with the Act, the Department's Rules, this Agreement, and Applicable Law.

(3) Any request for an amendment to the Subcontracting Plan that involves a change related to the use of Designated Carters must include a description of how such change is consistent with the City's Goals and Objectives and the purposes of the Act, including but not limited to, how such subcontracting will enhance public safety, minimize harmful environmental impacts and improve customer service. Any request to add a Subcontractor must be made after or at the same time as a request for Department approval of such Subcontractor pursuant to Section 16.1(A).

(4) The Department will review any proposed amendment for legal compliance and consistency with the City's Goals and Objectives and the overall purposes of the Act, and will either grant or deny such request at the Department's sole discretion. The Company acknowledges that the Department may direct the Company to provide additional information or documentation in order to respond to such request and the Company will comply with such direction within the time period directed. The Company will make the Company's and any Designated Carter's records available to the Department for inspection and will provide access to the Company's facilities or equipment and any Designated Carter's facilities or equipment, where the Department deems such access is necessary in order to make a determination regarding the requested amendment.

(5) The Department will provide a determination to the Company in writing regarding the request for an amendment within a reasonable time period. The Company further acknowledges that the Department may request that the Company make changes to its proposed amendment before granting Department approval.

(6) The Company must continue to comply with the terms of its existing CWZ Plans pending the Department's review of any proposed amendment to a CWZ Plan.

(7) If the Department approves a request for an amendment to a CWZ Plan, the amended Plan shall be incorporated into this agreement as of the date of such approval, or as otherwise specified by the Department in the notice of approval.

ARTICLE IX

WASTE MANAGEMENT AND ZERO WASTE GOALS

SECTION 9.1. GENERAL.

A. The Company must ensure that all Commercial Waste collected from Customers pursuant to this Agreement is collected, transported and delivered to a disposal location in full compliance with Subchapter C of Chapter 20 of Title 16 of the Rules of the City of New York and all other CWZ Rules, the Act, Applicable Law, the Company's Zero Waste Plan (Exhibit G), Waste Management Plan (Exhibit H) and Air Pollution Reduction Plan (Exhibit J).

B. The Company must ensure that all Commercial Waste Vehicles and facilities are properly operated and maintained in accordance with the requirements and standards set forth in Subchapter C of Chapter 20 of Title 16 of the Rules of the City of New York and all other CWZ Rules, the Act, Applicable Law and this Agreement.

SECTION 9.2. RECYCLING AND ORGANICS REQUIREMENTS.

A. The Company shall comply with all requirements regarding collection, transport, removal and disposal of designated Recyclable Materials and Source Separated Organic Waste set forth in Subchapter C of Chapter 20 of Title 16 of the Rules of the City of New York, the Act, Applicable Law, and the Company's Zero Waste Plan (Exhibit G), Waste Management Plan (Exhibit H) and Air Pollution Reduction Plan (Exhibit J), including but not limited to:

(1) Requirements regarding proper disposal of designated Recyclable Materials contained in 16 RCNY § 20-31;

(2) Prohibitions on commingling of designated Recyclable Materials with solid waste in the same vehicle contained in 16 RCNY § 20-31;

(3) Requirements regarding collection of single stream Recyclable

Materials with Department approval only, as applicable, contained in 16 RCNY § 20-31;

(4) Requirements regarding collection of dual stream Recyclable Materials, contained in 16 RCNY § 20-31;

(5) Prohibitions on commingling of Source Separated Organic Waste with other solid waste in the same vehicle contained in 16 RCNY § 20-32;

(6) Restrictions regarding where Source Separated Organic Waste may be lawfully delivered contained in 16 RCNY § 20-32;

(7) All requirements regarding notifications to customers and signs and decals for customers contained in 16 RCNY §§ 20-31 and 20-32.

B. The Company must take reasonable steps to ensure that its customers comply with the City's Recycling Laws, including but not limited to:

(1) Following the procedures regarding notifying customers of significant designated Recyclable Materials content in refuse in the Company's Zero Waste Plan (Exhibit G);

(2) Engaging in customer education as needed; and

(3) Cooperating with the Department's efforts to promote compliance with the City's Recycling Laws among Commercial Establishments, such as distributing educational materials to customers as directed by the Department, following notification requirements regarding customers that fail to comply with the City's Recycling Laws, as contained in 16 RCNY § 20-28, and fully cooperating with Department enforcement efforts.

SECTION 9.3. COMMERCIAL WASTE DISPOSAL.

A. The Company must ensure that Commercial Waste collected during the term of this Agreement is only disposed of at facilities authorized by the Company's Waste Management Plan (Exhibit H), the Act, the Department's CWZ Rules, and Applicable Law.

ARTICLE X

PROTECTION OF PROPERTY

SECTION 10.1. PROTECTION OF PROPERTY. The Company must, to the greatest extent possible, prevent damage to public and private rights of way and property. If the Company or any of its Designated Carters damages private property, it must immediately notify the property owner where feasible. If the Company or any of its Designated Carters damages public property, it must immediately notify the City by calling 311, and also notify the Department. The Company shall be responsible for all costs associated with the repair or replacement of property that has been damaged by the equipment, employees or agents of the Company or any of its Designated Carters, excluding damage from normal wear and tear. The Company must comply with 16 RCNY § 20-41 regarding any claims concerning property damage.

ARTICLE XI

COMMERCIAL WASTE VEHICLES

SECTION 11.1. VEHICLE SPECIFICATIONS. The Company must ensure that every Commercial Waste Vehicle meets the following requirements:

A. BIC Requirements. The Commercial Waste Vehicle must be fully compliant with all BIC requirements regarding Trade Waste vehicles.

B. Sideguards. Any Commercial Waste Vehicle that meets the definition of “trade waste hauling vehicle” under Administrative Code Section 16-526 must be in full compliance with such section and must be equipped with side guards by January 1, 2024, or by such earlier date as otherwise required by this Agreement.

C. Emissions standards.

(1) LL 38 of 2015. Every Heavy Duty Commercial Waste Vehicle must be in full compliance with Administrative Code Section 24-163.11 and must be equipped with an engine certified to the applicable 2007 United States Environmental Protection Agency (EPA) standard or be retrofitted to meet the required standard by the Agreement Effective Date. Commercial waste Vehicles are not eligible for waivers of this requirement.

(2) Zero Emissions Vehicles and Low Emissions Vehicles. If the Company intends to utilize any zero emissions vehicle or low emissions vehicle pursuant to its Air Pollution Reduction Plan, the Company is responsible for ensuring that such vehicle is maintained and operated in a manner consistent with

all Applicable Law, and that the actual emissions from such vehicle when operated conform to the intended reduction or elimination of emissions. The Company is also responsible for ensuring that the Company has access to sufficient charging and fueling infrastructure to utilize such vehicle as intended to meet the commitments of its Air Pollution Reduction Plan, or must seek approval for an amendment to such Plan, where appropriate, by following the procedures in Section 8.1(C) (Amendments to CWZ Plans).

D. Telematics. Every Commercial Waste Vehicle other than a bicycle must be equipped with a telematics system that meets the requirements of 16 RCNY § 20-56, the Company's Health and Safety Plan (Exhibit I), and Section 21.4 (Telematics Data) of this Agreement. Such system must be approved by the Department prior to the Agreement Effective Date, or prior to the date that the vehicle is first used as a Commercial Waste Vehicle, whichever is later. Such system must also be approved prior to the date the vehicle is returned to use as a Commercial Waste Vehicle following any replacement of or material alterations to such system.

E. Safety Requirements. Every Commercial Waste Vehicle must meet all applicable requirements in Subchapter D of Chapter 20 of Title 16 of the Rules of the City of New York, including but not limited to requirements regarding obstructions on a windshield, cross-over mirrors, back-up cameras, and auxiliary lighting, as further described in Section 12.2 (Compliance with All Health and Safety Laws).

F. Standards for CWZ Vehicles and Hoppers. Every Commercial Waste Vehicle, including hoppers and ancillary equipment, must be cleaned, maintained and presented in a manner that meets the requirements of 16 RCNY § 20-38.

G. Labeling. Every Commercial Waste Vehicle must be labeled in accordance with 16 RCNY § 20-44.

H. CWZ Plans. The Company must ensure that it fully complies with all requirements regarding vehicle specifications and performance of Commercial Waste Vehicles as under this Agreement, including any specifications for some or all Commercial Waste Vehicles in the Health and Safety Plan (Exhibit I) and Air Pollution Reduction Plan (Exhibit J).

I. Applicable Law. The Company must ensure that Commercial Waste Vehicles conform to all FMCSA and New York State law requirements and all other applicable requirements under federal, state and local law.

SECTION 11.2. VEHICLE MAINTENANCE AND INSPECTIONS. The Company must ensure that all Commercial Waste Vehicles are properly maintained and inspected in

accordance with 16 RCNY §§ 20-44, 20-52, and all CWZ Rules, the Act, this Agreement, all applicable FMCSA and New York State requirements, and Applicable Law.

SECTION 11.3. NON-STANDARD VEHICLES. If the Company or any of its Designated Carters utilizes vehicles other than Heavy Duty Commercial Waste Vehicles in the collection of Commercial Waste, such as vans, bicycles, or motorized scooters, such vehicles must be maintained and operated in a manner consistent with Applicable Law, including traffic safety laws and other laws governing public rights of way.

SECTION 11.4. NOTIFICATION OF NON-CWZ ACTIVITIES. If the Company intends to routinely use a Commercial Waste Vehicle for activities other than the Commercial Waste Collection Services on an on-going basis, the Company must notify the Department of such usage.

ARTICLE XII

HEALTH AND SAFETY

SECTION 12.1. COMPLIANCE WITH HEALTH AND SAFETY PLAN. The Company shall comply with the requirements of its Health and Safety Plan that is attached hereto as Exhibit I.

SECTION 12.2. COMPLIANCE WITH ALL HEALTH AND SAFETY LAWS.

A. The Company shall comply with all applicable federal, State, and local laws related to public health and safety or the health and safety of its employees, 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.

B. The Company shall ensure that the Company and each of its Designated Carters complies with the minimum safety requirements for Commercial Waste Awardees and Designated Carters contained in Subchapter C of Chapter 20 of Title 16 of the Rules of the City of New York, including but not limited to requirements regarding:

- (1) Safety records;
- (2) Safe vehicle operation;
- (3) Daily driver vehicle inspections and semi-annual qualified inspector inspections;
- (4) A requirement for cross-over mirrors;

- (5) A prohibition on obstructions to the windshield;
- (6) A requirement to install back-up cameras by January 1, 2026;
- (7) A requirement to install auxiliary exterior lighting by January 1, 2026; and
- (8) Minimum telematics systems requirements.

SECTION 12.3. WORKER SAFETY TRAINING.

A. The Company must ensure that the Company and any Designated Carter that will be providing Commercial Waste Collection Services under this Agreement provide a worker safety training program to its employees that meets the requirements of Administrative Code Section 16-1008. Every worker employed by the Company or the Designated Carter must receive the required worker safety training no later than 180 days after the Execution Date of this Agreement. Workers who are hired after the Agreement is signed must receive this training within 90 days after the start of employment or before the initial assignment of a worker to a job or task, whichever is earlier. Workers must receive an annual refresher course in accordance with the requirements of Administrative Code Section 16-1008. The Company shall provide each worker with a card indicating that the worker has completed the required worker safety training and the annual refresher course, as applicable, and the date(s) on which such training was completed. The Company shall require each Worker to carry such card at all times, when on duty.

B. The Company must ensure that the Company and each of its Designated Carters certifies to the Department that it has met the requirements of Administrative Code Section 16-1008, in the form and manner as the commissioner may prescribe, no later than 180 days after the Execution Date of this Agreement. For Designated Carters that are approved after the Execution Date, such certification must be provided to the Department on the date on which the Department approves the Designated Carter as a Subcontractor. After the first year of the Agreement, the Company must ensure that the Company and each of its Designated Carters provides an annual certification to the Department in accordance with Administrative Code Section 16-1008(i).

SECTION 12.4. VEHICLE COLLISIONS. The Company must comply with the requirement to immediately notify the Department of collisions involving commercial waste vehicles as set forth in 16 RCNY § 20-43.

ARTICLE XIII

EMERGENCY ACTION PLANNING

SECTION 13.1. EMERGENCY ACTION PLAN.

A. The Company must 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, health, or weather emergencies, and addressing continuity and restoration of service in such instances.

B. No later than 30 days after the Execution Date of this Agreement, the Emergency Action Plan must be submitted by the Company to the Department prior to the Implementation Start Date, and must be approved by the Department prior to the Agreement Effective Date.

C. The Company must follow its written Emergency Action Plan. If the Company seeks to make any changes to the Emergency Action Plan, it must follow the procedures for amending CWZ Plans, contained in Section 8.1(C) (Amendments to CWZ Plans).

SECTION 13.2. EMERGENCY SERVICES AND RESPONSE REQUIREMENTS.

A. The Company must comply with 16 RCNY § 20-42 and must designate a person or persons as the emergency contact to respond to emergencies. Such person or persons must be available 24 hours per day, 7 days per week.

B. In the event of an emergency, the Company must comply with all directives and orders of Department, and any other City, State or Federal agency.

ARTICLE XIV

PROFESSIONAL CONDUCT

SECTION 14.1. PROFESSIONAL CONDUCT GENERALLY. The Company shall ensure that all operations and Services performed under this Agreement are conducted with a high standard of professionalism and in full compliance with Administrative Code Section 16-1005 (Conduct by Awardees and Designated Carters within Commercial Waste Zones), the Act, the Department's CWZ Rules and this Agreement.

SECTION 14.2. NO COLLUSION OR INTERFERENCE.

A. The Company shall not make any false, falsely disparaging or misleading

oral or written statements or other representations to any Commercial Establishment that have the capacity, tendency or effect of misleading such Commercial Establishment regarding any aspect of the Commercial Waste Zones program, or engage in any threatening or extortive behavior when negotiating customer agreements, including but not limited to any statements declaring or suggesting that:

(1) A Commercial Establishment is required to enter into a service agreement with the Company because the Company is a Designated Carter in the Zone, or for any other reason;

(2) The Company is the only Designated Carter in the Zone, unless such statement is true and accurate;

(3) The Commercial Establishment must choose an Awardee other than the Company for Commercial Waste Collection Service, except where refusal of service is strictly authorized pursuant to the Department's CWZ Rules; or

(4) The Commercial Establishment cannot negotiate more favorable rates or terms of service because the Company has been selected as a Designated Carter for the Zone, or for any other reason.

B. The Company shall not interfere or attempt to interfere by threats, intimidation, or coercion, acts of violence, or by destruction or damage of property or equipment, or by any other means, with performance of the terms of an Agreement entered into between the Department and another Awardee pursuant to Section 16-1002, or with the performance of any Written Service Agreement between another Awardee and a Commercial Establishment.

C. The Company shall not engage in any act of collusion with any other Awardee regarding contractual arrangements with Commercial Establishments, including but not limited to any action or pattern of actions that suggests price fixing, pre-determined levels of service, pre-assignment of customers among Awardees, or any other conduct that interferes with or attempts to interfere with competition among Awardees within a Designated Zone or the exercise of independent customer preference within the Commercial Waste Zones program.

SECTION 14.3. HARASSMENT. No employee or agent of the Company or any of its Designated Carters shall use obscene, or other abusive or harassing language, or engage in any other threatening, abusive or harassing behavior when performing Services under this Agreement. The Company shall ensure that Designated Carters are not discourteous to customers or members of the general public, and shall behave in a professional manner at all times.

SECTION 14.4. NUISANCE. The Company, and any of the Company's Designated Carters, shall not conduct operations under this Agreement in a manner that creates a public nuisance, including but not limited to operations that generate excessive noise or nighttime disruption; or creation of a public safety hazard.

ARTICLE XV

MAINTENANCE OF BIC LICENSE

SECTION 15.1. MAINTENANCE OF BIC LICENSE.

A. Company Must Maintain BIC License. The Company must have a valid license issued by BIC pursuant to subdivision a of Section 16-505 of the Administrative Code, and such license must be in full force and effect during the entire Term of this Agreement. It is the Company's responsibility to seek renewal of such license in a timely manner such that the license does not lapse or expire.

B. BIC License for Designated Carters.

(1) Every Subcontractor authorized to perform Commercial Waste Collection Services as a Designated Carter under this Agreement must have a valid license issued by BIC pursuant to subdivision a of Section 16-505 of the Administrative Code, and such license must be in full force and effect during the entire period that the Designated Carter is authorized to collect commercial waste under the Subcontracting Plan, except as provided in Section 15.1(B.2).

(2) In the event that BIC promulgates rules pursuant to Title 16-A of the Administrative Code authorizing persons to collect certain categories of commercial waste without a license, the Company may notify the Department of its intent to utilize a Designated Carter that may lawfully collect commercial waste without a license pursuant to such BIC rules and Administrative Code Section 16-1000 (definition of "Designated Carter"). Such change shall be treated as a change to the Company's Subcontracting Plan, and the Company must receive prior approval from the Department pursuant to Section 8.1(C) (Amendments to CWZ Plans) before such Designated Carter is authorized to collect commercial waste without a license pursuant to this Agreement, regardless of whether such Designated Carter had been previously approved by BIC as a Licensee.

C. The Company must immediately notify the Department of any of the following regarding the Company's BIC License or the BIC License of any of the Company's Designated Carters:

- (1) Any complaint, investigation or audit by BIC regarding such license or regarding Trade Waste collection service operations;
- (2) Any proceeding to suspend or terminate such license;
- (3) Any other material changes to such license or the status of such license.

ARTICLE XVI

SUBCONTRACTING

SECTION 16.1. SUBCONTRACTING GENERALLY.

A. 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 other than Designated Carters providing Services covered by this Agreement pursuant to a subcontract in an amount that does not exceed \$20,000.00. The Company 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).

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

(a) The Company shall not enter into any subcontract for an amount greater than \$20,000.00 or any subcontract with a Designated Carter 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 or any subcontract with a Designated Carter, the Company 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 Company shall submit proof of professional liability insurance in the amount required by Article XIX (Insurance; Security for Performance). In addition, the Company shall list the proposed Subcontractor in the City's Payee Information Portal (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.

(c) Upon receipt of the information required above, the Department in its discretion may grant or deny preliminary approval for the Company to contract with the Subcontractor.

(d) The Department shall notify the Company within 30 days whether preliminary approval has been granted. If preliminary approval is granted, the Company 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 other relevant items required by the Department.

(e) Upon receipt of all relevant documentation, the Department shall notify the Company in writing whether the proposed Subcontractor is approved. If the proposed Subcontractor is not approved, the Company may submit another proposed Subcontractor unless the Company 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 PASSPort disclosures are required, 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 this Agreement, the Act, the Department's CWZ Rules, and Applicable Law;

(2) Nothing contained in the agreement between the Company and the Subcontractor shall impair the rights of the City;

(3) Nothing contained in the agreement between the Company and the Subcontractor, or under the Agreement between the City and the Company, shall

create any contractual relation between the Subcontractor and the City;

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

(5) The Subcontractor is prohibited from subcontracting any Services or obligations required of the Subcontractor under the agreement between the Company and the Subcontractor to a third party.

C. The Company 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 16.1(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 Company shall cause the Subcontractor to cease all Services 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.

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

G. Individual employer-employee contracts are not subcontracts subject to the requirements of this Section 16.1.

H. The Company 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 16.1(A)(2)(b) changes during the term of this Agreement, the Company shall update the information in such Portal accordingly. Failure of the Company to list a Subcontractor and/or to report Subcontractor payments in a timely fashion may result in the Department declaring the Company in default of the

Agreement and will subject Company to liquidated damages in the amount of \$100 per Day for each Day that the Awardee 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.

I. Notices of Subcontractor Breach or Default. The Company shall notify the City promptly of any material breach or event of default occurring under a subcontract, and the probable effect on the Services. The Company shall keep the City apprised of the course of the dispute and shall advise the City of its ultimate resolution. The Company shall be responsible for settling and resolving with all Subcontractors all claims arising out of delay, disruption, interference, hindrance, or schedule extension caused by the Company or inflicted on the Company or a Subcontractor by the actions of another Subcontractor.

SECTION 16.2. SUBCONTRACTING WITH DESIGNATED CARTERS.

A. The Company must ensure that no entity performs Commercial Waste Collection Services under this Agreement other than the Company itself or a Designated Carter that: 1) is identified in the Subcontracting Plan (Exhibit C-1) and 2) has been approved by the Department.

B. Any subcontracting arrangement with a Designated Carter to perform Commercial Waste Collection Services under this Agreement must meet the requirements of this Section, in addition to all requirements in Section 16.1 for Subcontractors generally.

C. Limitations on Number of Designated Carters. Pursuant to the Act, during the entire Term of this Agreement, the Company may subcontract with no more than two (2) Designated Carters in each Designated Zone at any given time. A subcontracting arrangement with a Designated Carter that collects commercial waste exclusively using bicycles shall not count toward the numerical limit on Designated Carters as Subcontractors provided in this section, although such Subcontractor will be fully held to all requirements of Designated Carters and Subcontractors in every other way pursuant to the Act, the Department's CWZ Rules, and this Agreement. There is no limit to the number of Subcontractors that the Company may use under this Agreement for Services other than Commercial Waste Collection Services.

D. Further Subcontracting Prohibited. The Designated Carter is prohibited from subcontracting any of its duties as a Designated Carter to a third party.

E. BIC License. Every Subcontractor authorized to perform Commercial Waste Collection Services as a Designated Carter under this Agreement must have a valid license issued by BIC pursuant to subdivision a of Section 16-505 of the Administrative Code, and

such license must be in full force and effect during the entire period that the Designated Carter is authorized to collect commercial waste under the Subcontracting Plan, except as provided in Section 15.1(B.2).

F. HireNYC. Any subcontract with a Designated Carter must include the “Hiring and Employment Rider: HireNYC and Reporting Requirements” (Appendix B), and the Awardee must ensure that the Designated Carter meets the requirements therein.

SECTION 16.3. SUBCONTRACTING PLAN.

A. The Company must fully comply with the Subcontracting Plan (Exhibit C-1). Every subcontracting arrangement for Services covered by this Agreement must be included in the Subcontracting Plan. The Company must follow the procedures in Section 8.1(C) (Amendments to CWZ Plans) to seek Department approval for any changes to the Company’s Subcontracting Plan. If the proposed change to the Subcontracting Plan involves adding a new Subcontractor, the Company must follow the procedures in Section 16.1(A) to obtain Department approval of the Subcontractor prior to or at the same time that the Company seeks approval to change the Subcontracting Plan.

ARTICLE XVII

MAINTENANCE OF EXISTENCE

SECTION 17.1. MAINTENANCE OF CORPORATE EXISTENCE. Consolidation, Merger, Sale, or Transfer. Company covenants that during the term of this Agreement it shall maintain its corporate existence, shall not dissolve or otherwise dispose of all or substantially all of its assets and shall not consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it unless the successor is the Company. Subject to approval by the Department, however, the Company may consolidate with or merge into another entity, or permit one or more other entities to consolidate with or merge into it, or sell or otherwise transfer to another entity all or substantially all of its assets as an entirety and thereafter dissolve if the successor entity (if other than the Company), (a) assumes in writing all the obligations of the Company hereunder and, if required by law, is duly qualified to do business in the State, and (b) delivers to the City an opinion of counsel to the effect that its obligations under this Agreement are legal, valid, binding and enforceable subject to applicable bankruptcy and similar insolvency or moratorium laws. No such consolidation, merger or sale or other transfer shall have the effect of releasing the initial Company from its liability hereunder unless a successor entity has assumed responsibility for this Agreement as provided in this Section. The foregoing provisions of Section 17.1 apply to all of Company’s Designated Carters.

SECTION 17.2. EMPLOYEE RETENTION. No less than thirty (30) calendar days before the effective date of any change in control of the Company, the Company shall ensure that all requirements of Administrative Code Section 16-1006 have been met.

ARTICLE XVIII

NOTICES

SECTION 18.1. NOTICE.

A. The Awardee and the Department hereby designate the business addresses and email addresses specified in Section 18.2 (Addresses for Notice) 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, any notice, direction, or communication from either party sent by email shall be deemed received on the same day that the email was sent.

C. Nothing in this Section 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.

D. Nothing in this Section shall preclude either party from providing notice orally via telephonic or videoconference in the event of an emergency, if such notice is followed by written communication as soon as practicable.

E. Nothing in this Section shall abridge or affect in any way the City's authority to give oral directives to the Company under Applicable Law.

SECTION 18.2. ADDRESSES FOR NOTICE.

A. City Notice Address. All notices (other than Operating Notices) required to be given to the City shall be addressed as follows:

City of New York
Department of Sanitation
Bureau of Commercial Waste
375 Pearl Street, 18th Floor
New York, New York 10038
Attn: Director of Commercial Waste

[Email address:_____]

with a copy to:

City of New York
Department of Sanitation
Bureau of Legal Affairs
125 Worth Street, Room 710
New York, New York 10013
Attn: Deputy Commissioner, Legal Affairs

[Email address:_____]

B. Company Notice Address. All notices required to be given to the Company shall be addressed as follows:

[Company name]

[Company address]

[Company e-mail address]

C. Operating Notices. All informal communications regarding Services under this Agreement should be sent by the Company to the Director of Commercial Waste or his/her representative.

ARTICLE XIX

INSURANCE; SECURITY FOR PERFORMANCE

SECTION 19.1. INSURANCE.

A. Agreement to Insure.

- (1) During the term of this Agreement, prior to the earliest Implementation Start Date of the Company's Designated Zone(s), the Company must comply with BIC's insurance requirements for licensed Waste Haulers¹ and must provide proof of such compliance to the Department upon request.
- (2) The Company shall maintain the following types of insurance throughout the rest of the term of this Agreement, beginning at least sixty (60) days prior to the Implementation Start Dates of each of the Company's Designated Zones, including any applicable Renewal Term. Such insurance shall meet the requirements set forth in this Section. Wherever this Section 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 Company can demonstrate that the alternative form or endorsement contained in its policy provides coverage at least as broad as the specified form.

B. Workers' Compensation, Disability Benefits, and Employers' Liability Insurance.

- (1) The Company shall maintain workers' compensation insurance, employers' liability insurance, and disability benefits insurance, in accordance with State law on behalf of, or in regard to, all employees providing Services under this Agreement.
- (2) Within sixty (60) days of the earliest Implementation Start Date of the Company's Designated Zone(s), or as otherwise specified by the Department, the Company shall submit proof of Company's employers' liability insurance to the

¹ BIC's insurance requirements for licensed Waste Haulers include Commercial General Liability of no less than \$5,000,000 combined single limit per occurrence for bodily injury and property damage; Commercial Automobile Liability Insurance of no less than \$2,000,000 combined single limit per accident for bodily injury and property damage; Employers' Liability Insurance of no less than \$1,500,000 per accident; and Workers' Compensation Insurance in compliance with New York State law. All BIC insurance requirements should be confirmed with BIC.

Department. The employers' liability insurance must comply with State law.

(3) Within sixty (60) days of the earliest Implementation Start Date of the Company's Designated Zone(s), or as otherwise specified by the Department, and as required by New York State Workers' Compensation Law §§ 57 and 220(8), the Company shall submit proof of Company'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:

- (a) Form C-105.2, *Certificate of Workers' Compensation Insurance*;
- (b) Form U-26.3, *State Insurance Fund Certificate of Workers' Compensation Insurance*;
- (c) Form SI-12, *Certificate of Workers' Compensation Self-Insurance*;
- (d) Form GSI-105.2, *Certificate of Participation in Worker's Compensation Group Self-Insurance*;
- (e) Form DB-120.1, *Certificate of Disability Benefits Insurance*;
- (f) Form DB-155, *Certificate of Disability Benefits Self-Insurance*;
- (g) Form CE-200, *Affidavit of Exemption*;
- (h) Other forms approved by the New York State Workers' Compensation Board; or
- (i) Other proof of insurance in a form acceptable to the City.

C. Other Insurance.

(1) Commercial General Liability Insurance. The Company shall maintain commercial general liability insurance with liability limits of no less than five million dollars (\$5,000,000) combined single limit per occurrence for bodily injury and property damage and no less than ten million dollars (\$10,000,000) aggregate. The aggregate limit shall apply on a per location or per project basis, with, for the purposes of this subsection, each Designated Zone constituting a separate location or project. The maximum deductible for such insurance shall be no more than one hundred thousand dollars (\$100,000). 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, 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.

(2) Commercial Automobile Liability Insurance. The Company shall maintain commercial automobile liability insurance of no less than two million dollars (\$2,000,000) combined single limit per accident for bodily injury and property damage 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.

D. General Requirements for Insurance Coverage and Policies.

(1) Unless otherwise stated, all insurance required by Section 19.1 of this Agreement must:

(a) Be provided by companies that may lawfully issue such policies;

(b) 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

(c) 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).

(2) The Company 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.

(3) There shall be no self-insurance program, including a self-

insurance retention, exceeding \$10,000.00, with regard to any insurance required under this Section unless approved in writing by the Commissioner. Any such self-insurance program shall provide the City with all rights that would be provided by traditional insurance required under this Section, including but not limited to the defense obligations that insurers are required to undertake in liability policies.

(4) The limits of coverage for all types of insurance for the City, including its officials and employees, shall be the greater of (i) the minimum limits set forth in this Section or (ii) the limits provided to the Company as named insured under all primary, excess, and umbrella policies of that type of coverage.

E. Proof of Insurance.

(1) For each policy required under this Agreement, the Company shall file proof of insurance and, where applicable, proof that the City, including its officials and employees, is an additional insured with the Department at least sixty (60) days prior to the Implementation Start Date(s) of each of the Company's Designated Zone(s). The following proof is acceptable:

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

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

(2) Proof of insurance confirming renewals of insurance required under Section 19.1 must be submitted to the Department prior to the expiration date of the coverage. Such proof must meet the requirements of this Section.

(3) The Company shall provide the City with a copy of any policy required under this Section upon the demand for such policy by the Commissioner or the New York City Law Department.

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

(5) If the Company receives notice, from an insurance company or other person, that any insurance policy required under this Section shall expire or be

cancelled or terminated for any reason, the Company shall immediately forward a copy of such notice to both the address referred to in the Notices section of this Agreement and to the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007.

F. Miscellaneous.

(1) Whenever notice of loss, damage, occurrence, accident, claim, or suit is required under a policy required by this Section, the Company shall provide the insurer with timely notice thereof on behalf of the City. Such notice shall be given even where the Company 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) 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 Company 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 Company fails to comply with the requirements of this paragraph, the Company shall indemnify the City, together with its officials and employees, and any other entity listed as an additional insured, 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.

(2) The Company's failure to maintain any of the insurance required by this Section 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.

(3) Insurance coverage in the minimum amounts required in this Section shall not relieve the Company 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.

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

(5) In the event the Company requires any Subcontractor to maintain insurance with regard to any operations under this Agreement and requires such Subcontractor to list the Company as an additional insured under such insurance, the Company shall ensure that such entity also lists the City, including its officials and employees, 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 XX

RECORDKEEPING

SECTION 20.1. RECORDKEEPING GENERALLY. The Company shall meet all recordkeeping requirements as set forth in the Act, the Department's CWZ Rules, and this Agreement. The Company shall ensure that all Subcontractors fully comply with all such recordkeeping requirements, as applicable.

SECTION 20.2. RECORDKEEPING FOR COMMERCIAL WASTE DISPOSAL.

A. The Company must ensure that a dump ticket, delivery receipt or other written record is obtained each time Commercial Waste is delivered from a customer to a waste transfer station, processing facility or any other location where such waste is dumped directly from the Commercial Waste Vehicle that collected the waste from the customer, in accordance with 16 RCNY § 20-34(b).

B. The Company must collect and maintain information on the final processing location, final disposal location, final use, or final reuse of all Commercial Waste collected by the Company and any of its Designated Carters, and all other information required by 16 RCNY § 20-34, including but not limited to where the commercial waste is sent after it is first tipped, and the mode of transport, as specified, and in accordance with the requirements in such rule.

ARTICLE XXI

REPORTING

SECTION 21.1. GENERAL REPORTING REQUIREMENTS. The Company shall meet all reporting requirements as set forth in the Act, the Department's CWZ Rules, and this Agreement, including but not limited to the required monthly and annual reports as set forth therein. Where the Act or the Department's CWZ Rules impose specific reporting requirements on Designated Carters, the Company shall also ensure that its Designated Carters comply with such requirements.

SECTION 21.2. ANNUAL REPORT. In addition to the periodic reporting requirements outlined within this Agreement and the Department's Rules, each Fiscal Year, the Company shall prepare a report (the "Annual Report") summarizing the status of operations with respect to each of the Designated Zones and including the information required by the Department's rules in a form and manner as specified by the Department. The Annual Report for the prior Fiscal Year (the period from July 1st through June 30th) shall be submitted to the Department by August 1st of each year.

SECTION 21.3. CUSTOMER REGISTERS.

A. Transition Period. The Company shall submit Transition Period Customer lists required by Section 4.2(G) (Customer Register) on a daily basis during normal business days by entering the required data on the Department's Portal, in the form and manner directed by the Department.

B. Post-Transition Period. After the Final Implementation Date for the Designated Zone, the Company shall enter true and accurate updates of customer lists to the Department on a weekly basis, by entering the required data on the Department's Portal, in the form and manner directed by the Department.

C. Definition of "Customer". The Company shall only enter such information regarding Customers that have signed a Written Service Agreement in accordance with the requirements of 16 RCNY § 20-26, and for customers that have been assigned by the Department and are deemed to have a Written Service Agreement.

D. Required Data. The Company shall report the Customer's legal name, address, and any other information required by the Department's rules and this Agreement.

SECTION 21.4. TELEMATICS DATA.

A. Every commercial waste vehicle must be equipped with a telematics

system that meets the requirements of 16 RCNY § 20-56.

B. The telematics system must transmit vehicle location information to both the Company and the Department in real time, via cellular connection, at a minimum of twice per minute. The Company must transmit location data via an API in a format specified by the Department. The telematics system must be turned on and transmitting data at all times during every Collection Route.

C. The Company must provide a monthly summary of the telematics data required to be transmitted to the Company by 16 RCNY § 20-56, by zone and vehicle, in a format specified by the Department.

SECTION 21.5. SUBMISSION OF REPORTS ON CWZ PLANS. Not less than once each year, the Company shall submit to the Department a report evaluating the Company's compliance with its CWZ Plans and addressing whether the existing Plans are sufficient or whether modifications are necessary or desirable for any of the reasons listed in Section 8.1(C.2). Any proposed changes to the CWZ Plans must be submitted for Department approval by following the procedures in Section 8.1(C) (Amendments to CWZ Plans).

SECTION 21.6. DISPLACED EMPLOYEES LIST. The Company shall report to the City any employees hired from such list in accordance with paragraph 10 of subdivision a of §16-1007 of the Administrative Code.

SECTION 21.7 PROFESSIONAL CONDUCT AND BREACHES. The Company shall immediately report to the City any instances of conduct violating the provisions of Article XIV (Professional Conduct) and shall also report any conduct constituting a breach, as set forth in Article XXV (Defaults and Remedies) and any investigations by any city, state, or federal agency. Such report shall include a detailed description of each instance or event. If criminal or civil proceedings were initiated, such report shall also include the status of the case, and the sentence or judgment imposed, as applicable. For any ongoing proceedings, a status update report must be submitted to the City on a monthly basis.

ARTICLE XXII

CITY RIGHT OF INSPECTION

SECTION 22.1. CITY RIGHT OF INSPECTION.

A. Facilities and Equipment. The City has the right to inspect the Company's facilities and equipment and the facilities and equipment of any of the Company's Designated Carters at any time for purposes of ensuring compliance with this Agreement. The Company must allow the City, or any of its agents, into any such facility at the City's request.

B. Vehicles. The City has the right to inspect any commercial waste vehicle, upon demand, at any time. The Company must allow the City or any of its agents into such vehicle upon the City's request.

ARTICLE XXIII

WHISTLEBLOWER PROTECTION

SECTION 23.1. 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) The Company 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 the Company's officers or employees believes that he or she has been the subject of an adverse personnel action in violation of this Section, he or she shall be entitled to bring a cause of action against the Company 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) The Company 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, "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 is applicable to all of the Company's Subcontractors having subcontracts with a value in excess of \$100,000.00; accordingly, the Company shall include this Section in all subcontracts with a value in excess of \$100,000.00.

SECTION 23.2. ADMINISTRATIVE CODE SECTION 16-1009.

A. Pursuant to Administrative Code Section 16-1009, it is unlawful for the Company or any Designated Carter or the agent of the Company or any 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 the Company or such Designated Carter for reporting to the officer or employee of any city agency information concerning the conduct of the Company or such Designated Carter or such agent, which the employee knows or reasonably believes to involve a violation of the provisions of the Act, the Department's CWZ Rules, or the terms of this Agreement.

B. This Section is applicable to all of the Company's Subcontractors; accordingly, the Company shall include this Section in all subcontracts.

ARTICLE XXIV

ASSIGNMENT OF ADDITIONAL ZONES DURING THE TERM

SECTION 24.1. SELECTION CRITERIA.

A. In determining which Awardee(s) to offer or assign a Zone that becomes available after this Agreement has been executed, such as in the case of the default of another Awardee in the Zone, or in other circumstances, as solely determined by the Department, in accordance with the Act, the City will consider several factors, including:

(1) The Awardee's prior performance and compliance with the requirements of this Agreement, the Act, the CWZ Rules, and all other Applicable Laws;

(2) The Awardee's operational and financial capacity to assume such additional Zone and service additional Customers within such Zone; and

(3) Any other factors the City determines to be relevant, consistent with the purposes of the Act.

Such selection criteria shall also apply to offers or assignments to collect, transport and remove Containerized Commercial Waste on a Citywide basis. For purposes of Article XXIV, the term "Zone" shall include Citywide Containerized Commercial Waste service.

SECTION 24.2. PROCEDURES.

A. Prior to offering or assigning an additional Zone under this Agreement, the Department may request additional information from the Company regarding the Company's operational or financial capacity to perform the required Services within the Zone or any other information the Department deems relevant to determining whether assignment of the Zone to the Company is within the best interests of the City.

B. The Department will provide the Company with no fewer than five calendar days advanced written notice of any new Zone assignment and will issue a Zone Notice to Proceed setting forth the date of commencement of service in the newly assigned Zone. All obligations and duties with regard to the newly assigned Zone shall begin on the date in the Notice to Proceed.

C. Upon commencement of service in the new Zone, the Company agrees to provide such additional information and assurances to the Department regarding the Customer transition, and to perform any additional duties necessary to ensure a smooth

and orderly transition of service. The Company agrees to provide updates to the Department on a biweekly basis for a period of 90 days after the commencement of service in the new Zone, unless otherwise agreed upon by the parties.

ARTICLE XXV

DEFAULTS AND REMEDIES

SECTION 25.1. BREACHES REQUIRING NOTICE AND ALLOWING CURE.

A. Each of the following shall constitute a breach by the Company upon which the City, in its sole discretion, may, after following the procedures described in this Section: (1) terminate this Agreement, or (2) terminate Company's rights to perform the Services in a Designated Zone:

(1) Noncompliance with any provision, term or condition of this Agreement (other than those in Section 25.2 (Breaches That are Automatic and Not Curable)), including unsatisfactory performance of the Services;

(2) Noncompliance with Customer Written Service Agreements;

(3) Noncompliance with applicable federal, State, and City Laws, including the requirements in the Hiring and Employment Rider, attached hereto as Appendix B;

(4) Insolvency or the commencement of any proceeding by or against the Awardee, either voluntarily or involuntarily, under the Bankruptcy Code or relating to the insolvency, receivership, liquidation, or composition of the Awardee for the benefit of creditors;

(5) If the Company refuses or fails to proceed with the Services under the Agreement when and as directed by the Commissioner;

(6) If the Company 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 related to obtaining or attempting to obtain or performing a public or private contract;

(b) A criminal offense of 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.*;
 - (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) Any other offense possibly indicating a lack of business integrity that could affect responsibility as a City vendor.
- (7) If the Company 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;
- (8) If the Company 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 fails to make a required material statement in any bid, proposal, or application for City or other government work;
- (9) Failure to remit annual fees to the City required by 16 RCNY § 20-03 or failure to remit liquidated damages in accordance with the requirements of Section 25.6 of this Agreement; or
- (10) Non-compliance with the provisions of Article XIV.

B. If any of the above breaches occurs during the course of this Agreement, the Company shall immediately notify the City of such breach, along with any and all relevant details. If the Director of Commercial Waste determines either that (i) such breach is of a level of materiality that warrants prompt remediation or (ii) the breach is part of an ongoing pattern of persistent and repeated breaches, any of which might not rise to the level of materiality set forth in clause (i), the Director of Commercial Waste shall send notice of such determination to the Company, and the Director of Commercial Waste may require that a representative of the Company meet with the Director of Commercial Waste or a designee within the Department and confer in good faith in an effort to agree on a resolution and cure of the breach or breaches. If the parties are unable to agree on an informal resolution or cure of the breach within ten (10) Days of receipt of notice from the

City, the Department shall have the right to terminate this Agreement in accordance with this section.

C. Following the ten (10) Day meeting period described above in Section 25.1(B), the Director of Commercial Waste shall give written notice to the Company specifying that a particular default (or defaults) exist which will, unless corrected, constitute a material breach of this Agreement on the part of the Company. The notice of the default shall be signed by the Commissioner and shall set forth the ground or grounds upon which such default is declared (“Notice to Cure”). The Awardee shall have ten (10) 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.

D. 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 Awardee in default pursuant to this Section. Before the Commissioner may exercise his or her right to declare the Awardee in default, the Commissioner shall give the Awardee an opportunity to be heard upon not less than five (5) 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.

E. After the opportunity to be heard, the Commissioner may terminate the Agreement, in whole or in part, or with respect to a specific Zone or Zones upon finding the Awardee in default pursuant to this Section, as specified in the notice, as described in Section 25.3 (Procedures for Termination).

F. Notwithstanding the provisions of Section 25.1(B), above, the Director may require that the Awardee enter into a monitorship agreement with an independent monitor approved or selected by the Business Integrity Commission. Such monitorship agreement shall be paid for by the Awardee, and shall provide that the monitor investigate the activities of the Awardee with respect to the Awardee’s compliance with applicable federal, state, and local laws, rules, regulations, and such other matters as the Department and/or Business Integrity Commission shall require. The monitorship agreement shall require the monitor to comply with the requirements of Subchapter D of Chapter 1 of Title 17 of the Rules of the City of New York. The monitorship agreement shall provide further that the monitor must report the findings of such monitoring and investigation to the Business Integrity Commission and the Department on a periodic basis, no less than four (4) times per year.

SECTION 25.2. BREACHES THAT ARE AUTOMATIC AND NOT CURABLE.

A. Each of the following shall constitute an Event of Default by the Company upon which the City, in its sole discretion, by notice to the Company may, without any requirement of having given notice previously or of providing any further cure opportunity, (1) terminate this Agreement, or (2) terminate Company's rights to perform the Services in a Designated Zone:

(1) Revocation of BIC License; and

(2) Impermissible merger/acquisition, pursuant to Section 17.1 (Maintenance of Corporate Existence), or impermissible assignment or sale pursuant to Article 3 of Appendix A to this Agreement.

B. If any of the above breaches occur, then the City may terminate the Agreement for cause, as described in Section 25.3 (Procedures for Termination).

SECTION 25.3. PROCEDURES FOR TERMINATION.

A. The Department shall give the Company 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 and Article XVIII (Notices). The effective date of the termination shall not be less than ten (10) Days from the date the notice is personally delivered, or fifteen (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, or such earlier date as the Commissioner may determine.

B. Maintenance of Operations. The Company must continue to provide Commercial Waste Collection Services under this Agreement to all Customers until the date of Termination, except as otherwise directed by the Department. If the Department terminates the Agreement in part, the Company shall continue the performance of the Agreement to the extent not terminated.

C. Upon termination or expiration of this Agreement, the Awardee shall comply with the Department close-out procedures, including but not limited to:

(1) Furnishing within ten (10) Days an inventory to the Department of all containers or other equipment used in service of this Agreement that is physically

located on the property of any Customer or on public property;

(2) Removing all containers or other equipment owned by the Company from the property of any Customer or on public property used in service of this Agreement no later than twenty (20) Days after the Termination or Expiration of this Agreement, except as otherwise agreed by the Customer or owner of such property, and carrying out any Department or City directive concerning the disposition of such containers or other equipment. Any such container or other equipment that is not so removed within twenty (20) Days of the termination or expiration of this Agreement, except as authorized in this Section, is subject to removal by the City;

(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 ninety (90) Days, a final statement and report relating to the Agreement.

(5) Paying all assessed liquidated damages to the Department, as specified in the Agreement; and

(6) Providing reasonable assistance to the Department and other Awardees to ensure a smooth and orderly transition of Customers to a new service provider.

D. The Commissioner, after declaring the Awardee in default, may have the Services under the Agreement completed by such means and in such manner, by Agreement, or otherwise, as he or she may deem advisable, consistent with the Act, the Department's Rules and Applicable Law.

E. Under no circumstances shall the Company provide Commercial Waste Collection Services in a Commercial Waste Zone after the date of termination or expiration of this Agreement with respect to such Zone, except where expressly so authorized pursuant to a subsequent Agreement with the Department.

SECTION 25.4. 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 Company ("Force Majeure Event"). Such events may include, but are not limited to, fire, flood, earthquake, storm or other natural disaster, pandemic, civil commotion, war, terrorism, riot, and labor disputes

not brought about by any act or omission of the Company.

B. In the event the Company cannot comply with the terms of the Agreement (including any failure by the Company to make progress in the performance of the Services) because of a Force Majeure Event, then the Company 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 Company 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.

C. If the City terminates the Agreement pursuant to this Section, the Company shall be entitled to all remedies set forth in its Written Service Agreements with Customers or otherwise available under Applicable Law.

SECTION 25.5. RESOLUTION OF DISPUTES.

A. All disputes between the City and the Company that arise under, or by virtue of, this Agreement shall be finally resolved in accordance with the provisions of this Section. This procedure shall be the exclusive means of resolving any such disputes.

B. All determinations required by this Section shall be clearly stated, with a reasoned explanation for the determination based on the information and evidence presented to the party making the determination.

C. During such time as any dispute is being presented, heard, and considered pursuant to this Section, the Agreement terms shall remain in full force and effect and, unless otherwise directed by the ACCO or the Director of Commercial Waste, the Company shall continue to perform work in accordance with the Agreement and as directed by the ACCO or the Director of Commercial Waste. Failure of the Company to continue the work as directed shall constitute a waiver by the Company of any and all claims being presented pursuant to this Section and a material breach of contract.

D. Presentation of Dispute to Commissioner.

(1) Notice of Dispute and Agency Response. The Company shall present its dispute in writing ("Notice of Dispute") to the Commissioner 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 Company relies in support of its position. Within 30 Days after receipt of the complete Notice of Dispute, the ACCO and the Director of Commercial Waste shall submit to the Commissioner all materials they deem pertinent to the dispute. Following the initial submissions to the Commissioner, the Commissioner may require the production of any document or other material that may be relevant to the dispute. Any question of relevancy shall be determined by the Commissioner whose decision shall be final. Willful failure of the Company to produce any requested material whose relevancy the Company has not disputed, or whose relevancy has been affirmatively determined, shall constitute a waiver by the Company of its claim.

(2) Commissioner Inquiry. The Commissioner shall examine the material and may, in his or her discretion, convene an informal conference with the Company, the ACCO, and the Director of Commercial Waste to resolve the issue by mutual consent prior to reaching a determination, or may appoint a designee to convene such a conference. The Commissioner or his or her designee may seek such technical or other expertise as he or she shall deem appropriate, including, but not limited to, the use of neutral mediators, and require any such additional material from either or both parties as he or she deems fit. The Commissioner'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 Commissioner participated therein. The Commissioner may or, at the request of any party to the dispute, shall compel the participation of any other Awardee or contractor with a contract related to the work of this Agreement and that Awardee or contractor shall be bound by the decision of the Commissioner. Any other Awardee or contractor thus brought into the dispute resolution proceeding shall have the same rights and obligations under this Section as the Company initiating the dispute.

(3) Commissioner 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 Commissioner shall make his or her determination and shall deliver or send a copy of such determination to the Company and ACCO.

(4) Finality of Commissioner Decision. The Commissioner's decision shall be final and binding on all parties. Any party may seek review of such final determination of the Commissioner solely in the form of a challenge, filed within four months of the date of the Commissioner'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 Commissioner'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.

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

SECTION 25.6. LIQUIDATED DAMAGES.

A. Notwithstanding the provisions of Section 25.1, the Company shall be subject to liquidated damages for the following reasons for conduct in the scope of this Agreement in the following amounts:

Performance Standard and Conditions When Liquidated Damages Will Apply	Administrative Assessment
1. Failure to collect a missed collection within 36 hours of receiving a Customer complaint or notification by the Department.	\$50 per occurrence; \$50 for each day thereafter in the case of a continuing violation.
2. A material violation of a CWZ Plan.	\$2,000 per each material and measurable violation, as determined by the Director of Commercial Waste, from an approved plan for which the Company has not advised the City in writing that it needs to depart from an approved plan. If the Company is required to deviate from an approved plan prior to the submission of an updated plan, the Company should notify the City in writing of such required deviation to avoid incurrence of this liquidated damage, subject to the cure procedures in <u>Section 25.6(B)</u> .
3. Use of obscene or abusive or harassing speech, or other forms of threatening, abusive or harassing behavior in violation of <u>Section 14.3</u> .	\$300 per occurrence.
4. Failure to list a Subcontractor on the Subcontracting Plan.	\$100 per day for each day that the Awardee fails to identify a Subcontractor along with the required information about the Subcontractor, subject to the cure procedures in <u>Section 25.6(B)</u> .
5. Failure to pay for damage to a Customer's property or other private property, caused by or resulting from the actions of the Company or its Designated Carters, within 14 days of occurrence of such damage.	\$500 per occurrence, subject to the cure procedures in <u>Section 25.6(B)</u> .

Performance Standard and Conditions When Liquidated Damages Will Apply	Administrative Assessment
6. Violations of the requirements of <u>Appendix B (Hiring and Employment Rider)</u> .	<p>\$2,500 per breach of the rider for Awardee’s or Designated Carter’s failure to enroll in HireNYC; for not informing HireNYC, as required, of open positions; and/or for failure to interview a qualified candidate.</p> <p>\$500 per breach of the rider for all other material and measurable breaches, as determined by the Director of Commercial Waste, subject to the cure procedures in <u>Section 25.6(B)</u>.</p>
7. Violation of <u>Section 16.1(H)</u> , reporting Subcontractors in the City’s Payee Information Portal.	\$100 per day, subject to the cure procedures in <u>Section 25.6(B)</u> .

B. Prior to any assessment of liquidated damages for those performance standards and liquidated damages specifically identified in Section 25.6(A), the Department shall notify the Company in writing, in accordance with Section 18.1, of the potential for liquidated damages, and the Company shall have ten (10) days from the date notice is provided to resolve or cure the alleged deficiency. If the issue or matter is resolved within 10 Days to the Department’s satisfaction, no liquidated damages shall be issued.

C. If the issue or matter is not resolved and liquidated damages are issued by the Department, the Company may seek review of such imposition of liquidated damages solely in the form of a challenge, filed within four months of the date of the imposition of liquidated damages, 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 imposition of liquidated damages was arbitrary and capricious or an abuse of discretion.

D. The liquidated damages sums indicated in this Agreement, including as set forth in Appendix A to this Agreement, are fixed and agreed as the liquidated damages that the City will suffer by reason of such noncompliance and not as a penalty.

SECTION 25.7. MONITORING COMPLIANCE WITH APPLICABLE LAWS.

A. Labor. In the event that the Department becomes aware that the Company or any of its Subcontractors is in violation of any of the following laws and notifies the Company of such situation, the Company must immediately cure the violation and send monthly payroll records and/or any other relevant records requested by the Department at such time demonstrating compliance with the applicable provision of law for six months following such notification, as may be further specified by the Department in such notice:

(1) Any violation of Article 19 of the New York State Labor Law (Minimum Wage Act) or any other applicable state minimum wage law or implementing regulation;

(2) Any other violation of the New York State Labor Law, including but not limited to Article 5 (Hours of Labor), Article 6 (Payment of Wages), Article 7 (General provisions), Article 20-C (Retaliatory Action by Employer), and any implementing regulation;

(3) Any violation of the Fair Labor Standards Act or any implementing regulation;

(4) Any violation of the New York City Earned Sick and Safe Time Act;

or

(5) Any violation of the Fair Chance Act, or any other violation of the New York City Human Rights Law.

B. Environmental, Health and Safety. In the event that the Department becomes aware that the Company is in violation of any of the following laws and notifies the Company of such situation, the Company must immediately cure the violation and send relevant records requested by the Department demonstrating compliance with the applicable provision within the timeframe specified in such notice:

(1) Any violation of the Occupational Safety and Health Act (including whistleblower provisions) or implementing regulation, or any other requirement enforced by the United States occupational safety and health administration;

(2) Any violation of the Federal Motor Carrier Safety Act or implementing regulation, or any other requirement established or administered by the Federal Motor Carrier Safety Administration;

(3) Any violation of Article 27 of New York State Environmental Conservation law or implementing regulations, or any other requirement enforced

by the New York State Department of Environmental Conservation; or

(4) Any violation of any requirement enforced by the U.S Environmental Protection Agency.

C. Additional Procedures. In the event that the Department becomes aware that the Company or any of its Subcontractors is in violation of any of the laws described in subdivisions A or B of this section, in addition to requesting the records described therein, the Department may schedule a meeting with the Company and any other such parties as the Department may deem appropriate to discuss ways to improve the Company's compliance with such laws. As a result of such meeting, the Department may impose such additional requirements as the Department may see fit, consistent with Applicable Law, and Company shall comply in full with any such requirements. Any such requirements shall in no way limit the indemnity obligations of the Company otherwise set forth in this Agreement.

D. Reporting to Governmental Authorities. The Company acknowledges that in the event the Department becomes aware of a violation of any of the laws described in this section the Department may notify the governmental agency with enforcement authority of such violation.

SECTION 25.8. 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, the City shall not incur or pay any obligation pursuant to this Agreement.

B. Notwithstanding any other provisions of this Agreement, the Company shall not be relieved of liability to the City for damages sustained by the City by virtue of the Company's breach of the Agreement, and the Company shall pay such amount owed directly to the City in the amount of damages due to the City from the Company.

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

D. The remedies set forth in this section shall be in addition to remedies provided in Appendix A to this Agreement.

SECTION 25.9. CIVIL AND CRIMINAL PENALTIES; OTHER REMEDIES.

The Company shall be subject to all applicable civil and criminal penalties, injunctive relief, restitution, seizure and forfeiture of property, and any other legal remedies as set forth in the Act, the Department's CWZ Rules, and Applicable Law.

SIGNATURES

IN WITNESS WHEREOF: The Department of Sanitation Agency Chief Contracting Officer, acting on behalf of the City, and the Company have executed this Agreement.

THE CITY OF NEW YORK
acting by and through the Department of Sanitation

By: _____
Agency Chief Contracting Officer

Date

[INSERT NAME OF COMPANY]

(Name)

By: _____
(Signature)

(Typed or Printed Name)

(Title)

(Date)

APPENDIX A

Additional City Contract Terms

Appendix A – Additional City Contract Terms

APPENDIX A

ADDITIONAL CITY CONTRACT TERMS

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 4

Section 3.01 Assignment 4

ARTICLE 4 - LABOR PROVISIONS 5

Section 4.01 Awardee Status..... 5

Section 4.02 Employees and Subcontractors..... 5

Section 4.03 Removal of Individuals Performing Work 6

Section 4.04 Minimum Wage; Living Wage 6

Section 4.05 Non-Discrimination in Employment 6

Section 4.06 Paid Sick Leave Law..... 8

ARTICLE 5 - RECORDS, AUDITS, REPORTS, AND INVESTIGATIONS..... 13

Section 5.01 Books and Records 13

Section 5.02 Retention of Records 13

Section 5.03 Inspection 13

Section 5.04 Audit..... 14

Section 5.05 No Removal of Records from Premises 14

Section 5.06 Electronic Records 14

Section 5.07 Investigations Clause 15

Appendix A – Additional City Contract Terms

<i>Section 5.08 Confidentiality</i>	17
ARTICLE 6 - COPYRIGHTS, PATENTS, INVENTIONS, AND ANTITRUST.....	19
<i>Section 6.01 Copyrights and Ownership of Work Product</i>	19
<i>Section 6.02 Patents and Inventions</i>	20
<i>Section 6.03 Pre-existing Rights</i>	20
<i>Section 6.04 Antitrust</i>	20
Article 7 - INTENTIONALLY OMITTED	20
Article 8 - PROTECTION OF PERSONS AND PROPERTY AND INDEMNIFICATION	20
<i>Section 8.01 Reasonable Precautions</i>	20
<i>Section 8.02 Protection of City Property</i>	21
<i>Section 8.03 Indemnification</i>	21
<i>Section 8.04 Infringement Indemnification</i>	21
<i>Section 8.05 Indemnification Obligations Not Limited By Insurance Obligation</i>	21
<i>Section 8.06 Actions By or Against Third Parties</i>	22
<i>Section 8.07 No Third Party Rights</i>	22
ARTICLE 9 - CONTRACT CHANGES	22
<i>Section 9.01 Contract Changes</i>	22
ARTICLE 10 - INTENTIONALLY OMITTED.....	22
ARTICLE 11 - INTENTIONALLY OMITTED.....	22
Article 12 - CLAIMS.....	22
<i>Section 12.01 Choice of Law</i>	22
<i>Section 12.02 Jurisdiction and Venue</i>	23
<i>Section 12.03 Claims and Actions</i>	23
<i>Section 12.04 No Claim Against Officials, Agents, or Employees</i>	23
<i>Section 12.05 No Waiver</i>	23
ARTICLE 13 - APPLICABLE LAWS.....	23
<i>Section 13.01 All Legal Provisions Deemed Included</i>	23
<i>Section 13.02 Severability / Unlawful Provisions Deemed Stricken</i>	23
<i>Section 13.03 Compliance With Laws</i>	24
<i>Section 13.04 Unlawful Discrimination in the Provision of Services</i>	24
<i>Section 13.05 Americans with Disabilities Act (ADA)</i>	25
<i>Section 13.06 INTENTIONALLY OMITTED</i>	25
<i>Section 13.07 Political Activity</i>	27

Appendix A – Additional City Contract Terms

Section 13.08 Religious Activity..... 28

Section 13.09 Participation in an International Boycott..... 28

Section 13.10 MacBride Principles..... 28

Article 14 - MISCELLANEOUS PROVISIONS 28

Section 14.01 Conditions Precedent..... 28

Section 14.02 Merger..... 28

Section 14.03 Headings..... 28

Appendix A – Additional City Contract Terms

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 Awardee Agreement between the Awardee and the City.

C. “Awardee” means the entity entering into this Agreement with the City.

D. “City” means the City of New York.

E. “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.

F. “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.

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

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

I. “Department” or “Agency” means the New York City Department of Sanitation.

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.

Appendix A – Additional City Contract Terms

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 Awardee represents and warrants that, with respect to securing or soliciting this Agreement, the Awardee is in compliance with the requirements of the New York State Lobbying Law (Legislative Law §§ 1-a *et seq.*). The Awardee 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; and the Awardee shall not make claim for, or be entitled to recover, any sum or sums 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 Awardee 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 Awardee further represents and warrants that no person having such interest or possible interest shall be employed by or connected with the Awardee 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 Awardee from participating in decisions relating to this Agreement where their sole personal interest is in the Awardee.

Appendix A – Additional City Contract Terms

C. The Awardee 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 Awardee if such employment or service would violate Chapter 68 of the Charter.

Section 2.03 Certification Relating to Fair Practices

A. The Awardee 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, maximum rates 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, maximum rates 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, maximum rates 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 Awardee have not been knowingly disclosed by the Awardee, 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 Awardee 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 Awardee (i) has published price lists, rates, or tariffs (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 Awardee 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 Awardee 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 Awardee 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 Awardee files for bankruptcy or reorganization under Chapter Seven or Chapter Eleven of the United States Bankruptcy Code, the Awardee shall disclose such action to the

Appendix A – Additional City Contract Terms

Department within seven days of filing.

Section 2.06 Authority to Execute Agreement

The Awardee 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

Section 3.01 Assignment

A. The Awardee 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 Awardee 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 Awardee 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 Awardee, its assignees, or transferees, who shall forfeit all monies earned under this Agreement, except so much as may be necessary to pay the Awardee's employees.

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

Appendix A – Additional City Contract Terms

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 Awardee with written notice of any such assignment.

ARTICLE 4 - LABOR PROVISIONS

Section 4.01 Awardee Status

The Awardee and the City agree that the Awardee is an independent contractor and not an employee, subsidiary, affiliate, division, department, agency, office, or unit of the City. Accordingly, the Awardee 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 Awardee, 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 Awardee and all the Awardee'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 an Agreement with the City. The Awardee, and not the City, is responsible for their work, direction, compensation, and personal conduct while the Awardee 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 Awardee'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 Awardee, 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 Awardee 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 Awardee 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 Awardee, 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 Awardee 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 Awardee 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 Awardee, 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 an Awardee that an individual shall no longer perform work under this Agreement, the Commissioner shall provide the Awardee an opportunity to be heard on no less than five Days' written notice. The Commissioner may direct the Awardee 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 Awardee 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.

Section 4.05 Non-Discrimination in Employment

A. General Prohibition. To the extent required by law, the Awardee 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 Awardee 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. 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*

Appendix A – Additional City Contract Terms

seq. No agreement will be awarded unless and until these requirements have been complied with in their entirety. The Awardee 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 Awardee 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 Awardee 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 Awardee; and/or

Appendix A – Additional City Contract Terms

- b. Suspension or termination of the Agreement; and/or
 - c. Declaring the Awardee 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 Awardee to be non-responsible.
4. The Awardee 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 Awardee 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 Awardee 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 Awardee 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 Awardee 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

Appendix A – Additional City Contract Terms

work in New York City to be provided with paid sick time.¹ Awardees of the City or of other governmental entities may be required to provide sick time pursuant to the PSLL.

2. The PSLL 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 PSLL are codified at Chapter 7 of Title 6 of the Rules of the City of New York (“Rules”).

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

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

5. The PSLL is summarized below for the convenience of the Awardee. The Awardee is advised to review the PSLL and Rules in their entirety. On the website www.nyc.gov/PaidSickLeave there are links to the PSLL 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 Awardee can get more information about how to comply with the PSLL. The Awardee acknowledges that it is responsible for compliance with the PSLL notwithstanding any inconsistent language contained herein.

B. *Pursuant to the PSLL 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 PSLL (“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.

¹ 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.

Appendix A – Additional City Contract Terms

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.

Appendix A – Additional City Contract Terms

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 PSSL 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 PSSL 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 PSSL 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 PSSL. In addition, an employer may not interfere with any investigation, proceeding, or hearing pursuant to the PSSL.

E. *Notice of Rights.*

1. An employer must provide its employees with written notice of their rights pursuant to the PSSL. Such notice must be in English and the primary language spoken

Appendix A – Additional City Contract Terms

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.

ARTICLE 5 - RECORDS, AUDITS, REPORTS, AND INVESTIGATIONS

Section 5.01 Books and Records

The Awardee 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 Awardee 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 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 Awardee 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 Awardee pursuant to this Article 5. Notwithstanding any provision herein regarding notice of inspection, all books, records, documents, and other evidence of the Awardee 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 cost to the City. The Awardee 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

Appendix A – Additional City Contract Terms

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 Awardee 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.

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, 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 Awardee 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.

Section 5.05 No Removal of Records from Premises

Where performance of this Agreement involves use by the Awardee 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 Awardee 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 Awardee 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.

Appendix A – Additional City Contract Terms

Section 5.07 Investigations Clause

A. The Awardee 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.

1. 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.

2. 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:

Appendix A – Additional City Contract Terms

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.

Appendix A – Additional City Contract Terms

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 Awardee 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 Awardee, or affecting the performance of this Agreement.

Section 5.08 Confidentiality

A. The Awardee 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 Awardee under this Agreement. The Awardee 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 Awardee uses to preserve the confidentiality of its own confidential information. The Awardee 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 Awardee is legally required to disclose such reports, information or data, by virtue of a subpoena, court order or otherwise (“disclosure demand”), provided that the Awardee complies with the following: (1) the Awardee 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 Awardee 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 Awardee is prohibited by law from disclosing to the Department the disclosure demand for such reports, information or data. Confidential Information shall not include information which the Awardee can demonstrate by competent evidence (i) was publicly known at the time it was communicated to the Awardee by the Department and (ii) becomes publicly known without any fault of or participation by the Awardee or its Representatives in violation of this Section 5.8.

Appendix A – Additional City Contract Terms

B. Where in connection with the services under this Agreement the Awardee, or its employees, subcontractors, or agents, will have access to, acquire, disclose, or use any data that includes private information (as defined in Admin. Code § 10-501(b)), the Awardee shall provide written notice to the Department within three days of the earlier of discovery by the Awardee or notification to Awardee of any breach of security (as defined in Admin. Code § 10-501(c)). Such notice shall inform the Department of the nature and scope of the breach of security.

1. Upon such discovery or notification of such breach of security, the Awardee shall take reasonable steps to determine the cause(s) of such breach and to remediate the cause(s) of such breach, shall provide written notice to the Department of such steps, and shall cooperate with any investigation conducted by the City of such breach. Such cooperation includes, but is not limited to, promptly responding to the City's reasonable inquiries and providing prompt access to in human and machine readable format all evidentiary artifacts associated with such breach of security, such as relevant records, logs, files, data reporting, and other materials.
2. In the event of such breach of security, the Awardee shall cooperate and coordinate with the City regarding any notifications determined by the City to be made to individuals affected by such breach.
3. Without limiting any other right of the City, at the City's discretion, the Awardee shall pay directly for the costs of such notifications to individuals affected by the breach of security and/or other actions mandated by any Law, or administrative or judicial order, to address such breach of security, and for the costs of any fines or disallowances imposed by the State or federal government as a result of such breach. At the City's discretion, the Awardee shall also pay the costs of identity theft monitoring services for individuals affected by such breach of security by a national credit reporting agency, and/or any other commercially reasonable preventive measure. The Department shall provide the Awardee with written notice and an opportunity to comment on such preventive measures prior to implementation.

C. The Awardee shall restrict access to confidential information to persons who have a legitimate work related purpose to access such information. The Awardee 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 Awardee, 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 Commercial Waste Zones program or the collection of commercial waste in New York City 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 Awardee may not issue any statement or submit any material for publication that includes confidential information as prohibited by this Section 5.08.

Appendix A – Additional City Contract Terms

E. At the request of the Department, the Awardee shall return to the Department any and all confidential information in the possession of the Awardee or its subcontractors, provided that, the Awardee may retain a back-up copy of the Department’s Confidential Information (i) as part of the archival records (including backup systems) that Awardee keeps in the ordinary course of business, but only to the extent, and only as long as, required by the Awardee’s records retention policies or applicable law, and (ii) to the extent reasonably necessary in connection with enforcement of rights, duties, responsibilities or obligations under the Agreement. Any such retained Confidential Information shall continue to be subject to the provisions of this Section 5.08. If the Awardee or its subcontractors are legally required to retain any confidential information, the Awardee 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 Awardee shall confer with the Department, in good faith, regarding any issues that arise from the Awardee 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 XXV. 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 Awardee 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 Awardee shall retain no copyright or intellectual property interest in the Copyrightable Materials. The Copyrightable Materials shall be used by the Awardee for no purpose other than in the performance of this Agreement without the prior written permission of the City. The Department may grant the Awardee a license to use the Copyrightable Materials on such terms as determined by the Department and set forth in the license.

C. The Awardee 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 Awardee shall fully cooperate in this effort, and agrees to provide any and all documentation necessary to accomplish this.

Appendix A – Additional City Contract Terms

D. The Awardee 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 Awardee 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.

Appendix A – Additional City Contract Terms

F. If the Awardee 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 Awardee 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 Awardee 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 Awardee 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 Awardee 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 - INTENTIONALLY OMITTED

ARTICLE 8 - PROTECTION OF PERSONS AND PROPERTY AND INDEMNIFICATION

Section 8.01 Reasonable Precautions

The Awardee 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 Awardee's and/or its subcontractors' operations under this Agreement.

Appendix A – Additional City Contract Terms

Section 8.02 Protection of City Property

The Awardee 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 Awardee, its officers, employees, agents or subcontractors.

Section 8.03 Indemnification

To the fullest extent permitted by Law, the Awardee 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 Awardee 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 Awardee, the City and its officials and employees shall be partially indemnified by the Awardee to the fullest extent permitted by Law.

Section 8.04 Infringement Indemnification

To the fullest extent permitted by Law, the Awardee 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 Awardee and/or its employees, agents, or subcontractors in the performance of this Agreement. To the fullest extent permitted by Law, the Awardee 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 Awardee, the City and its officials and employees shall be partially indemnified by the Awardee to the fullest extent permitted by Law.

Section 8.05 Indemnification Obligations Not Limited By Insurance Obligation

The Awardee'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 Awardee'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 Awardee, the Awardee shall diligently render to the City without additional compensation all assistance that the City may reasonably require of the Awardee.

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

Section 8.07 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 Awardee 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. Any amendment or change to this Agreement shall not be valid unless made in writing and signed by authorized representatives of both parties. The Awardee deviates from the requirements of this Agreement without a duly approved and executed change order document or written Awardee Agreement modification or amendment at its own risk.

ARTICLE 10 - INTENTIONALLY OMITTED

ARTICLE 11 - INTENTIONALLY OMITTED

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 Awardee, 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.

Appendix A – Additional City Contract Terms

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 Awardee initiates any action in breach of this Section 12.02, the Awardee 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 Claims and Actions

A. Any claim, that is not subject to dispute resolution under this Agreement, against the City for damages for breach of the Awardee Agreement shall not be made or asserted in any action, unless the Awardee 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 and Applicable Law.

B. No action shall be instituted or maintained on any such claims unless such action shall be commenced 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 12.04 No Claim Against Officials, Agents, or Employees

No claim shall be made by the Awardee 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 12.05 No Waiver

Waiver by either the Department or the Awardee 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 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 13.02 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

Appendix A – Additional City Contract Terms

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 13.03 Compliance With Laws

The Awardee 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 13.04 Unlawful Discrimination in the Provision of Services

A. *Discrimination in Public Accommodations.* With respect to services provided under this Agreement, the Awardee 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 Awardee 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 Awardee 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 Awardee 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 Awardee will not engage in any unlawful discriminatory practice as defined in and pursuant to the terms of Title 8 of the Admin. Code. The Awardee 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 Awardee 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 Awardee is required by law to inquire about such person's immigration status.

Appendix A – Additional City Contract Terms

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 Awardee 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 Awardee’s compliance with the ADA during the term of this Agreement, the Awardee 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, Awardee 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 Awardee 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 Awardee’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 INTENTIONALLY OMITTED

Section 13.07 Political Activity

The Awardee’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 Awardee’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 Awardee agrees that neither the Awardee 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

Appendix A – Additional City Contract Terms

the United States as to, or conviction of, the Awardee 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 Awardee 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 Awardee stipulates that the Awardee and any individual or legal entity in which the Awardee 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 Awardee 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 Awardee agrees that the covenants and representations in Paragraph A above are material conditions to this Agreement.

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

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.

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.

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

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 A – Additional City Contract Terms

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.

Appendix A – Additional City Contract Terms

**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 _____

APPENDIX B

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, 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.

APPENDIX C
COMMERCIAL WASTE ZONE RULES

Chapter 20: Commercial Waste Zones

Editor's note: Rules amending 16 RCNY §§ 1-01, 1-09, and 1-10 and enacting 16 RCNY §§ 20-01, 20-03, and 20-20 et seq. (see City Record 11/16/2021, eff. 12/16/2021, at pp. 7666 to 7683) provide for the following specific effective date provisions:

1. The rule shall take effect in each commercial waste zone on the implementation start date for such zone set by rule of the department of sanitation pursuant to paragraph 3 of subdivision e of § 16-1002 of the Administrative Code, except that 16 RCNY § 20-30, as added by section 8 of this rulemaking, shall take effect in each commercial waste zone on the final implementation date for such zone set by rule of the department of sanitation pursuant to paragraph 3 of subdivision e of § 16-1002 of the Administrative Code;
2. The rule shall take effect with respect to Citywide containerized commercial waste collection on the implementation start date for Citywide containerized commercial waste collection set by rule of the department of sanitation; and
3. In accordance with subdivision c of section 25 of local law number 199 for the year 2019, a licensee, as such term is used in Title 16-A of the Administrative Code, 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 of the Administrative Code 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 § 16-1002 of the Administrative Code.

Subchapter A: General

§ 20-01 Definitions.

(a) The following terms have the same meanings as such terms are defined in § 16-1000 of the Administrative Code: "awardee", "commercial waste", "commercial waste zone", "commissioner", "containerized commercial waste", "department", "organic waste", "trade waste".

(b) The following terms have the following meanings, except as otherwise provided in this chapter:

Bicycle. The term "bicycle" means: (1) 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; (2) a "pedal-assist bicycle" as defined in 34 RCNY § 4-01 or as otherwise defined by the department of transportation; (3) any electric scooter as defined in section 114-e of the vehicle and traffic law; or (4) any bicycle with electric assist as defined in section 102-c of the vehicle and traffic law.

Cab-over design vehicle. The term "cab-over design vehicle" means a vehicle that is designed so that the driver cab is situated in relation to the vehicle engine such that the driver sits directly above or forward of the front axle of the vehicle.

Container: The term "container" means a bin, dumpster, compactor or other receptacle for the storage or collection of commercial waste.

Commercial establishment. The term "commercial establishment" means a commercial establishment required to provide for the removal of commercial waste pursuant to the provisions of § 16-116 of the Administrative Code.

Commercial waste generation audit. The term "commercial waste generation audit" means an assessment of the commercial waste generated by a commercial establishment that:

1. Is performed by a person registered by the business integrity commission as a trade waste broker;
2. Separately assesses the commercial waste generated, disaggregated by waste stream as follows:
 - i. Refuse: Total amount of refuse at each premises;
 - ii. Designated recyclable materials: (1) Total amount of designated recyclable paper at each premises; and (2) total amount of designated recyclable metal, glass, and plastic at each premises; and
 - iii. Source separated organics: If the commercial establishment is a designated covered establishment, total amount of source separated organics at each premises; and

3. Includes a report with information on:

- i. The actual measurements of all waste streams assessed, as recorded on-site;
- ii. Estimates of the amount of each waste stream generated on a monthly basis;
- iii. Contamination levels for each waste stream assessed; and
- iv. Recommendations for waste reduction by waste stream and diversion from refuse to designated recyclable materials and source separated organic waste.

Commercial waste vehicle. The term "commercial waste vehicle" means a vehicle that is used to collect, transport or remove commercial waste.

Containerized commercial waste awardee. The term "containerized commercial waste awardee" means an awardee that is authorized to provide containerized commercial waste collection, removal and disposal service citywide pursuant to an agreement with the Department entered into pursuant to § 16-1002 of the Administrative Code.

Contamination. The term "contamination" means: (1) a bag or container of designated recyclable materials that contains a detectable quantity of refuse or organic waste; (2) a container of source separated organic waste that contains a detectable quantity of non-organic waste; or (3) a bag or container of refuse that contains a detectable quantity of designated recyclable materials.

Customer. The term "customer" means: (1) a commercial establishment that is located within a commercial waste zone for which a zone awardee has been awarded an agreement pursuant to § 16-1002 of the Administrative Code and that selects such awardee for collection of commercial waste or has been assigned such awardee pursuant to paragraph 4 of subdivision e of such section; or (2) a commercial establishment that selects a containerized commercial waste awardee to collect containerized commercial waste.

Designated carter. The term "designated 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 § 16-1002 of the Administrative Code. 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 in the awardee's Subcontracting Plan.

Designated covered establishment. The term "designated covered establishment" means any commercial establishment designated as an establishment required to separate organic waste pursuant to subdivision (a) of 16 RCNY § 1-11.

Designated recyclable materials. The term "designated recyclable materials" means materials that have been designated for recycling by the Department pursuant to subdivision (a) of 16 RCNY § 1-10.

Non-collection of commercial waste. The term "non-collection" means a particular instance when an awardee fails to perform a scheduled pick-up of commercial waste from a customer, but where the awardee has not suspended or terminated service.

Normal business hours. The term "normal business hours" means 9 a.m. to 5 p.m., Monday through Friday.

Organic waste processing facility. The term "organic waste processing facility" has the same meaning as set forth in 16 RCNY § 1-01.

Overfilled container. The term "overfilled container" means a container with materials that project above its rim in a manner that impedes the complete closure of its lid and/or a container with materials that are placed outside the container and/or allowed to accumulate.

Qualified Inspector. The term "qualified inspector" means an individual who meets the qualifications set forth in Part 396.19 of Title 49 of the Code of Federal Regulations.

Refuse. The term "refuse" means commercial waste that is not organic waste or designated recyclable material.

Single stream collection of recyclables. The term "single stream collection of recyclables" has the same meaning as the term "single stream collection and recycling," as defined in 16 RCNY § 1-01 and shall be deemed interchangeable with such term and with the term "single stream recycling and collection."

Source separation. The term "source separation" means the separation at the point of generation of designated recyclable materials from each other or the separation of designated recyclable materials from solid waste.

Standard service hours. The term "standard service hours" means 8 p.m. to 7 a.m., Monday through Saturday, excluding the federal holidays listed in 5 U.S.C. § 6103. For purposes of this definition, a day of the week or a holiday (e.g. Monday or Memorial Day) begins at 8 p.m. on that day and ends at 7 a.m. the following day.

Telematics system. The term "telematics system" means an integrated system of hardware and software that is capable of monitoring and recording data from GPS devices, vehicle dynamics systems, and engine performance systems and that is installed in a commercial waste vehicle, as required pursuant to 16 RCNY § 20-56.

Textiles. The term "textiles" means textiles that: (1) are source separated by a commercial establishment or (2) are required be source separated by a commercial establishment pursuant to 16 RCNY § 1-10.

Zero waste plan. The term "zero waste plan" means an awardee's plan describing practices to support waste reduction, reuse and recycling among commercial establishments, as set forth in the awardee's Agreement with the Department pursuant to § 16-1002 of the Administrative Code.

Zone awardee. The term "zone awardee" means an awardee that is authorized to provide commercial waste collection, removal and disposal service in a particular zone assigned to the awardee pursuant to an agreement with the Department entered into pursuant to § 16-1002 of the Administrative Code.

(Added City Record 11/16/2021, eff. 12/16/2021*)

* **Editor's note:** For specific effective date provisions, see the editor's note at 16 RCNY Ch. 20.

§ 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:

Zone name	Zone geographic area
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)

§ 20-03 Fees.

The annual fee that each awardee must pay pursuant to § 16-1013 of the Administrative Code shall be:

- a. \$107,148.73 per zone award, and
- b. \$107,148.73 per citywide containerized commercial waste award.

(Added City Record 11/16/2021, eff. 12/16/2021*)

* **Editor's note:** For specific effective date provisions, see the editor's note at 16 RCNY Ch. 20.

Subchapter B: Customer Service Requirements

§ 20-20 Service to Customers in a Commercial Waste Zone.

(a) (1) Each commercial establishment must enter into a written service agreement with a zone awardee selected by the Department for the zone in which the commercial establishment is located, and/or a containerized commercial waste awardee in accordance with subdivision (c) of this section, to provide all commercial waste collection, removal and disposal services for the commercial establishment. All such written service agreements must meet the requirements of 16 RCNY § 20-26 and must be entered into no later than the final implementation date for the zone in which the commercial establishment is located, as set forth in the rules of the Department.

(2) This subdivision does not apply to a commercial establishment registered by the Business Integrity Commission to haul its own commercial waste pursuant to subdivision (b) of § 16-505 of the Administrative Code operating pursuant to the terms of such registration.

(b) A commercial establishment must not enter into an agreement for the collection, removal or disposal of commercial waste with more than one zone awardee selected for the zone in which the commercial establishment is located at the same time under any circumstances.

(c) In lieu of or in addition to a contract with a zone awardee, a commercial establishment may contract with a containerized commercial waste awardee for the removal of containerized commercial waste, provided that the other requirements of this section have been met. If a commercial establishment's contract with a containerized commercial waste awardee does not cover the entirety of the commercial establishment's commercial waste, the commercial establishment must enter into an agreement with a zone awardee for collection, removal and disposal of the remainder of the commercial establishment's commercial waste, except that such establishment may not contract with more than one zone awardee, as provided in subdivision (b) of this section.

Example 1: Bob's Restaurant is located in the zone Bronx East. Bob's Restaurant selects Containerized Carting to perform containerized commercial waste collection services. Containerized Carting receives an award to collect containerized commercial waste citywide and is also selected as a zone awardee for zone Bronx East. If Bob's restaurant uses Containerized Carting for containerized collection services, Bob's restaurant is prohibited from selecting a different Bronx East zone awardee to collect non-containerized commercial waste because Containerized Carting is a zone awardee for zone Bronx East.

Example 2: Molly's Restaurant is located in the zone Queens Central. Molly's Restaurant is looking for containerized commercial waste collection services for refuse. None of the zone awardees in zone Queens Central were selected to collect containerized commercial waste citywide. Molly's Restaurant can hire Containerized Carting to provide containerized commercial waste collection service and may choose to select a Queens Central zone carter to provide non-containerized refuse and organics collection.

(d) If an awardee is authorized to operate as a containerized commercial waste awardee and a zone awardee in a given zone, such awardee must follow all requirements applicable to zone awardees set forth in Title 16-B of the

Administrative Code and this title with respect to all customers in such zone.

(e) If a commercial establishment fails to enter into a written agreement with a zone awardee selected for the zone in which such commercial establishment is located or a containerized commercial waste awardee in accordance with the requirements of this section by the final implementation date for such zone, the Department will assign a zone carter to such commercial establishment and the processes and terms of service set forth in subdivision (e) of 16 RCNY § 20-26 shall apply.

(Added City Record 11/16/2021, eff. 12/16/2021*)

* **Editor's note:** For specific effective date provisions, see the editor's note at 16 RCNY Ch. 20.

§ 20-21 Rates.

(a) (1) An awardee shall not charge or accept rates or fees for the collection, removal or disposal of commercial waste from a customer in a commercial waste zone above the maximum rates and maximum fees for such zone as set forth in the agreement with the Department under which such awardee is operating pursuant to § 16-1002 of the Administrative Code and as provided in this section.

(2) Rates for collection of designated recyclable materials and source separated organic waste must be proportionally lower than rates for refuse collection services in the proportion set forth in the agreement between the awardee and the Department where such agreement includes such a proportion, except that if the awardee collects no amount of refuse from the customer, the rate for designated recyclable materials and source separated organics cannot exceed the maximum rate for such material set forth in such agreement.

(b) An awardee must not charge or accept rates or fees for the collection, removal or disposal of containerized commercial waste citywide above the maximum rates or fees for such service as set forth in the agreement with the Department under which such awardee is operating pursuant to § 16-1002 of the Administrative Code and as provided in this section. Paragraph (2) of subdivision (a) of this section shall apply to the collection, removal or disposal of containerized waste citywide only where such agreement also provides for the collection of designated recyclable materials or source separated organic waste.

(c) (1) An awardee must only charge a customer in accordance with the pricing structure set forth in the agreement with the Department pursuant to which such awardee is operating. Such pricing structure must reflect the following pricing structure:

(i) A separately itemized charge based on frequency of collection by waste stream: refuse, designated recyclable materials and source separated organic waste; and

(ii) A separately itemized charge based on weight or volume of waste collected by waste stream: refuse, designated recyclable materials and source separated organic waste.

An awardee must not charge any additional fees, except as provided in paragraph (2) of this subdivision.

(2) An awardee may impose fees only for the following:

(i) Cleaning containers or compactors;

(ii) Delivery, replacement or removal of carts or containers;

(iii) Rental of compactors or roll-off containers;

NOTE: Rental fees for containers or dumpsters other than compactors and roll-offs are prohibited by Administrative Code § 16-1002(c)(2);

(iv) Rental of equipment other than containers/dumpsters;

(v)* Collection service that requires entry inside the building, other than service in and out of a loading dock;

(v)* A requested pick-up outside of standard service hours;

* **Editor's note:** There are two subsections designated as (v).

(vi) A requested pick-up time within a window of less than two hours where a pick-up window is specified in the agreement;

(vii) A return rate, if an awardee must return to provide service based on a customer created condition, after following all applicable procedures set forth in 16 RCNY § 20-24;

(viii) Overfilled containers, after following all applicable procedures set forth in 16 RCNY § 20-24;

(ix) Designated recyclable materials or source separated organic waste with contamination of at least 10 percent, after following all applicable procedures set forth in 16 RCNY § 20-24;

(x) If a driver has to wait due to a customer created delay in excess of 15 minutes, documented with GPS technology;

(xi) Late payment;

(xii) Insufficient funds, including but not limited to a bounced check or an electronic transfer that fails due to insufficient funds in the customer's account;

(xiii) Payment made by credit card if the following conditions are met:

(A) The fee must not exceed 3% of the amount charged for services; and

(B) The awardee must offer an alternate form of electronic payment, such as direct bank to bank transfer, with no added fee for the customer;

(xiv) Commercial waste generation audit services in accordance with the awardee's Zero Waste Plan; and

(xv) Any other fees approved by the Department in accordance with the procedures set forth in the awardee's agreement with the Department pursuant to which the awardee is operating.

(d) (1) In addition to any automatic rate adjustments set forth in the agreement with the Department pursuant to which such awardee is operating, entered into pursuant to § 16-1002 of the Administrative Code, an awardee may petition the Department for an adjustment to the maximum rates (including any maximum fee amounts) set forth in such agreement in accordance with this subdivision. Such petition shall be made in a form and format prescribed by the Department. No later than 60 days after the submission of such petition, the Department shall either deny such petition in writing, along with a description of the reason for such denial, or commence with a public hearing on such petition in accordance with the procedures described in this subdivision. Such decision shall be within the discretion of the Department.

(2) Upon petition of an awardee in accordance with paragraph (1) of this subdivision, or upon its own initiative, the Department may hold a public hearing on the maximum rates (inclusive of any maximum fee amounts) charged by one or more awardees for the collection, removal or disposal of commercial waste as set forth in the agreement or agreements with the Department entered into pursuant to § 16-1002 of the Administrative Code by such awardee or awardees. At least 30 days prior to the public hearing, the Department will publish the date, time and location of the public hearing in the City Record and on the Department website. At the hearing, any member of the public may submit oral or written testimony regarding whether the maximum rates should be changed. The proponent of the rate change shall bear the burden of demonstrating, on an individual, zone or industry-wide basis, that existing rates do not allow for a fair and reasonable return to such awardee or awardees or are otherwise inconsistent with the purposes of Title 16-B of the Administrative Code.

(3) In determining whether the maximum rates charged by one or more awardees for the collection, removal or disposal of commercial waste will be adjusted, the Department shall not be limited to evidence provided pursuant to paragraph (2) of this subdivision, and may request additional information from the proponent of the rate change, and may consider any relevant factor affecting the commercial waste industry or its customers, including but not limited to:

(i) Available data on the commercial waste industry, including but not limited to any material change in: operating revenues (overall revenues); regulated service operating revenues (revenue generated from waste removal services associated with the rate-regulated portion of a business) by waste stream; operating expenses; regulated operating expenses by waste stream; and total regulated waste tonnage disposed;

(ii) Any material change to waste disposal capacity or infrastructure; and

(iii) Any other factor that may be relevant to assessing a fair and reasonable return to the awardee or awardees, promoting the protection of customers from excessive or unreasonable charges, and promoting the purposes of Title 16-B of the Administrative Code.

(Added City Record 11/16/2021, eff. 12/16/2021*)

* **Editor's note:** For specific effective date provisions, see the editor's note at 16 RCNY Ch. 20.

§ 20-22 Denial of Service Prohibited; Termination; Suspension of Service.

(a) *General prohibition; minimum level of service.*

(1) An awardee may not deny, suspend, or terminate commercial waste collection service to any commercial establishment within a zone for which the awardee has been awarded an agreement, except as otherwise provided in this

section and as set forth in the agreement between the awardee and the Department pursuant to § 16-1002 of the Administrative Code.

(2) An awardee must offer to each commercial establishment within a zone for which the awardee has been awarded an agreement including the following minimum level of service:

(i) At least two days of refuse collection per week;

(ii) At least one day of designated recyclable materials collection per week; and

(iii) If the commercial establishment is a designated covered establishment, at least one day of source separated organics collection per week.

(3) Nothing in this subdivision shall prevent a commercial establishment and an awardee from mutually agreeing on terms of service that include less frequent or more frequent collection than the minimum level of service described in paragraph (2) of this subdivision.

(b) *Suspension or termination of service for non-payment.*

(1) An awardee may suspend or terminate commercial waste collection service to a commercial establishment within a zone for which the awardee has been awarded an agreement if the commercial establishment is a current customer and owes full or partial payment to the awardee for services rendered for more than 45 days and the awardee has followed the procedures set forth in this subdivision.

(2) When a current customer has failed to pay the full amount due for 30 days, the awardee must notify the customer in writing that the account is past due, and that nonpayment may result in service suspension or termination, including the timeframe when such suspension or termination may occur.

(3) After at least 45 days of non-payment, the awardee may suspend or terminate service by notifying the customer by certified mail of such suspension or termination and the reason therefor. Such notice shall state that the customer may seek Department review of the awardee's decision to suspend or terminate service by submitting such request to the Department in writing no later than 120 days after receipt of such notice, along with evidence that service should not be suspended or terminated, and a copy of the postmarked certified mail receipt. The customer must also send a copy of such review request to the awardee.

(4) The Department will review each customer request for Department review and may ask either party to provide additional information necessary to make a determination. The Department will issue a final determination within 30 days of receipt of such request, unless such additional information is requested from either party, in which case the Department shall notify the parties of its determination within a reasonable timeframe. The awardee is under no obligation to provide service pending such review. If the awardee continues to provide service, any late fees set forth in the awardee's customer service agreement with the customer shall continue to accrue while such service is being provided in accordance with such agreement.

(c) *Denial, suspension or termination for other allowable reasons.*

(1) Except in authorized cases of non-payment as described in subdivision b, an awardee may only deny, suspend, or terminate commercial waste collection service to a commercial establishment within a zone for which the awardee has been awarded an agreement after prior approval by the Department in accordance with this section.

(2) The Department will only grant approval pursuant to this subdivision if the awardee has followed the procedures set forth in this subdivision and demonstrates to the satisfaction of the Department one or more of the following:

(i) The commercial establishment has set out commercial waste in a form or manner that presents a direct health or safety threat to employees of the designated carter or to the public;

(ii) The commercial establishment has caused substantial damage to property of the awardee or its designated carter;

(iii) Provision of service to the commercial establishment would jeopardize the awardee's ability to meet the requirements of the awardee's agreement with the Department pursuant to § 16-1002 of the Administrative Code; or

(iv) The awardee has other good cause for denial, suspension or termination of service, consistent with the purposes of Title 16-B of the Administrative Code.

(3) An awardee may seek denial, suspension or termination of service by notifying the commercial establishment by certified mail of its intention to deny, suspend or terminate service and informing the commercial establishment of the reason therefor. Such notice shall state that no later than 30 days after the postmark date on such notice, the commercial establishment may submit evidence to the Department demonstrating that circumstances described in paragraph (2) of

subdivision (b) of this section have not occurred or other evidence that service should not be denied, suspended or terminated, along with a copy of the postmarked certified mail receipt of such notice.

(4) The awardee must provide a copy of the notice described in paragraph (1) of this subdivision to the Department along with evidence that circumstances described in paragraph (2) of this subdivision have occurred. In the case of subparagraphs (i) and (ii) of paragraph (2), the awardee shall provide photographic documentation where feasible. In all other instances, such evidence may include but need not be limited to photographic or video evidence, invoices, insurance reports, or police reports. The Department may ask either party to provide additional information necessary to make a determination.

(5) The Department shall notify the awardee and the commercial establishment of its determination regarding whether the awardee's request for approval for denial, suspension or termination of service has been granted no later than 45 days after receipt of a copy of the notice described in paragraph (4) of this subdivision, unless additional information is requested by the Department from either party, in which case the Department shall notify the parties of its determination within a reasonable timeframe. Within 15 days of receipt of such determination, either party may appeal such determination in writing to the Commissioner.

(6) If the commercial establishment is a current customer, the awardee must continue providing service to such customer until a final determination by the Department has been made.

(d) Nothing in this section shall preclude the awardee from seeking to enforce the terms of its agreement with a customer, including but not limited to terms governing damages or other remedies for breach of contract.

(e) Nothing in this section shall be construed to alter, amend or negate any obligation of the awardee to provide service to any commercial establishment in accordance with the terms of the agreement between the awardee and the Department entered into pursuant to § 16-1002 of the Administrative Code.

(f) A written contract for the removal, collection, or disposal of commercial waste that contains no provision regarding duration shall be terminable at will by the customer.

(g) (1) Subdivisions (a) through (c) of this section shall not apply to containerized commercial waste awardees providing collection, removal or disposal of containerized commercial waste in accordance with an agreement with the Department to provide such containerized commercial waste collection, removal and disposal service citywide pursuant to § 16-1002 of the Administrative Code.

(2) An awardee providing containerized commercial waste collection, removal or disposal service citywide in accordance with such an agreement with the Department must not suspend or terminate such service to a customer unless at least 14 days' written notice to the customer is given. No contract for the removal, collection, or disposal of containerized commercial waste shall provide that an awardee may suspend or terminate service upon shorter notice.

(h) If a customer's service is suspended or terminated, the awardee shall provide written notification to the Department within 24 hours and shall include in this notification the customer name and address, reason for suspension or termination, and any unresolved customer complaints.

(Added City Record 11/16/2021, eff. 12/16/2021*)

* **Editor's note:** For specific effective date provisions, see the editor's note at 16 RCNY Ch. 20.

§ 20-23 Non-Collection of Commercial Waste.

(a) If a designated carter is precluded from collecting a customer's commercial waste on a particular day, due to a severe weather event, street closure, or other emergency as determined by the Department, the designated carter must return to collect the commercial waste on the next business day when access to the premises is possible, or as otherwise agreed upon between the awardee and the customer. In such a case, the awardee must notify such customer no less than two hours after becoming aware of the situation that collection on the scheduled day is not possible, the reason therefor, and the awardee's expected timeframe for collecting the customer's waste.

(b) Except as provided in subdivision (a), an awardee and its designated carters may only refuse to collect commercial waste from a customer set out on a particular day, resulting in the non-collection of commercial waste, in the following circumstances:

(1) Overfilled containers;

(2) Designated recyclable materials or source separated organic waste with contamination of at least 10 percent;

(3) The bag or container cannot be safely lifted, container contents will not empty after tipping, and/or bags or containers are blocked or inaccessible for reasons other than those described in subdivision (a) of this section;

(4) Bags or containers set out for collection contain non-commercial waste not otherwise agreed upon by the customer and the awardee; or

(5) The customer has otherwise set out commercial waste in a form or manner that presents a direct health or safety threat to employees of the designated carter or to the public.

(c) Before refusing to collect commercial waste from a customer set out on a particular day in any of the circumstances described in subdivision (b) of this section, the awardee must ensure that all applicable procedures described in 16 RCNY § 20-24 are followed, and the awardee must continue to provide commercial waste collection service at the customer's next scheduled pick-up in accordance with the awardee's agreement with the customer, except as otherwise provided in 16 RCNY § 20-22.

(Added City Record 11/16/2021, eff. 12/16/2021*)

* **Editor's note:** For specific effective date provisions, see the editor's note at 16 RCNY Ch. 20.

§ 20-24 Overfilled Containers, Contamination, Infeasible Collection and Other Non-Conforming Material; Procedures for Fees and Non-Collection.

(a) Before imposing fees pursuant to subparagraphs (vii) through (ix) of paragraph (2) of subdivision (c) of 16 RCNY § 20-21 or refusing to collect commercial waste from a customer on a particular day pursuant to subdivision (b) of 16 RCNY § 20-23, an awardee and its designated carters must follow the procedures described in this section. Nothing in this section shall be construed to require an awardee to impose a fee or to refuse to collect any material.

(b) *Overfilled containers.*

(1) *First instance within a 12-month period:* The designated carter must take a photograph of the overfilled container, collect the material, and leave a written notice approved by the Department informing the customer that: (i) the material collected was overfilled; (ii) if containers are overfilled in the future, the awardee may charge the customer applicable fees or may choose not to collect such container; and (iii) the amount of such fees. Nothing in this section shall be construed to require collection where such collection is infeasible because a customer sets out a bag or container that cannot be safely lifted or in a form or manner that otherwise presents a direct health or safety threat to employees of the designated carter or to the public, as provided in subdivision (d) of this section.

(2) *Second and subsequent instances within a 12-month period:* The designated carter must take a photograph of the overfilled container. The awardee may elect to collect the material and impose a fee in the customer's next monthly bill or, as an alternative, may choose not to collect the material. If the awardee chooses not to collect the material, the designated carter must affix a written non-collection notice approved by the Department to the uncollected container. At a minimum, such notice must provide the following information: (i) the awardee's reason for not collecting the material; (ii) information that will allow the customer to correct the problem; and (iii) the awardee's telephone number for any further questions. If the awardee fails to document the reasons for not collecting the material on that day, the refusal to collect will be treated as a missed collection.

(c) *Designated recyclable materials or source separated organic waste with contamination of at least 10 percent.*

(1) *First instance within a 12-month period:* If the designated carter determines by visual inspection that a bag or container of designated recyclable materials or source separated organic waste is at least 10 percent contaminated, the designated carter must take a photograph of the contaminated bag or container, collect the material, and leave a written notice approved by the Department informing the customer that: (i) the material collected was contaminated; (ii) if bags or containers are contaminated in the future, the awardee may charge the customer applicable fees or may choose not to collect such bag or container; and (iii) the amount of such fees. The awardee must also include information with the customer's next monthly bill regarding the City's recycling and organics requirements, recommended corrective action, and where the customer can find more information on the subject.

(2) *Second and subsequent instances within a 12-month period:* If the designated carter determines by visual inspection that a bag or container of designated recyclable materials or source separated organic waste is at least 10 percent contaminated, the designated carter must take a photograph of the contaminated bag or container. The awardee may elect to collect the material and impose a fee in the customer's next monthly bill or, as an alternative, may choose not to collect the material. If the awardee chooses not to collect the material, the designated carter must affix a written non-collection notice approved by the Department to the uncollected bag or container. At a minimum, such notice must provide the following information: (i) the awardee's reason for not collecting the material; (ii) information that will allow the customer to correct the problem; and (iii) the awardee's telephone number for any further questions. If the designated carter fails to document the reasons for not collecting the material on that day, the refusal to collect will be treated as a missed collection.

(d) *Infeasible collection.*

(1) If collection is infeasible because: (i) a customer sets out a bag or container that cannot be safely lifted or in a form or manner that otherwise presents a direct health or safety threat to employees of the designated carter or to the public; (ii) the container contents will not empty after tipping; or (iii) the bags or containers are blocked or inaccessible at the scheduled time of collection, the designated carter must take a photograph or otherwise document the reason why collection is infeasible.

(2) The designated carter must provide the customer with a written non-collection notice approved by the Department. At a minimum, such notice must provide the following information: (i) reason for not collecting the material; (ii) information that will allow the customer to correct the problem; and (iii) the awardee's telephone number for any further questions. If possible, the designated carter must affix such notice to the uncollected bag or container. If physically affixing such notice to the bag or container is not feasible, the designated carter must leave the notice at the customer's physical address. If the designated carter fails to document the reasons for not collecting the material on that day, the refusal to collect will be treated as a missed collection.

(3) If the awardee and customer agree that the designated carter will return at a different time to provide collection service after the condition has been corrected, the awardee may impose a fee in the customer's next monthly bill for the return pick-up, provided that the procedures described in this subdivision have been followed, including photo documentation of the reason why collection was infeasible at the first attempt.

(e) *Non-commercial waste and other non-conforming waste.*

(1) If the customer sets out a bag or container that contains non-commercial waste not otherwise agreed upon by the customer and the awardee, the awardee may choose not to collect the material. In such a case, the designated carter must take a photograph of the non-commercial waste and affix a written non-collection notice approved by the Department to the uncollected bag or container. At a minimum, such notice must provide the following information: (i) the awardee's reason for not collecting the material; (ii) information that will allow the customer to correct the problem; and (iii) the awardee's telephone number for any further questions. If the designated carter fails to document the reasons for not collecting the material on that day, the refusal to collect will be treated as a missed collection.

(2) If the awardee believes a customer is depositing hazardous, radioactive, medical, or e-waste for collection, the awardee must immediately notify the Department in addition to following the procedures in paragraph (1) of this subdivision. If the generator of such waste is unknown, the awardee must work with the City to identify the generator of such waste.

(Added City Record 11/16/2021, eff. 12/16/2021*)

* **Editor's note:** For specific effective date provisions, see the editor's note at 16 RCNY Ch. 20.

§ 20-25 Customer Service Plan.

(a) An awardee must establish and maintain a customer service plan in accordance with this section and the terms of its agreement with the Department pursuant to § 16-1002 of the Administrative Code. The awardee must comply with the terms of such customer service plan.

(b) Such customer service plan must include, at a minimum, a description of:

(1) Customer service support tools, including but not limited to: a dedicated phone line for receiving customer inquiries, service requests and complaints, which must be actively staffed during normal business hours and have the capability for receiving messages 24 hours a day, seven days a week;

(2) A company website, which must contain information regarding the awardee's name, office address, e-mail address, the customer phone number described in paragraph (1) of this subdivision, the maximum rates that the awardee is authorized to charge pursuant to the agreement entered into with the Department pursuant to § 16-1002, instructions for requesting initial service, and instructions for making customer complaints and service requests;

(3) A protocol for promptly addressing customer service requests and complaints;

(4) Performance metrics or other methods of measuring customer service, including but not limited to a process for tracking customer service requests and complaints and the awardee's response times for addressing such requests and complaints;

(5) Customer service standards, including but not limited to hours of operation and emergency contact protocols;

(6) The awardee's plan for addressing the language access needs of customers in the zone, including but not limited to an assessment of the primary languages spoken by customers in the zone and a description of the specific tools used to provide quality customer service to customers with limited English proficiency; and

(7) A process for customers to contest invoices, request changes to level of service provided, and request changes to costs for service based on changes in amount of waste generated by the customer; and

(8) The awardee's plans, if any, for the set-out of commercial waste in a manner that promotes the City's goals of improving cleanliness, rodent mitigation, order and safety on City sidewalks.

(c) If a customer submits a missed collection complaint, the designated carter must return to the premises and collect the commercial waste that was missed within 12 hours of receiving such complaint, unless:

(1) the awardee has elected non-collection of the commercial waste for reasons authorized in 16 RCNY § 20-23 and in accordance with the applicable procedures described in 16 RCNY § 20-24, or

(2) the awardee otherwise resolves the customer complaint in a manner agreed upon between the customer and the awardee.

(Added City Record 11/16/2021, eff. 12/16/2021*)

* **Editor's note:** For specific effective date provisions, see the editor's note at 16 RCNY Ch. 20.

§ 20-26 Written service agreement.

(a) An awardee must enter into a written contract with each customer for the collection, removal, or disposal of commercial waste in accordance with the requirements of this section. Such written contract must comply with the applicable requirements of Titles 16-A and 16-B of the Administrative Code and the applicable rules promulgated pursuant to such titles, all other applicable laws, and the terms of the agreement between the awardee and the Department under which the awardee is operating.

(b) A contract between an awardee and a customer for the collection, removal or disposal of commercial waste shall:

(1) Describe the following:

(i) Rates, including a clear description of any applicable fees that might be imposed pursuant to paragraph (2) of subdivision (c) of 16 RCNY § 20-21;

(ii) Customer and awardee responsibilities;

(iii) For each waste stream: pick-up frequency and estimated pick-up time for each collection, and where agreed upon by the parties, a prescribed pick-up window; and

(iv) Dispute resolution protocols.

(2) State the estimated volume or weight of designated recyclable materials and the estimated volume or weight of source separated organic waste, if any, to be collected from such customer and transported pursuant to 16 RCNY §§ 20-31 and 20-32;

(3) Not extend beyond the last date the awardee is authorized to operate in the zone in which the customer is located under the awardee's agreement with the Department entered into pursuant to § 16-1002 of the Administrative Code;

(4) Provide that the awardee must remove the customer's commercial waste from the location designated by the customer, provided that such location is consistent with all applicable laws, rules and regulations;

(5) Provide for not less than 14 days' written notice by the awardee if the awardee seeks to raise rates charged to a customer;

(6) Provide for not less than 7 days' written notice by the awardee if the awardee seeks to change pick-up times, except in unforeseen circumstances;

(7) Provide that the awardee must comply with Titles 16-A and 16-B of the Administrative Code and any rules promulgated pursuant thereto and all other applicable laws, rules and regulations; and

(8) Provide the method by which the awardee will provide the customer with all applicable notices required pursuant to this chapter. Except where otherwise specifically provided by this chapter, such notices may be in the form of paper or electronic communication, as long as the recordkeeping requirements of this chapter and as set forth in the Agreement with the Department are met.

(c) (1) A standard contract form that an awardee proposes to use with its customers must be submitted to the Department within 60 days of entering into an agreement with the Department pursuant to § 16-1002 of the Administrative Code. An awardee must submit any subsequent changes in the standard contract to the Department 30 days prior to implementing such change. The Department will perform a legal review of each awardee's standard contract and may

require changes to such standard contract form prior to its use by the awardee pursuant to the procedures described in such agreement with the Department.

(2) Nothing in this subdivision shall be construed to prevent an awardee and a customer from negotiating terms at variance with the standard contract, except that an awardee must not vary such contract in any manner inconsistent with Title 16-A of the Administrative Code and any rules promulgated thereunder or Title 16-B of the Administrative Code and any rules promulgated thereunder.

(d) Prior to commencement of service, an awardee must prepare a written contract that clearly and legibly sets forth the terms and conditions of the agreement negotiated by the awardee and the customer and deliver such contract to the customer. Such contract must provide that it shall be effective only upon being dated and signed by the awardee and the customer's owner or authorized representative and that a change of any term or condition of such contract must be made in writing, dated, and signed by both the awardee and the customer's owner or authorized representative before such term or condition takes effect. One copy of such signed and dated contract and a copy of any signed and dated amendments must be provided to the customer's owner or authorized representative by the awardee.

(e) (1) If a customer has been assigned to the awardee by the Department pursuant to paragraph (4) of subdivision (e) of § 16-1002 of the Administrative Code or rules promulgated pursuant to such section, the standard contract that the awardee has submitted to the Department pursuant to subdivision (c) of this section shall be deemed to be in effect, and the awardee shall provide commercial waste collection service at the level of service described in paragraph (2) of subdivision (a) of 16 RCNY § 20-22 at the maximum rates the awardee is authorized to charge pursuant to the awardee's agreement with the Department pursuant to § 16-1002 of the Administrative Code, unless and until such customer and such awardee negotiate alternative terms by following the procedures in subdivision (d) of this section or the customer selects a different awardee pursuant to paragraph (4) of subdivision (e) of § 16-1002.

(2) Upon notification by the Department that it has been assigned a customer by the Department pursuant to paragraph (4) of subdivision (e) of § 16-1002 of the Administrative Code or other applicable law, the awardee shall mail the awardee's standard contract to such customer by certified mail, retain the signed returned postal receipt during the duration of service to the customer, and make available to the Department upon its request a copy of such contract and such return receipt, unless and until such customer and such awardee negotiate alternative terms by following the procedures in subdivision (d) of this section.

(f) An awardee must comply with the service and other terms set forth in such contract with the customer, including the agreed-upon frequency and schedule for the collection of commercial waste. Such schedule must not be altered without the written agreement of the customer's owner or authorized representative.

(g) No contract or contract amendment shall provide that the awardee is exempt from liability for damage caused by its negligence or the negligence of any of its agents.

(h) A contract that does not meet the requirements of federal, state or local law is voidable by either party.

(Added City Record 11/16/2021, eff. 12/16/2021*)

* **Editor's note:** For specific effective date provisions, see the editor's note at 16 RCNY Ch. 20.

§ 20-27 Billing and payment.

(a) An awardee must provide a consolidated bill, statement, or invoice at least once every month to every customer. Such bill, statement or invoice may be provided electronically, unless the customer requests a paper version. Such bill, statement or invoice must include all costs for services provided, including if an awardee uses one or more subcontractors to provide services to the customer. Such bill, statement, or invoice must conspicuously contain all of the following:

- (1) The awardee's name, address, telephone number, and Business Integrity Commission license number;
- (2) The customer's name and complete address;

(3) The maximum rates the awardee is authorized to charge such customer pursuant to the awardee's agreement with the Department entered into pursuant to § 16-1002 of the Administrative Code with a statement indicating that the rates so identified are maximum legal rates and that lower rates may be lawfully charged;

(4) The negotiated rate on which the bill, statement, or invoice is based, broken down into the component parts of such rate, including the rates based on frequency of collection of refuse, designated recyclable materials and source separated organic waste, if applicable, and the rates based on volume or weight of refuse, designated recyclable materials and source separated organic waste collected, if applicable;

(5) A notice to customers as follows: "NOTICE TO CUSTOMERS – The maximum rates that may be charged by your commercial waste removal business are regulated by the New York City Department of Sanitation. If you should have a question or a complaint concerning commercial waste removal, contact the New York City Department of Sanitation";

(6) An itemized list of actual charges being imposed detailing:

(i) The number of weekly pick-ups of each waste stream;

(ii) The weight or volume of refuse, designated recyclable materials and source separated organic waste, if any, removed, and the charge for such weight or volume of such waste, broken down by waste stream, or, where the customer is being charged on a "flat" or "average" billing rate, the estimated volume or weight of refuse, designated recyclable materials and source separated organic waste, if any, removed, and the charge for such estimated weight or volume of such waste, broken down by waste stream, along with a statement as to the method by which the estimated volume or weight was determined; and

(iii) Any additional charges or fees imposed; and

(7) a separate statement of sales tax collected.

(b) Such bill, statement or invoice must be on a form approved by the Department.

(c) (1) An awardee may only accept cash payments from a customer for the collection, removal, or disposal of commercial waste:

(i) At the awardee's primary office location or primary garage for storing commercial waste vehicles; or

(ii) At a customer service location that has been approved by the Department.

(2) Under no circumstances may an awardee accept cash payments for such services at the customer's business location.

(3) An awardee must provide a receipt to the customer for all cash payments.

(4) An awardee may not charge a customer any additional fees or charges for processing or accepting non-cash payments for commercial waste collection, removal or disposal services, except as authorized pursuant to subparagraph (xiii) of paragraph (2) of subdivision (c) of 16 RCNY § 20-21.

(d) An awardee may not charge new or existing customers for payments not collected from other customers.

(e) The awardee shall not assess new customers for payments owed from a previous customer. The awardee shall not charge existing customers in full or in part for payments owed from other customers.

(Added City Record 11/16/2021, eff. 12/16/2021*)

* **Editor's note:** For specific effective date provisions, see the editor's note at 16 RCNY Ch. 20.

§ 20-28 Notifications.

(a) An awardee must provide each customer with such informational notices as the Department shall require throughout the term of service.

(b) An awardee must comply with the notification protocols described in the awardee's zero waste plan for notifying the customer of significant designated recyclable material content in refuse and providing recommendations for compliance with the City's recycling requirements and diversion of designated recyclable materials, in accordance with 16 RCNY § 20-33.

(c) On a monthly basis, an awardee must provide the Department with the following information for the previous month, in the form specified by the Department:

(1) Any non-collections and the reasons therefor;

(2) Any additional fees imposed and the reasons therefor; and

(3) A list of customers to which the awardee or any of its designated carters provided notifications of significant designated recyclable material content in refuse pursuant to subdivision (b) of this section.

(Added City Record 11/16/2021, eff. 12/16/2021*)

* **Editor's note:** For specific effective date provisions, see the editor's note at 16 RCNY Ch. 20.

§ 20-29 Commercial Waste Generation Audits

An awardee must provide to its customers commercial waste generation audit services and/or reimbursement for commercial waste generation audits by a third party in accordance with the requirements of the awardee's Zero Waste

Plan.

(Added City Record 11/16/2021, eff. 12/16/2021*)

* **Editor's note:** For specific effective date provisions, see the editor's note at 16 RCNY Ch. 20.

Subchapter C: Operations; Delivery of Service

§ 20-30 Restrictions on Operation in Multiple Zones.

(a) For purposes of this section, the term "collection route" means a trip by a commercial waste vehicle that: (i) begins at either the garage or yard where such commercial waste vehicle is parked while not in use, or at a waste transfer station, processing facility or other location where waste is dumped from such commercial waste vehicle; (ii) includes pick-ups of commercial waste from customers; and (iii) terminates either at such garage or yard, or with the delivery of such commercial waste to such a waste transfer station, processing facility or other location where such waste is dumped.

(b) An awardee may only provide commercial waste collection, removal or disposal service to a customer located in a zone in which the awardee is authorized to operate pursuant to an agreement with the Department entered into pursuant to § 16-1002 of the Administrative Code.

(c) If an awardee is authorized to operate in more than one zone pursuant to an agreement with the Department entered into pursuant to § 16-1002 of the Administrative Code, neither the awardee nor any of the awardee's designated carters shall operate a collection route with pick-ups of commercial waste from customers in more than one zone, except as provided in subdivision (d).

(d) Subdivision (c) of this section does not apply to an awardee authorized to operate in more than one zone pursuant to an agreement with the Department entered into pursuant to § 16-1002 where:

(1) The awardee is providing commercial waste collection, removal or disposal service outside of standard service hours;

(2) The awardee is collecting, removing or disposing of source separated organic waste, and such awardee's agreement with the Department entered into pursuant to § 16-1002 of the Administrative Code provides that subdivision (c) of this section does not apply to such collection, removal or disposal; or

(3) The awardee has received prior written approval from the Department to provide service without following the requirements of subdivision (c) in specific circumstances that further the purposes of Title 16-B of the Administrative Code, provided that such awardee is operating in accordance with the terms of such approval.

(e) This section does not apply to the collection, removal or disposal of containerized waste provided in accordance with an agreement with the Department entered into pursuant to § 16-1002 of the Administrative Code that authorizes such collection, removal or disposal of containerized commercial waste to be performed citywide.

(Added City Record 11/16/2021, eff. 12/16/2021*)

* **Editor's note:** For specific effective date provisions, see the editor's note at 16 RCNY Ch. 20.

§ 20-31 Recycling Requirements for Awardees.

(a) *Recycling collection required.*

(1) An awardee must provide designated recyclable materials collection service to any customer of the awardee, unless such customer is not required to arrange with a private carter for the collection of designated recyclable materials pursuant to 16 RCNY § 1-10 and § 16-306 of the Administrative Code.

(2) This subdivision shall only apply to the collection of containerized commercial waste citywide where the agreement between the awardee and the Department so provides.

(b) *Designated carters required to recycle.* When collecting or transporting designated recyclable materials that have been source-separated as required by subdivision (b) of § 1-10 of this title or materials that have been commingled pursuant to subdivision (c) of 16 RCNY § 1-10 and paragraph (2) of subdivision (c) of this section, a designated carter must transport such materials to putrescible or non-putrescible transfer stations or other facilities that accept such materials for recycling, reuse or sale for reuse. Such designated carter shall not bring such materials for disposal, or cause such materials to be brought for disposal, to any solid waste disposal facility, whether or not such disposal facility is operated by the Department, except in an amount that could not have been detected through reasonable inspection efforts by the designated carter.

(c) *Collection restrictions for designated recyclable materials.*

(1) Waste that has been source-separated for recycling by the customer.

(i) A designated carter collecting materials that have been source-separated by the customer may not commingle in the same vehicle compartment any of the following: (1) designated recyclable paper, (2) designated recyclable metal, glass, and plastic, (3) yard waste, (4) textiles, (5) construction and demolition debris, (6) organic waste, (7) any other materials that have special collection requirements pursuant to applicable local, state or federal law, or (8) other solid waste.

(ii) Designated recyclable metal, glass and plastic may be commingled together, but may not be commingled in the same vehicle compartment with designated recyclable paper unless such materials are collected using single stream collection of recyclables pursuant to paragraph (2) of this subdivision.

(2) Commingling of certain designated recyclable materials. A designated carter may only collect waste consisting of designated metal, glass, and plastic commingled with designated recyclable paper if such designated carter is operating pursuant to an agreement between an awardee and the Department that authorizes such designated carter to use single stream collection of recyclables. The Department will only authorize use of single stream collection of recyclables where the awardee has demonstrated through its waste management plan, submitted pursuant to paragraph 5 of subdivision b of § 16-1002 of the Administrative Code, that the awardee intends to tip the commingled metal glass plastic and paper at a facility that has the capability to sort such commodities appropriately into separate, marketable commodity streams.

(d) *Notice to customer.* Upon request by a customer, an awardee must inform such customer of the location where such awardee transported such customer's designated recyclable materials for recycling, reuse or sale for reuse.

(e) *Signage.* Upon request by a customer, an awardee must provide such customer with all signage and decals that the customer is required to post pursuant to 16 RCNY § 1-10, in a form and format approved by the Department.

(f) *Penalties.* Any person who violates any provision of this section will be liable for civil penalties provided for under paragraph (1) of subdivision (b) of § 16-1015 of the Administrative Code. Paragraph (1) of subdivision (b) of § 16-1015 provides for a civil penalty in the amount 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.

(Added City Record 11/16/2021, eff. 12/16/2021*)

* **Editor's note:** For specific effective date provisions, see the editor's note at 16 RCNY Ch. 20.

§ 20-32 Collection of Organic Waste That Has Been Source-Separated.

(a) *Organics collection required.*

(1) An awardee must provide organic waste collection services to any customer that is a designated covered establishment pursuant to subdivision b of § 16-306.1 of the Administrative Code and that has elected collection by a private carter of organic waste pursuant to subdivision c of such section.

(2) An awardee must offer organic waste collection services to any customer that is not a designated covered establishment pursuant to subdivision b of § 16-306.1 in accordance with the terms of the agreement entered into between such awardee and the Department pursuant to § 16-1002 of the Administrative Code.

(3) This subdivision shall only apply to the collection of containerized commercial waste citywide where the agreement between the awardee and the Department so provides.

(b) *No commingling of organic waste.* Organic waste shall not be commingled with any other solid waste and shall not be collected in the same truck compartment as other solid waste.

(c) *Collection restrictions for source separated organic waste.* Any source separated organic waste collected by a designated carter from a customer must be delivered by such designated carter either:

(1) directly to an organic waste processing facility for purposes of composting, aerobic digestion or anaerobic digestion; or

(2) to a putrescible transfer station that: (i) is authorized by the New York State Department of Environmental Conservation and the Department to handle source separated organic waste or is otherwise in compliance with all applicable state and local permitting requirements regarding handling of source separated organic waste, and (ii) has represented to the awardee that it will deliver such organic waste to an organic waste processing facility for purposes of composting, aerobic digestion or anaerobic digestion.

(d) *Delivery of organic waste for other uses.*

(1) For purposes of this subdivision, the term "organic waste" has the same meaning as set forth in § 16-303 of the Administrative Code.

(2) Notwithstanding any other provision of this section, a designated carter that collects organic waste from a customer may deliver such waste to:

(i) A farm or other facility for purposes of feeding animals; or

(ii) Upon approval by the Department, any other third party, for biological, chemical or mechanical processing of such waste for the production of a commodity, material or other product that has value.

(3) In no event shall a designated carter deliver organic waste to a third party to be incinerated or otherwise cause organic waste to be incinerated.

(4) No organic waste shall be collected by a designated carter from a customer that has source separated such waste, except as authorized in this section.

(5) Nothing in this section shall preclude an awardee or any of its designated carters from collecting or facilitating the collection of edible food from a customer for delivery to a food bank, soup kitchen or other entity for purposes of feeding people, provided all applicable health, safety and legal requirements are met.

(e) *Signage*. Upon request by a customer, an awardee must provide such customer with all signage and decals that the customer is required to post pursuant to 16 RCNY § 1-11, in a form and format approved by the Department.

(f) *Penalties*. Any person who violates any provision of this section will be liable for civil penalties provided for under paragraph (1) of subdivision (b) of § 16-1015 of the Administrative Code. Paragraph (1) of subdivision (b) of § 16-1015 provides for a civil penalty in the amount 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.

(Added City Record 11/16/2021, eff. 12/16/2021*)

* **Editor's note:** For specific effective date provisions, see the editor's note at 16 RCNY Ch. 20.

§ 20-33 Zero Waste Plan.

Each awardee and its designated carters must comply with the terms of the awardee's zero waste plan. Such plan must, at a minimum:

a. Detail the awardee's practices to support waste reduction, reuse and recycling among commercial establishments within the zone or zones covered by the Agreement with the Department under which the awardee is operating, including but not limited to partnerships with local organizations, waste reduction or diversion targets, customer outreach and education or other practices to further such goals;

b. Detail how the awardee will work with customers to promote compliance with the City's recycling laws and rules, increase the amount and quality of designated recyclable material diverted from the refuse stream, and increase overall diversion through waste reduction, reuse and recycling;

c. Include a protocol for notifying a customer of significant designated recyclable material content in the customer's refuse and recommending to the customer steps to improve compliance with the City's recycling requirements and to increase diversion of designated recyclable material from the refuse stream;

d. Include plans for offering organics collection services to a broad range of establishments within the zone, including the awardee's specific plans for providing organic waste collection services to customers that are not designated covered establishments pursuant to § 16-306.1(b) of the Administrative Code in accordance with the requirements of § 16-1002(c)(5) of such code; and

e. Include a plan to provide commercial waste generation audit services to customers and/or reimbursement to customers for commercial waste generation audits performed by a third party, including but not limited to:

i. A description of whether the awardee will contract directly with a third party waste audit company or offer reimbursement to customers;

ii. The awardee's prices for third party waste audit services and/or reimbursement rates for such services;

iii. How the awardee will promote access to commercial waste generation audit services to a broad range of commercial establishments including small businesses, in the zone or zones covered by the Agreement with the Department under which the awardee is operating; and

iv. Specific methods, if any, of utilizing commercial waste generation audit services to support the Department's zero waste goals.

(Added City Record 11/16/2021, eff. 12/16/2021*)

* **Editor's note:** For specific effective date provisions, see the editor's note at 16 RCNY Ch. 20.

§ 20-34 Commercial Waste Diversion and Disposal; Recordkeeping; Written Agreements; Reporting.

(a) All awardees and designated carters must ensure proper disposal of all commercial waste collected, consistent with the awardee's waste management plan, Zero Waste Plan, and all other terms of the agreement entered into with the Department pursuant to § 16-1002 under which the awardee is operating, and all applicable laws, rules and regulations.

(b) *Dump tickets and other delivery receipts.*

(1) Each time a designated carter delivers commercial waste from a customer to a waste transfer station, processing facility or any other location where such waste is dumped directly from the commercial waste vehicle in which such waste was collected from such customer, such designated carter must obtain a dump ticket, delivery receipt or other written record documenting such delivery, including the amount and type of commercial waste delivered.

(2) Such records must be retained by the designated carter and the awardee for five years, and must be made available for inspection by the Department.

(c) (1) An awardee must collect and maintain information on the final processing location, final disposal location, final use, or final reuse of all commercial waste collected by such awardee and any of its designated carters, disaggregated by waste stream. Unless the awardee or its designated carters is delivering such commercial waste directly from the customer to the location of such final disposal, use or reuse, the awardee must collect and maintain information regarding where such commercial waste is sent after the awardee or its designated carters delivers the commercial waste from the customer to a waste transfer station, processing facility or other location.

(2) An awardee must collect and maintain information on the mode of transport of such commercial waste from each such transfer station, processing facility or other location.

(3) An awardee may meet the requirements of this subdivision either by following the procedures described in subdivisions (d) through (g) of this section, or by otherwise collecting and maintaining the information required pursuant to this subdivision in a verifiable form and manner approved by the Department.

(d) *Designated recyclable materials.*

(1) An awardee may fulfill the requirements of subdivision (c) of this section by entering into a written agreement with each transfer station or other facility that accepts designated recyclable materials from such awardee or any of its designated carters in accordance with 16 RCNY § 20-31.

(2) Such agreement must:

(i) Include the name and contact information of the owner of the transfer station or other facility and the address of such transfer station or facility;

(ii) Be signed by both the awardee and such owner; and

(iii) In the case of an agreement with a transfer station, provide that such transfer station must report to the awardee on an annual basis the name and address of each material recovery facility or other destination where designated recyclable materials received by such transfer station are sent, and the mode of transport of such designated recyclable materials to each such facility or destination. Such information may be provided in the aggregate for all designated recyclable materials received by such transfer station.

(e) *Organic waste.*

(1) An awardee may fulfill the requirements of subdivision (c) of this section by entering into a written agreement with each processing facility or transfer station that accepts organic waste from such awardee or any of its designated carters in accordance with 16 RCNY § 20-32.

(2) Such agreement must:

(i) Include the name and contact information of the owner of the processing facility or transfer station and the address of such facility or transfer station;

(ii) Be signed by both the awardee and such owner; and

(iii) In the case of an agreement with a transfer station, provide that such transfer station must report to the awardee on an annual basis the name and address of each final destination of organic waste received by such transfer station and the mode of transport of such organic material to each such destination. Such information may be provided in the aggregate for all organic waste received by such transfer station.

(3) Any awardee that provides for collection of waste in accordance with subdivision (d) of 16 RCNY § 20-32 shall enter into a written agreement with the entity that accepts such waste that meets the requirements of this subdivision. Such agreement must also include information regarding the final destination and the end use of such waste.

(f) *Refuse.*

(1) An awardee may fulfill the requirements of subdivision (c) of this section by entering into a written agreement with each transfer station or solid waste disposal facility that accepts refuse from such awardee or any of its designated carters after collection from the awardee's customers.

(2) Such agreement must:

(i) Include the address and name and contact information of the owner of such transfer station or solid waste disposal facility;

(ii) Be signed by both the awardee and such owner;

(iii) In the case of an agreement with a transfer station, provide that such transfer station must report to the awardee on an annual basis the name and address of each final disposal location of all refuse received by such transfer station and the mode of transport of such refuse to such location. Such information may be provided in the aggregate for all refuse received by such transfer station.

(g) Upon request by a customer, an awardee must furnish to such customer a copy of any such agreement required by this section. A copy of such agreement must also be provided to the Department upon request.

(h) Nothing in this section shall relieve the awardee from meeting any additional obligation to collect, maintain and report information regarding the final disposal locations, final processing locations, final uses, or final reuses of commercial waste collected by such awardee as set forth in this title or the agreement between such awardee and the Department entered into pursuant to § 16-1002 of the Administrative Code.

(i) *Penalties.* Any person who violates any provision of this section will be liable for civil penalties provided for under paragraph (1) of subdivision (b) of § 16-1015 of the Administrative Code. Paragraph (1) of subdivision (b) of § 16-1015 provides for a civil penalty in the amount 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.

(Added City Record 11/16/2021, eff. 12/16/2021*)

* **Editor's note:** For specific effective date provisions, see the editor's note at 16 RCNY Ch. 20.

§ 20-35 Exempt Waste Streams.

(a) Any awardee that collects waste that does not meet the definition of commercial waste set forth in § 16-1000 of the Administrative Code from a customer within a commercial waste zone must comply with all applicable laws, rules and regulations governing the collection, transport and disposal of such waste.

(b) *Penalties.* Any person who violates any provision of this section will be liable for civil penalties provided for under paragraph (1) of subdivision (b) of § 16-1015 of the Administrative Code. Paragraph (1) of subdivision (b) of § 16-1015 provides for a civil penalty in the amount 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.

(Added City Record 11/16/2021, eff. 12/16/2021*)

* **Editor's note:** For specific effective date provisions, see the editor's note at 16 RCNY Ch. 20.

§ 20-36 Sign or Decal Required.

(a) An awardee must provide each customer with a sign or decal that conspicuously and legibly displays the awardee's name, the awardee's license number issued by the business integrity commission pursuant to Title 16-A of the Administrative Code, and a unique customer identifier number created by the awardee and assigned to such customer by the awardee for purposes of assisting the Department in tracking the awardee's compliance with the requirements of Title 16-B of the Administrative Code and the Department's rules.

(b) The awardee must submit to the Department for approval a sample of the sign or decal that the awardee intends to use prior to distributing the sign or decal to customers.

(c) The awardee must inform the customer of its obligation to post the sign or decal in accordance with the requirements of subdivision (b) of § 16-116 of the Administrative Code and the rules of the Department.

(d) An awardee is prohibited from charging a fee to any customer for a sign or decal required by this section.

(Added City Record 11/16/2021, eff. 12/16/2021*)

* **Editor's note:** For specific effective date provisions, see the editor's note at 16 RCNY Ch. 20.

§ 20-37 Compliance with All Applicable Laws and Regulations.

An awardee must comply with all applicable laws, rules and regulations, including, but not limited to, applicable rules of the Business Integrity Commission, the Department of Environmental Protection, the Department of Health and Mental Hygiene, and the Department of Transportation relating to vehicle specifications, sanitary requirements, and the handling, transport, receipt, transfer or disposal of trade waste, regulated medical waste or waste containing asbestos or other hazardous, toxic or dangerous material.

(Added City Record 11/16/2021, eff. 12/16/2021*)

* **Editor's note:** For specific effective date provisions, see the editor's note at 16 RCNY Ch. 20.

§ 20-38 Operations.

(a) An awardee and each designated carter must maintain all premises where commercial waste vehicles and machinery are kept in a safe and sanitary condition.

(b) All commercial waste vehicles must be loaded and operated at all times in such a manner and by such methods so as to prevent the release or discharge of dust and debris and to prevent the spilling of any materials upon sidewalks or streets.

(c) A loading hopper and the mechanism and controls by which it is operated must be constructed, maintained, and operated so as to prevent any of the contents of such loading hopper from being released or discharged in any manner, other than into and within the totally permanently enclosed body.

(d) Every operator of a commercial waste vehicle must immediately remove from sidewalks or streets any materials spilled, littered, or thrown thereon in loading operations, in the handling and return of receptacles, or while traveling.

(e) Materials loaded into commercial waste vehicles must be dumped or unloaded and disposed of only at points where disposal of the particular material is allowed by applicable law.

(f) Commercial waste vehicle operators must exercise care at all times to prevent making unnecessary or avoidable noise in the course of operating such vehicles or loading commercial waste, and must comply with § 24-225 of the Administrative Code.

(g) Commercial waste vehicles with open top box type bodies and containers on or in platform or panel type body vehicles shall not be filled or loaded over their capacity as specified by the vehicle manufacturer. In no case shall the body or container of such vehicles be filled or loaded to a level that would allow water or solid waste to spill out from the vehicle.

(h) Each open top box type vehicle body shall be loaded only from front to rear, and the partial load shall be kept securely and fully covered at all times. Each such vehicle shall have a heavy tarpaulin cover which shall be secured over the vehicle body at all times other than when the vehicle body is being loaded or unloaded or is empty.

(i) Materials loaded in or upon commercial waste vehicles must not be re-worked, re-sorted, picked over, or re-handled while the vehicle is on the street, and material shall not be transferred or re-loaded from a vehicle on the street to or into any other vehicle.

(j) Materials must not be carried at any time upon any commercial waste vehicle other than within the vehicle body, or within containers on or in the vehicle body provided such materials are to be removed in such containers.

(k) After materials are dumped for disposal the body of the commercial waste vehicle and any container used must be emptied thoroughly and cleared of all loose materials.

(l) Commercial waste vehicles and containers must be thoroughly cleaned inside and outside frequently so that they present a good appearance and are maintained free of dirt and offensive odors.

(m) An awardee and each designated carter must provide for the general cleanliness of, and the control of odors and extermination of pests and rodents on and around, commercial waste vehicles and the locations where such vehicles are stored when not in use.

(n) An awardee must provide for off-street parking for commercial waste vehicles.

(o) An awardee and each designated carter must keep closed the doors of any garage, or the gate to any outdoor premises, from which commercial waste vehicles are dispatched except when such vehicles are entering or leaving such

garage or premises. The perimeter of any outdoor location used to store vehicles shall be surrounded by a fence or wall that is at least 8 feet high.

(p) An operator of a commercial waste vehicle must comply with all traffic laws, rules and regulations, and must not allow such vehicle to stand with the engine idling in violation of § 24-163 of the Administrative Code.

(q) Any receptacle for the deposit of commercial waste provided by an awardee to a customer must be made of metal or other material of a grade and type acceptable to the Department, the Department of Health and Mental Hygiene and the Department of Housing Preservation and Development, as provided in § 16-120 of the Administrative Code. Receptacles provided by the awardee must be constructed so as to hold their contents without leakage, and must be maintained by the awardee in such condition. All containers provided by the awardee must be provided and maintained with tight fitting covers.

(r) Any container provided by an awardee to a customer for the collection of organic waste must:

(1) Meet the labeling requirements set forth in 16 RCNY § 20-39;

(2) Have a lid and a latch, lock, or other fastening or sealing mechanism or cord that keeps the lid closed and is resistant to tampering by rodents or other wildlife; and

(3) Have the capacity to meet the disposal needs of the customer.

(s) After removing the commercial waste of a customer from a receptacle, a designated carter must return the receptacle to a place inside or in the rear of the premises of the customer. If this is not feasible, the designated carter must place such receptacle against the building line. A designated carter must not return such receptacle to a place or in such a manner that obstructs a sidewalk or other public right of way.

(t) When removing, collecting or disposing of commercial waste, a designated carter must keep the sidewalk, flagging, curbstone and roadway abutting any area from which such waste is removed free from obstruction, garbage, litter, debris and any other offensive material resulting from the removal by the awardee of such commercial waste.

(u) An awardee must immediately clean up any oil, hydraulic, or other fluid that leaks or spills from the awardee's or any of its designated carters' vehicles. Upon notification of any leaks or spills, the awardee must initiate its clean-up activities within 2 hours, and must complete its clean up within 24 hours, in a manner consistent with all applicable laws and rules. The awardee must assume all costs associated with clean-up activities.

(Added City Record 11/16/2021, eff. 12/16/2021*)

* **Editor's note:** For specific effective date provisions, see the editor's note at 16 RCNY Ch. 20.

§ 20-39 Labeling of Containers.

(a) Each container from which commercial waste is collected by a designated carter must be labeled with the container's volume capacity in either cubic yards or gallons. Such label must be conspicuous and legible on the front of the container.

(b) If a container is provided by an awardee, the awardee must imprint and maintain on the container the awardee's name and license number and the volume of the container as required by subdivision (a). An awardee must, at no charge, mark each unmarked container provided by a customer with the name of the owner of the container and the volume of the container as required by subdivision (a).

(c) Any container provided by an awardee to a customer for the collection of designated recyclable materials must be labeled to indicate that only designated recyclable materials may be placed in such container.

(d) Any container provided by an awardee to a customer for the collection of organic waste must be labeled to indicate that only organic waste may be placed in such container.

(Added City Record 11/16/2021, eff. 12/16/2021*)

* **Editor's note:** For specific effective date provisions, see the editor's note at 16 RCNY Ch. 20.

§ 20-40 Routes and Schedules.

An awardee must maintain records of all collection routes and schedules for the collection of commercial waste, and must make such records available to the Department for inspection upon request.

(Added City Record 11/16/2021, eff. 12/16/2021*)

* **Editor's note:** For specific effective date provisions, see the editor's note at 16 RCNY Ch. 20.

§ 20-41 Protection of Private and Public Property.

An awardee and each designated carter must, to the greatest extent possible, prevent damage to public and private rights of way and property. If an awardee or any of its designated carters damages private property, it must immediately notify the property owner where feasible. If an awardee or any of its designated carters damages public property, it must immediately notify the Department and follow any Department directives, including any directives to notify and cooperate with other City agencies. An awardee shall be responsible for all costs associated with the repair or replacement of property that has been damaged by the equipment, employees or agents of the awardee or any of its designated carters, excluding damage from normal wear and tear. An awardee must promptly investigate and respond to any claim concerning property damage. If the Department notifies the awardee of a claim concerning any such damage, the awardee must investigate and respond to the Department within 3 business days.

(Added City Record 11/16/2021, eff. 12/16/2021*)

* **Editor's note:** For specific effective date provisions, see the editor's note at 16 RCNY Ch. 20.

§ 20-42 Emergency Services and Response Requirements.

An awardee must designate a person or persons as the emergency contact to respond to emergencies. Such person or persons must be available 24 hours per day, 7 days per week. An awardee must follow its written Emergency Action Plan included in the agreement between the awardee and the Department, as required by paragraph (11) of subdivision (c) of § 16-1002 of the Administrative Code.

(Added City Record 11/16/2021, eff. 12/16/2021*)

* **Editor's note:** For specific effective date provisions, see the editor's note at 16 RCNY Ch. 20.

§ 20-43 Vehicle Collisions.

In the event of a collision involving a commercial waste vehicle and any other vehicle, cyclist, or pedestrian, at any location, the awardee must notify the Department immediately, except where all of the following circumstances are met:

- (a) The collision does not result in injury to any person;
- (b) The collision does not involve a cyclist or pedestrian; and
- (c) The accident is not required to be reported to the New York State Department of Motor Vehicles on form MV-104 pursuant to section 605 of the New York State Vehicle and Traffic Law, or any subsequent form pursuant to such section.

(Added City Record 11/16/2021, eff. 12/16/2021*)

* **Editor's note:** For specific effective date provisions, see the editor's note at 16 RCNY Ch. 20.

§ 20-44 Vehicle Maintenance and Condition.

(a) The awardee and each designated carter must keep their commercial waste vehicles and equipment in good repair and condition so as to prevent leaks from oil and hydraulic systems, as well as to ensure waterproofing of all seals and enclosures. All commercial waste vehicles must be labeled with the name of the awardee or designated carter.

(b) The awardee must ensure that the engine particulate filter and emissions control technology required pursuant to § 24-163.11 of the Administrative Code are working properly on each commercial waste vehicle.

(Added City Record 11/16/2021, eff. 12/16/2021*)

* **Editor's note:** For specific effective date provisions, see the editor's note at 16 RCNY Ch. 20.

Subchapter D: Safety Requirements

§ 20-50 Safety Records

(a) An awardee must maintain accurate time records for each vehicle operator and worker who handles commercial waste. Such time records must identify the worker by name and job title, and for each day reflect the time the worker reported to work; the route, truck number or other information used to identify the worker's daily work assignment; any off-duty breaks; the time the worker was released from duty; and the total number of hours worked per week.

(b) An awardee must maintain copies of all inspection and certification of repair forms required by subdivision a of 16 RCNY § 20-52 for at least five years, and copies of such forms (paper or electronic) must be available in the corresponding vehicles at all times for 6 months.

(c) An awardee must maintain copies of all daily inspection reports required by subdivision b of 16 RCNY § 20-52 for at least five years, and copies of such reports (paper or electronic) must be available in the corresponding vehicles at all times for 14 days.

(Added City Record 11/16/2021, eff. 12/16/2021*)

* **Editor's note:** For specific effective date provisions, see the editor's note at 16 RCNY Ch. 20.

§ 20-51 Safe Vehicle Operation

(a) An awardee must not permit or require any vehicle operator to drive a commercial waste vehicle unless the vehicle operator complies with the hours of service requirements set forth in Part 395.3 of Title 49 of the Code of Federal Regulations.

(b) An awardee is responsible for ensuring that the commercial waste vehicles used to perform commercial waste collection, transport and removal services under its agreement with the City are not engaging in a pattern of unsafe practices. Each such pattern of unsafe practices is a violation of this subdivision. For purposes of this subdivision, "a pattern of unsafe practices" shall be defined as four instances of prohibited conduct set forth in paragraphs (1) through (6) of this subdivision within a six month period by the awardee's commercial waste vehicles operators or the operators of the commercial waste vehicles of the awardee's designated carters, in the aggregate:

(1) A commercial waste vehicle must not back up unless such movement can be made safely and without interfering with traffic for the minimum distance to allow for the safe collection of trade waste.

(2) A commercial waste vehicle must not make a U turn, except where legally permitted at marked center lines and from designated lanes.

(3) A commercial waste vehicle must stop at all steady red lights until such light turns green. A trade waste vehicle must stop at all flashing red lights and stop signs before entering an intersection.

(4) A commercial waste vehicle must be driven only in the direction designated for the roadway.

(5) A commercial waste vehicle must not obstruct a bike lane, bus stop, sidewalk, crosswalk, or intersection.

(6) Under no circumstances shall an individual ride on or cling to the outside of a commercial waste vehicle while the vehicle is operating on a roadway.

(Added City Record 11/16/2021, eff. 12/16/2021*)

* **Editor's note:** For specific effective date provisions, see the editor's note at 16 RCNY Ch. 20.

§ 20-52 Vehicle Inspections.

(a) (1) A commercial waste vehicle must not be operated unless such vehicle is in safe operating condition and has passed an inspection conducted by a qualified inspector demonstrating compliance with the terms of this section at least once during the preceding six months.

(2) Each such inspection must be recorded on an inspection report form prescribed by the Department. Such inspection report must identify any safety defects discovered during the inspection and cover at a minimum, the following parts and accessories: service and parking brakes, steering mechanism, tires, wheels and rims, sideguards, coupling devices, mirrors, lighting devices and reflectors, horn, windshield wipers, and emergency equipment.

(3) Following an inspection, such vehicle may not be operated unless a qualified inspector certifies on the inspection report that all necessary repairs have been made and that such vehicle has passed the inspection.

(4) Copies of such inspection reports must be kept in the corresponding vehicle in accordance with the requirements of subdivision b of 16 RCNY § 20-50.

(b) A commercial waste vehicle must not be operated unless the operator of such vehicle is satisfied such vehicle is in safe operating condition. An awardee must require the operator of such vehicle to inspect such vehicle following each day's work and to prepare a daily inspection report that identifies such vehicle and any defect that would affect the safety of operation of such vehicle. Such daily inspection report must cover at a minimum the following parts and accessories: service and parking brakes, steering mechanism, tires, wheels and rims, sideguards, coupling devices, mirrors, lighting devices and reflectors, horn, windshield wipers, and emergency equipment. Copies of such daily inspection reports must be kept in the corresponding vehicle in accordance with the requirements of subdivision c of 16 RCNY § 20-50. The operator of such vehicle must review the most recent daily inspection report and determine whether required repairs have been made when evaluating the condition of such vehicle.

(c) The Department or a person designated by the Department may inspect commercial waste vehicles, equipment, licenses, registrations, inspection reports, and fleet records of each awardee and each designated carter at any time at its own discretion.

(1) The Department or a person designated by the Department may order the awardee to immediately remove any commercial waste vehicle or equipment from service and, where appropriate, to take corrective action within a prescribed period of time if the Department or such person designated by the Department determines the vehicle or equipment presents an imminent threat to public health or safety or to the environment due to an issue that may include, but need not be limited to, defective brakes, tires or lighting devices, or leaking or spilling of fluids and escaping of waste. The awardee shall comply with the order within the time prescribed in the order and shall notify the Department when compliance has been achieved.

(2) Within the time specified for compliance in an order issued pursuant to this section, or as otherwise specified in such order, the awardee may submit a written statement appealing the order to the Commissioner in the manner specified in the order.

(3) Submission of an appeal pursuant to paragraph (2) of this subdivision shall relieve the awardee's obligation to take any corrective action within the time prescribed in the order pending a final determination pursuant to paragraph (4) of this subdivision, provided, however, that in the event the Department determines that failure to take corrective action within the time prescribed in the order poses a significant risk of imminent harm to public health or safety or to the environment, the awardee will be notified and will be required to take such corrective action within the specified time, or within an alternative time specified by the Department. Notwithstanding the foregoing, submission of such an appeal shall not relieve the awardee's obligation to remove a commercial waste vehicle or equipment from service during the pendency of an appeal.

(4) The Commissioner must review appeals and make a final written determination regarding the appeal within a reasonable period of time. The Commissioner will serve final determinations on the awardee by mailing the final determination to the awardee.

(5) If the Commissioner sustains an appeal in whole or in part, then the stated terms of the final determination on appeal will replace the original requirements of the order.

(6) If an appeal is denied, the final determination will specify a reasonable period of time for compliance with the order based on the circumstances, except in the case of an order where taking corrective action is required within an earlier time pursuant to paragraph (3) of this subdivision. The final determination by the Commissioner is subject to review pursuant to article 78 of the New York Civil Practice Laws and Rules.

(Added City Record 11/16/2021, eff. 12/16/2021*)

* **Editor's note:** For specific effective date provisions, see the editor's note at 16 RCNY Ch. 20.

§ 20-53 Cross-Over Mirrors; Obstructions to Windshield

(a) Each commercial waste vehicle having a gross vehicle weight rating of 26,000 pounds or more and a conventional cab configuration in which the engine is mounted in front of the operator must be equipped with a convex mirror positioned on the front of such vehicle. When such vehicle is being operated, such mirror shall be adjusted so as to enable the operator thereof to see all points on an imaginary horizontal line which is three feet above the road, is one foot directly forward from the midpoint of the front of such motor vehicle, and extends the full width of the front of such vehicle or combination of vehicles.

(b) Nothing may be placed or suspended in or on the vehicle or windshield so as to obstruct the operator's vision through the windshield or other windows. Nothing in this subdivision shall be construed to prohibit the placement or suspension of an object in or on the vehicle or windshield: (i) in order to comply with or as expressly permitted by federal, state or local law or (ii) authorized pursuant to the agreement between the awardee and the City for purposes of promoting public safety.

(Added City Record 11/16/2021, eff. 12/16/2021*)

* **Editor's note:** For specific effective date provisions, see the editor's note at 16 RCNY Ch. 20.

§ 20-54 Back-up Cameras

No later than January 1, 2026, every commercial waste vehicle must be equipped with a rear video system, rear object detection system, or other device which enables the driver of the vehicle to detect by means of a visual indicator, or visual and audible warning-indicator, persons and objects located directly behind the vehicle.

(Added City Record 11/16/2021, eff. 12/16/2021*)

* **Editor's note:** For specific effective date provisions, see the editor's note at 16 RCNY Ch. 20.

§ 20-55 Auxiliary Exterior Lighting

(a) (1) On or before January 1, 2026, every commercial waste vehicle must be equipped with one or more auxiliary exterior lights on the back of the vehicle, positioned at a height and angle so as to illuminate: (i) the vehicle's hopper; (ii) any other equipment or machinery attached to the back exterior side of the vehicle; and (iii) a work staging area of at least 6 feet behind the vehicle.

(2) Such auxiliary exterior back lights must be sufficiently bright so as to: (i) allow any workers loading waste into the hopper or otherwise working in a staging area behind the vehicle to perform their duties and (ii) make such workers and such staging area visible to other vehicles on the road.

(b) (1) On or before January 1, 2026, every commercial waste vehicle must be equipped with one or more auxiliary exterior lights on both sides of the vehicle, positioned at a height and angle so as to illuminate: (i) any equipment or machinery attached to the side of the vehicle, and (ii) a work staging area running along the length of the vehicle and outward at least 3 feet from the side of the vehicle.

(2) Such auxiliary exterior side lights must be sufficiently bright so as to: (i) allow any workers working in a staging area next to the vehicle to perform their duties and (ii) make such workers and such staging area visible to other vehicles on the road.

(c) The auxiliary exterior lighting required by this section must be turned on when a worker from the vehicle is outside the vehicle performing work at night or during poor visibility conditions, including but not limited to rain, fog or snow.

(d) The auxiliary exterior lighting required by this section must be maintained in good working condition and must be functional at all times while the vehicle is in operation, regardless of the time of day.

(Added City Record 11/16/2021, eff. 12/16/2021*)

* **Editor's note:** For specific effective date provisions, see the editor's note at 16 RCNY Ch. 20.

§ 20-56 Telematics Systems in Commercial Waste Vehicles

(a) An awardee must ensure that each commercial waste vehicle is equipped with a telematics system that meets the requirements of this section and such other specifications as set forth in the awardee's agreement with the Department. Such system must be approved by the Department prior to the implementation start date of the zone in which such vehicle is authorized to operate pursuant to such agreement, or prior to the date that the vehicle is first used as a commercial waste vehicle, whichever is later. Such system must also be approved prior to the date the vehicle is returned to use as a commercial waste vehicle following any replacement of or material alterations to such system.

(b) The telematics system must transmit vehicle location information to both the awardee and the Department in real time, via cellular connection.

(c) The telematics system must transmit in real time via cellular connection the following information to the awardee:

- (1) Vehicle speed;
- (2) Each instance when the vehicle travels at a speed above the applicable speed limit;
- (3) Each instance of sudden acceleration by the vehicle;
- (4) Each instance when the vehicle engages in a hard stop; and
- (5) Vehicle miles traveled.

(d) (1) On a monthly basis, the awardee must submit to the Department the information collected pursuant to paragraphs two through five of subdivision c of this section for each commercial waste vehicle, disaggregated by vehicle and, where applicable, by zone, for the previous month.

(2) Data collected pursuant to paragraphs one through six of subdivision c of this section shall be made available to the Department for inspection upon request.

(e) The awardee must ensure that the telematics system installed in each commercial waste vehicle is constantly maintained and is in good working order.

(f) (1) If any material feature of the telematics system is not functioning, an incident report must be filed by the designated carter with the Department within two hours following the discovery of the malfunction or at such time as the designated carter reasonably should have known of the malfunction.

(2) If any material feature of the telematics system of a commercial waste vehicle is not functioning, the commercial waste vehicle must not operate for more than 7 days following the start of the malfunction or the timely filing of an incident report, whichever is later, until the system is repaired. Any commercial waste vehicle in which there is a malfunction of a material feature of the telematics system more than once in a 30 day period shall be removed from service immediately until the system is repaired.

(3) During the period the telematics system is malfunctioning and the commercial waste vehicle is permitted by this subdivision to operate, the vehicle operator or operators must record the following trip record information by hand at the end of each route:

- (i) Vehicle miles traveled;
- (ii) Route start and stop locations; and
- (iii) A list of stops on each route.

(4) In the case of a partial malfunction of the telematics system, the information required pursuant to paragraph 3 of this subdivision need not be recorded by hand if the telematics system is capable of collecting and transmitting such data in real time in accordance with subdivision b of this section.

(5) Trip records required pursuant to paragraph 3 of this subdivision must be submitted to the Department in the monthly report required pursuant to subdivision d of this section.

(Added City Record 11/16/2021, eff. 12/16/2021*)

* **Editor's note:** For specific effective date provisions, see the editor's note at 16 RCNY Ch. 20.

APPENDIX D

LOCAL LAW 199 for the Year 2019

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

No. 199

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 E

EARNED SAFE AND SICK TIME ACT RIDER

(Wherever the Earned Safe and Sick Time Act Rider refers to “Contractor,” the term shall be construed as also including “Awardee” for purposes of this Agreement.)

NYC EARNED SAFE AND SICK TIME ACT CONTRACT RIDER

(To supersede Section 4.06 of the January 2018 Appendix A and Section 35.5 of the March 2017 Standard Construction Contract and to be attached to other City contracts and solicitations)

A. Introduction and General Provisions.

1. The Earned Safe and Sick Time Act (“ESSTA”), codified at Title 20, Chapter 8 of the New York City Administrative Code, also known as the “Paid Safe and Sick Leave Law,” requires covered employees (as defined in Admin. Code § 20-912) in New York City (“City”) to be provided with paid safe and sick time. Contractors of the City or of other governmental entities may be required to provide safe and sick time pursuant to the ESSTA. The ESSTA is enforced by the City’s Department of Consumer and Worker Protection (“DCWP”), which has promulgated 6 RCNY §§ 7-101 and 201 *et seq.* (“DCWP Rules”).

2. The Contractor agrees to comply in all respects with the ESSTA and the DCWP 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 ESSTA in performance of this agreement may result in its termination.

3. The Contractor must notify (with a copy to DCWP at ComplianceMonitoring@dcwp.nyc.gov) the Agency Chief Contracting Officer of the City Agency or other entity with whom it is contracting in writing within 10 days of receipt of a complaint (whether oral or written) or notice of investigation regarding the ESSTA involving the performance of this agreement. Additionally, the Contractor must cooperate with DCWP’s guidance and must comply with DCWP’s subpoenas, requests for information, and other document demands as set forth in the ESSTA and the DCWP Rules. More information is available at <https://www1.nyc.gov/site/dca/about/paid-sick-leave-what-employers-need-to-know.page>.

4. Upon conclusion of a DCWP investigation, Contractor will receive a findings letter detailing any employee relief and civil penalties owed. Pursuant to the findings, Contractor will have the opportunity to settle any violations and cure the breach of this agreement caused by failure to comply with the ESSTA either i) without a trial by entering into a consent order or ii) appearing before an impartial judge at the City’s administrative tribunal. In addition to and notwithstanding any other rights and remedies available to the City, non-payment of relief and penalties owed pursuant to a consent order or final adjudication within 30 days of such consent order or final adjudication may result in the termination of this agreement without further opportunity to settle or cure the violations.

5. The ESSTA is briefly summarized below for the convenience of the Contractor. The Contractor is advised to review the ESSTA and the DCWP Rules in their entirety. The Contractor may go to www.nyc.gov/PaidSickLeave for 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 ESSTA and the DCWP Rules. The Contractor acknowledges that it is responsible for compliance with the ESSTA and the DCWP Rules notwithstanding any inconsistent language contained herein.

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

1. An employee who works within the City must be provided paid safe and sick time.¹ Employers with one hundred or more employees are required to provide 56 hours of safe and sick time for an employee each calendar year. Employers with fewer than one hundred employees are required to provide 40 hours of sick leave each calendar year. Employers must provide a minimum of one hour of safe and sick time for every 30 hours worked by an employee and compensation for such safe and sick time must be provided at the greater of the employee's regular hourly rate or the minimum wage at the time the paid safe or sick time is taken. Employers are not discouraged or prohibited from providing more generous safe and sick time policies than what the ESSTA requires.

2. Employees have the right to determine how much safe and sick time they will use, provided that an employer may set a reasonable minimum increment for the use of safe and sick time not to exceed four hours per day. For the use of safe time or sick time beyond the set minimum increment, an employer may set fixed periods of up to thirty minutes beyond the minimum increment. In addition, an employee may carry over up to 40 or 56 hours of unused safe and sick time to the following calendar year, provided that no employer is required to carry over unused paid safe and sick time if the employee is paid for such unused safe and sick time and the employer provides the employee with at least the legally required amount of paid safe and sick time for such employee for the immediately subsequent calendar year on the first day of such calendar year.

3. An employee entitled to safe and sick time pursuant to the ESSTA may use safe and 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, the child or parent of an employee's spouse or domestic partner, any other individual related by blood to the employee, and any other individual whose close association with the employee is the equivalent of a family relationship) who has a mental illness, physical illness, injury or health condition or who has a need for medical diagnosis or preventive medical care;

¹ Pursuant to the ESSTA, if fewer than five employees work for the same employer, and the employer had a net income of less than one million dollars during the previous tax year, such employer has the option of providing such employees uncompensated safe and sick time.

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

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

e. when the employee or a family member has been the victim of a family offense matter, sexual offense, stalking, or human trafficking:

1. to obtain services from a domestic violence shelter, rape crisis center, or other shelter or services program for relief from a family offense matter, sexual offense, stalking, or human trafficking;
2. to participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or employee's family members from future family offense matters, sexual offenses, stalking, or human trafficking;
3. to meet with a civil attorney or other social service provider to obtain information and advice on, and prepare for or participate in any criminal or civil proceeding, including but not limited to, matters related to a family offense matter, sexual offense, stalking, human trafficking, custody, visitation, matrimonial issues, orders of protection, immigration, housing, discrimination in employment, housing or consumer credit;
4. to file a complaint or domestic incident report with law enforcement;
5. to meet with a district attorney's office;
6. to enroll children in a new school; or
7. to take other actions necessary to maintain, improve, or restore the physical, psychological, or economic, health or safety of the employee or the employee's family member or to protect those who associate or work with the employee.

4. An employer must not require an employee, as a condition of taking safe and sick time, to search for a replacement. However, where the employee's need for safe and sick time is foreseeable, an employer may require an employee to provide reasonable notice of the need to use safe and sick time. For an absence of more than three consecutive work days, an employer may require reasonable documentation that the use of safe and sick time was needed for a reason listed in Admin. Code § 20-914; and/or written confirmation that an employee used safe and sick time pursuant to the ESSTA. However, an employer may not require documentation specifying the nature of a medical condition, require disclosure of the details of a medical condition, or require disclosure of the details of a family offense matter, sexual offense, stalking, or human trafficking, as a condition of providing safe and sick time. Health information and information concerning family offenses, sexual offenses, stalking or human trafficking obtained solely due to an

employee's use of safe and sick time pursuant to the ESSTA must be treated by the employer as confidential. An employer must reimburse an employee for all reasonable costs or expenses incurred in obtaining such documentation for the employer.

5. An employer must provide to all employees a written policy explaining its method of calculating sick time, policies regarding the use of safe and sick time (including any permissible discretionary conditions on use), and policies regarding carry-over of unused time at the end of the year, among other topics. It must provide the policy to employees 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 safe and sick time to an employee because of non-compliance with such a policy.

6. An employer must provide a pay statement or other form of written documentation that informs the employee of the amount of safe/sick time accrued and used during the relevant pay period and the total balance of the employee's accrued safe/sick time available for use.

7. Safe and 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 safe and sick time was used.

C. *Exemptions and Exceptions.* Notwithstanding the above, the ESSTA 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, if the provisions of the ESSTA are expressly waived in such agreement and such agreement provides a benefit comparable to that provided by the ESSTA for such employee;

3. 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 their own schedule, has the ability to reject or accept any assignment referred to them, and is paid an average hourly wage that is at least four times the federal minimum wage;

4. an employee in a work study program under Section 2753 of Chapter 42 of the United States Code;

5. 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

6. a participant in a Work Experience Program (WEP) under N.Y. Social Services Law § 336-c.

D. *Retaliation Prohibited.* An employer shall not take any adverse action against an employee that penalizes the employee for, or is reasonably likely to deter the employee from or interfere with the employee exercising or attempting in good faith to exercise any right provided by the ESSTA. In addition, an employer shall not interfere with any investigation, proceeding, or hearing pursuant to the ESSTA.

E. *Notice of Rights.*

1. An employer must provide its employees with written notice of their rights pursuant to the ESSTA. Such notice must be in English and the primary language spoken by an employee, provided that DCWP has made available a translation into such language. Downloadable notices are available on DCWP's website at <https://www1.nyc.gov/site/dca/about/Paid-Safe-Sick-Leave-Notice-of-Employee-Rights.page>. The notice must be provided to the employees by a method that reasonably ensures personal receipt by the employee.

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 ESSTA for a period of at least three years, and must allow DCWP to access such records in furtherance of an investigation related to an alleged violation of the ESSTA.

G. *Enforcement and Penalties.*

1. Upon receiving a complaint alleging a violation of the ESSTA, DCWP must investigate such complaint. DCWP may also open an investigation to determine compliance with the ESSTA on its own initiative. Upon notification of a complaint or an investigation by DCWP, the employer must provide DCWP with a written response and any such other information as DCWP may request. If DCWP believes that a violation of the ESSTA has occurred, it has the right to issue a notice of violation to the employer.

2. DCWP 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, but is not limited to, treble damages for the wages that should have been paid; statutory damages for unlawful retaliation; and damages, including statutory damages, full compensation for wages and benefits lost, and reinstatement, for unlawful discharge. In addition, DCWP may impose on an employer found to have violated the ESSTA 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. When an employer has a policy or practice of not providing or refusing to allow the use of safe and sick time to its employees, DCWP may seek penalties and relief on a per employee basis.

3. Pursuant to Admin. Code § 20-924.2, (a) where reasonable cause exists to believe that an employer is engaged in a pattern or practice of violations of the ESSTA, the Corporation Counsel may commence a civil action on behalf of the City in a court of competent jurisdiction by filing a complaint setting forth facts relating to such pattern or practice and requesting relief, which may include injunctive relief, civil penalties and any other appropriate relief. Nothing in § 20-924.2 prohibits DCWP from exercising its authority under section 20-924 or the Charter, provided that a civil action pursuant to § 20-924.2 shall not have previously been commenced.

H. *More Generous Policies and Other Legal Requirements.* Nothing in the ESSTA is intended to discourage, prohibit, diminish, or impair the adoption or retention of a more generous safe and 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 safe and sick time. The ESSTA provides minimum requirements pertaining to safe and 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 safe and sick leave or time, whether paid or unpaid, or that extends other protections to employees. The ESSTA may not be construed as creating or imposing any requirement in conflict with any federal or state law, rule or regulation.