

CONCESSION AGREEMENT

between

**THE CITY OF NEW YORK
DEPARTMENT OF SANITATION
125 Worth Street
New York, New York 10013**

&

**Duramax Holdings LLC
(doing business as Otto Environmental Systems)
12700 General Drive
Charlotte, NC 28273**

City of New York Official Refuse and Recycling Bins

REVOCABLE CONCESSION AGREEMENT
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THIS CONCESSION AGREEMENT, (the “Concession” or “Agreement” or “License”) made and entered into this ___ day of _____, 2024, by and between THE CITY OF NEW YORK (the “City”), acting by and through its Department of Sanitation (“DSNY” or “the Department” or “Licensor”), having its headquarters at 125 Worth Street, New York, New York 10013, and Duramax Holdings LLC (doing business as Otto Environmental Systems) (“Licensee” or “Concessionaire”), having its headquarters at 12700 General Drive, Charlotte, North Carolina 28273.

WITNESSETH:

WHEREAS, the Department is seeking to take the fight to the rats, reduce odors, reclaim street space, and get trash bags off the street once and for all. As a component of that plan, DSNY plans to implement a requirement that all New York City residential properties with nine (9) or fewer units place their putrescible solid waste out for collection in containers with tight fitting lids by a date to be determined, and do so exclusively in City-approved bins (“NYC Waste Bins”) by a point in time approximately two (2) years following the initial mandate, in line with waste management best practices found around the world; and

WHEREAS, the NYC Waste Bins will be available to New Yorkers at a substantial discount compared to existing standard retail prices. While metal, glass, plastic, and paper recycling will not require bins, any resident seeking to use a bin for these streams must also use a City-approved bin; and

WHEREAS, NYC Waste Bins will be produced and distributed by the Concessionaire and must be available for purchase no later than six (6) months following the start of the concession and through the duration of the concession thereafter. New York City residents will be responsible for purchasing the bins directly from the Concessionaire; and

WHEREAS, the Department hereby grants to the Concessionaire the right to (1) market the NYC Waste Bin and (2) use Property identified in Appendix 1 on the bin, on a website, and for purposes of marketing the bin as approved in writing by the Department; and

WHEREAS, the Franchise and Concession Review Committee (“FCRC”) of the City of New York has specifically authorized DSNY to enter into this Concession Agreement; and

WHEREAS, Licensee shall conduct all activities permitted hereunder with reasonable care and be responsible for and shall indemnify and hold the City harmless from any damage to Licensor, third parties (including Licensee’s agents, employees and invitees), and the property resulting from such activities.

NOW, THEREFORE, it is agreed by and between the parties as follows:

ARTICLE 1

GRANT OF CONCESSION

(a) Licensor hereby grants a concession to and permits Licensee to perform the services specified in the Scope of Services (“the Services”), attached hereto as Exhibit “A.”

(b) Licensee shall provide the Services to applicable members of the general public, as described above and in the Scope of Services (Exhibit “A”) at the prices set forth in Exhibit “D.”

(c) Licensee shall provide, at all times, full and free access to view and/or inspect its performance of the Services to the Commissioner of DSNY (“Commissioner”) or the Commissioner’s representatives and to other City, State, and Federal officials or their representatives having jurisdiction for inspection purposes, to ensure DSNY’s satisfaction with Licensee’s compliance with the terms of this Concession Agreement, and for any other City purposes.

ARTICLE 2

TERM

This Concession shall take effect upon DSNY giving the Licensee a written Notice to Proceed following registration with the Comptroller. The Term of the Concession shall commence upon the date in the written Notice to Proceed (“Commencement Date”), and shall terminate no later than ten (10) years from the Commencement Date (“Termination Date” or “Expiration Date”). Licensor shall have the right, at its sole option, to renew the Concession for two (2) additional five-year terms. Licensor shall give Licensee written notice at least ninety (90) days prior to the last day of the initial term if it intends to exercise the first renewal option. Licensor shall give Licensee written notice at least ninety (90) days prior to the last day of the first renewal term if it intends to exercise the second renewal option. If Licensor exercises the option for one or both renewal terms, then the last day of the last renewal term shall be the

Termination Date or Expiration Date. The period between the Commencement Date and Termination Date shall be the License Term (“Term”). Upon the Expiration Date or any earlier revocation or termination, all rights of Licensee by virtue of this Concession shall cease and terminate. Any rights Licensor may have under this Concession and any laws, rules or regulations affecting the conduct of activities permitted hereunder shall survive the revocation or termination of this Concession.

ARTICLE 3

TERMINATION OF CONCESSION

(a) Notwithstanding any language contained herein, this Concession is terminable at will by DSNY at any time. Such termination shall be effective twenty-five (25) days after written notice is sent to Licensee. The Commissioner, the City, its employees, and agents shall not be liable for damages to Licensee in the event that this License is terminated by DSNY as provided for herein.

(b) DSNY may terminate this Concession for cause as follows:

- i. Should Licensee breach or fail to comply with any of the provisions of this License or any Federal, State, or local law, rule, regulation or order affecting this License with regard to any and all matters, Commissioner shall in writing order Licensee to remedy such breach or comply with such provision, law, rule, regulation or order, and in the event that Licensee fails to comply with such written notice or commence, in good faith and with due diligence, efforts to comply with such order within thirty (30) days from the mailing or facsimile transmission thereof, subject to unavoidable delays beyond the reasonable control of Licensee as determined by Commissioner, then this License shall immediately terminate. In the event such breach or failure to comply cannot be remedied within such thirty (30) day period due to reasons beyond Licensee’s control as

reasonably determined by Commissioner, the cure period shall be extended for such period as may be reasonably necessary in the Commissioner's judgment to cure such breach. If said breach or failure to comply is corrected, and a repeated violation of the same provision, law, rule, regulation or order occurs, Commissioner, by notice in writing, may revoke and terminate this License, such revocation and termination to be immediately effective on the mailing thereof.

- ii. The following shall constitute events of default for which this Concession may be terminated on one (1) days' written notice: the appointment of any receiver of Licensee's assets; the making of a general assignment for the benefit of creditors; the occurrence of any act which operates to deprive Licensee permanently of the rights, powers, and privileges necessary for the proper conduct and operation of this License; and the levy of any attachment or execution which substantially interferes with Licensee's operations under this License and which attachment or execution is not vacated, dismissed, stayed or set aside within a period of sixty (60) days.
- iii. Nothing contained in paragraphs (i) or (ii) above shall be deemed to imply or be construed to represent an exclusive enumeration of circumstances under which Commissioner may terminate this License.

(c) Upon expiration or sooner termination of this Concession by DSNY, all rights of Licensee herein shall be forfeited without claim for loss, damages, refund of investment or any other payment whatsoever against the Commissioner, DSNY, or the City. Licensee agrees that upon the expiration or sooner termination of this Concession, it shall immediately cease all operations pursuant to this License without any further notice by DSNY and without resort to any judicial proceeding by the City.

(d) Any and all obligations and/or liabilities of Licensee under this Concession shall survive the revocation or termination thereof.

ARTICLE 4

PERMITTED ACTIVITIES

Licensee shall perform services pursuant to this Concession Agreement in compliance with the Scope of Services attached hereto as Exhibit “A” (hereinafter, the “Permitted Activities”). Licensors make no representation as to the legality of the work under this Concession. In the event any use or proposed use is declared illegal by a court of competent jurisdiction or governmental agency having jurisdiction, Licensee covenants and agrees that Licensors, its agents, officers, and employees, shall not be liable for any damages arising out of or related to such illegal use and that Licensee shall defend, indemnify, and hold harmless Licensors, including its officials and employees, against any liability or expense therefor. During the course of providing services under this Concession Agreement, Licensee shall not promote the sale of tobacco or tobacco products, electronic cigarettes, non-tobacco smoking products, or for arcades, slot machines, gambling establishments of any kind, game rooms, billiard halls, gun sales or repair shops, pornography or physical culture establishments of any kind, or for discotheques or cabarets.

Licensee shall carry out all Permitted Activities hereunder in accordance with all applicable laws, orders, rules, and regulations of all federal, state, and municipal bodies having jurisdiction.

ARTICLE 5

ADDITIONAL CHARGES

(a) In the event that Licensors reasonably determines that Licensee or Licensee’s employees, agents, sublicensees, or subcontractors have breached any of the provisions contained in Article 1, above, or the Scope of Services attached hereto as Exhibit “A,” Licensee

may be subject to a charge of five hundred dollars and zero cents (\$500.00) with respect to each incident of breach as liquidated damages, provided that Licensee has been given reasonable notice of such breach and has failed to cure within thirty (30) days of such notice.

ARTICLE 6

LATE CHARGES/DISHONORED CHECKS

If Licensee fails to pay any Additional Charge in full by the tenth (10th) day from any due date, Licensor, at its sole discretion, may impose a late payment charge equal to two percent (2%) of any charges due, but not less than a minimum charge of ten dollars (\$10.00). Such late payment charge shall be compounded monthly and shall be collectible as an Additional Charge. Licensor's failure to immediately demand a late payment charge shall not waive Licensor's right to collect it at a later date.

In the event that any payment by check is not honored the first time it is presented for payment, Licensee shall make that payment by certified or bank check unless otherwise indicated by Licensor in writing. Nothing contained herein, however, shall be deemed to prevent Licensor from holding Licensee in default under this Concession for the dishonor of any of Licensee's checks. Licensee must pay Licensor a fee of Twenty (\$20.00) Dollars for each dishonored check, which fee shall be collectible as an Additional Charge.

ARTICLE 7

INTELLECTUAL PROPERTY AND ADVERTISING

(a) DSNY hereby approves the Licensee's use of the name "Otto Environmental Systems" and all derivations, logos and trademarks and trade names associated thereof, and DSNY acknowledges that the City has no ownership or other rights in such intellectual property. Licensee represents and warrants that Licensee has all right, title, and interest in the approved

trade names above, or has acquired or properly licensed such right, title, and interest, and that to the extent Licensee shall cease to possess such right, title, or interest, it shall immediately notify DSNY and cease to use such trade names in connection with operations under this Agreement. The placement and design of Licensee's logo on the NYC Waste Bins is subject to the Commissioner's prior written approval.

(b) This Concession is further subject to the terms of the Intellectual Property Terms and Conditions and the exhibits thereto ("Annex 1"), which is fully incorporated and made a part hereof. Concessionaire's breach of those terms shall be a deemed material breach for which the City may terminate this Concession for cause pursuant to Article 3(b), above.

(c) The provisions in this Article 7 are in addition to, and not in lieu of, the additional provisions and requirements set forth in Exhibit A.

ARTICLE 8

NO ASSIGNMENT

This Concession is for the exclusive use of the Licensee and solely for the purpose hereinabove set forth and shall not be assigned either in whole or in part, or leased or sublicensed in any manner, nor shall any interest therein pass to any other person, firm or corporation whatsoever, either by the acts of the Licensee or by operation of law, without the prior consent in writing of Licensor.

ARTICLE 9

COST OF WORK, LABOR, AND MATERIAL

(a) Licensee shall pay the entire cost of all work, labor, and material in connection with all activities undertaken by pursuant to this Concession Agreement, including but not limited to:

- (i) Construction, use, maintenance, delivery, and removal;
- (ii) The protection of all structures which shall in any way be disturbed by the conduct of Permitted Activities; or

- (iii) The inspection of all work during the conduct of Permitted Activities and any restoration, as herein provided, which may be required by any City, state, or federal department having jurisdiction.

ARTICLE 10

PERMITS AND COMPLIANCE WITH LAWS

Before the conduct of any Permitted Activities hereunder shall begin, Licensee shall obtain all permits which may be required by any City, state, or federal department having jurisdiction. Licensee shall perform all the duties which may be imposed by any department as a condition of such permits, provided such conditions are not inconsistent with the provisions of this Concession. Licensee shall submit to those departments working plans which shall include and show in detail the method of construction of the structures hereby authorized and the mode of protection or changes in all structures required by the construction or removal of the same.

Licensee shall comply with all applicable laws, rules, regulations, and orders of City, state, and federal authorities regarding the work under this Concession Agreement, and with such other rules, regulations, orders, terms, and conditions as may be set or required by Licensor.

Licensee shall comply with the Earned Safe and Sick Time Act, also known as the Paid Safe and Sick Leave Law, as a concessionaire of the City of New York, as set forth in the Earned Safe and Sick Leave Law Concession Agreement Rider attached hereto as Exhibit “C.”

ARTICLE 11

INSURANCE

Section 11.01 Licensee’s Obligation to Insure

A. From the date this Concession is executed through the date of its expiration or termination, the Licensee shall ensure that the types of insurance indicated in this Article are obtained and remain in force, and that such insurance adheres to all requirements herein.

B. The Licensee is authorized to undertake or maintain operations under this Concession only during the effective period of all required coverage.

Section 11.02 Commercial General Liability Insurance

A. The Licensee shall maintain Commercial General Liability insurance in the amount of at least One Million Dollars (\$1,000,000) per occurrence. In the event such insurance contains an aggregate limit, the aggregate shall apply on a per-location basis and such per-location aggregate shall be at least Two Million Dollars (\$2,000,000). This insurance shall protect the insureds from claims for property damage and/or bodily injury, including death, that may arise from any of the operations under this Concession. Coverage shall be at least as broad as that provided by the most recently issued Insurance Services Office (“ISO”) Form CG 0001, shall contain no exclusions other than as required by law or as approved by the Commissioner, and shall be "occurrence" based rather than "claims-made."

B. Such Commercial General Liability insurance shall name the City, together with its officials and employees, as an Additional Insured with coverage at least as broad as the most recent edition of ISO Form CG 2026.

Section 11.03 Workers’ Compensation, Employers Liability, and Disability Benefits Insurance

The Licensee shall maintain Workers’ Compensation insurance, Employers Liability insurance, and Disability Benefits insurance on behalf of, or with regard to, all employees involved in the Licensee’s operations under this Concession, and such insurance shall comply with the laws of the State of New York.

Section 11.04 Commercial Automobile Liability Insurance

A. With regard to all operations under this Concession, the Licensee shall maintain or cause to be maintained Commercial Automobile Liability insurance in the amount of at least One Million Dollars (\$1,000,000) each accident (combined single limit) for liability arising out of the ownership, maintenance, or use of any owned, non-owned, or hired vehicles. Coverage shall be

at least as broad as the latest edition of ISO Form CA0001.

B. If vehicles are used for transporting hazardous materials, such 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.

Section 11.05 General Requirements for Insurance Coverage and Policies

A. Policies of insurance required under this Article shall be provided by companies that may lawfully issue such policy and have an A.M. Best rating of at least A- / “VII,” a Standard and 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 City Corporation Counsel.

B. Policies of insurance required under this Article shall be primary and non-contributing to any insurance or self-insurance maintained by the City.

C. There shall be no self-insurance program with regard to any insurance required under this Article unless approved in writing by the Commissioner. The Licensee shall ensure that any such self-insurance program provides the City with all rights that would be provided by traditional insurance under this Article, including but not limited to the defense and indemnification obligations that insurers are required to undertake in liability policies.

D. The City’s limits of coverage for all types of insurance required under this Article shall be the greater of (i) the minimum limits set forth in this Article or (ii) the limits provided to the Licensee under all primary, excess, and umbrella policies covering operations under this Concession.

E. All required policies, except for Workers’ Compensation insurance, Employers Liability insurance and Disability Benefits insurance, shall contain an endorsement requiring that the issuing insurance company endeavor to provide the City with advance written notice in the event such policy is to expire or be cancelled or terminated for any reason, and to mail such notice to both the Commissioner, and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York

10007. Such notice is to be sent at least thirty (30) days before the expiration, cancellation, or termination date, except in cases of non-payment, where at least ten (10) days' written notice would be provided.

F. All required policies, except Workers' Compensation, Employers Liability, and Disability Benefits insurance, shall include a waiver of the right of subrogation with respect to all insureds and loss payees named therein.

Section 11.06 Proof of Insurance

A. Certificates of Insurance for all insurance required in this Article must be submitted to and accepted by the Commissioner prior to or upon execution of this Concession.

B. For Workers' Compensation, Employers Liability Insurance, and Disability Benefits insurance policies, the Licensee shall submit one of the following:

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

C. For all insurance required under this Article other than Workers Compensation, Employers Liability, and Disability Benefits insurance, the Licensee shall submit proof of the required insurance in a form acceptable to the Commissioner. This shall include: (a) Certificates of Insurance certifying the issuance and effectiveness of such policies of insurance, each with the specified minimum limits, and the company code issued to the insurance company by the National Association of Insurance Companies (the NAIC number); (b) the additional insured endorsement(s) in the Licensee's policy/ies (including its general liability policy) by which the

City has been made an additional insured or loss payee, as required herein; and (c) a duly executed “Certification by Insurance Broker or Agent” in the form required by the Licensor, attached hereto as Exhibit “B,” or certified copies of all policies 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.

D. Certificates of Insurance confirming renewals of insurance shall be submitted to the Commissioner prior to the expiration date of coverage of all policies required under this Concession. Such Certificates of Insurance shall comply with subsections (B) and (C) directly above.

E. Acceptance or approval by the Licensor of a Certificate of Insurance or any other matter does not waive Licensee’s obligation to ensure that insurance fully consistent with the requirements of this Article is secured and maintained, nor does it waive Licensee’s liability for its failure to do so.

F. The Licensee shall be obligated to provide the City with a copy of any policy of insurance required under this Article upon request by the Commissioner or the New York City Law Department.

Section 11.07 Miscellaneous

A. The Licensee may satisfy its insurance obligations under this Article through primary policies or a combination of primary and excess/umbrella policies, so long as all policies provide the scope of coverage required herein.

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

C. Where notice of loss, damage, occurrence, accident, claim or suit is required under a policy maintained in accordance with this Article, the Licensee shall notify in writing all insurance carriers that issued potentially responsive policies of any such event relating to any operations under this Concession (including notice to Commercial General Liability insurance carriers for events relating to the Licensee’s own employees) no later than 20 days after such event. For any policy where the City is an Additional Insured, such notice shall expressly

specify that “this notice is being given on behalf of the City of New York as Insured as well as the Named Insured.” Such notice shall also contain the following information: the number of the insurance policy, the name of the named insured, the date and location of the damage, occurrence, or accident, and the identity of the persons or things injured, damaged or lost. The Licensee 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 Licensee fails to comply with the requirements of this paragraph, the Licensee shall indemnify the City, together with its officials and employees 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.

D. The Licensee’s failure to secure and maintain insurance in complete conformity with this Article, or to give the insurance carrier timely notice on behalf of the City, or to do anything else required by this Article shall constitute a material breach of this Concession. Such breach shall not be waived or otherwise excused by any action or inaction by the City at any time.

E. Insurance coverage in the minimum amounts provided for in this Article shall not relieve the Licensee of any liability under this Concession, 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 Concession or the law.

F. In the event of any loss, accident, claim, action, or other event that does or can give rise to a claim under any insurance policy required under this Article, the Licensee shall at all times fully cooperate with the City with regard to such potential or actual claim.

G. Apart from damages or losses covered by Workers’ Compensation Insurance, Employers’ Liability Insurance, Disability Insurance, or Commercial Automobile Insurance, the Licensee waives all rights against the City, including its officials and employees, for any damages or losses that are covered under any insurance required under this Article (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of the Licensee and/or its employees, agents, or servants of its contractors or subcontractors.

H. In the event the Licensee requires any entity, by contract or otherwise, to procure insurance with regard to any operations under this Concession and requires such entity to name the Licensee as an Additional Insured under such insurance, the Licensee shall ensure that such entity also name the City, including its officials and employees, as an Additional Insured with coverage at least as broad as ISO form CG 20 26.

I. In the event the Licensee receives notice, from an insurance company or other person, that any insurance policy required under this Article shall expire or be cancelled or terminated (or has expired or been cancelled or terminated) for any reason, the Licensee shall immediately forward a copy of such notice to both Licensor in accordance with Article 19 (“Notice”) hereinafter and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, NY 10007. Notwithstanding the foregoing, the Licensee shall ensure that there is no interruption in any of the insurance coverage required under this Article.

ARTICLE 12

RESPONSIBILITY FOR SAFETY, INJURIES, OR DAMAGE,

AND INDEMNIFICATION

Section 12.01 Licensee Responsibilities

A. The Licensee shall be solely responsible for the safety and protection of its employees, agents, servants, contractors, and subcontractors, and for the safety and protection of the employees, agents, or servants of its contractors or subcontractors.

B. The Licensee shall be solely responsible for taking all reasonable precautions to protect the persons and property of the City or others from damage, loss or injury resulting from any and all operations under this Concession.

C. The Licensee shall be solely responsible for injuries to any and all persons, including death, and damage to any and all property arising out of or related to the operations under this Concession, whether or not due to the negligence of the Licensee, including but not limited to injuries or damages resulting from the acts or omissions of any of its employees, agents, servants, contractors, subcontractors, or any other person.

D. The Licensee shall comply with, and shall not cause or permit the violation of, any and all federal, state or local environmental, health and/or safety-related laws, regulations, standards, decisions of the courts, permits or permit conditions, currently existing or as amended or adapted in the future which are or become applicable to the Licensee (collectively “Environmental Laws”). Except as may be agreed by the City as part of this Concession, Licensee shall not cause or permit, or allow any of the Licensee’s personnel to cause or permit, any Hazardous Materials to be brought upon, stored, used, generated, treated or disposed of. As used herein, “Hazardous Materials” means any chemical, substance, or material which is now or becomes in the future listed, defined, or regulated in any manner by any Environmental Law based upon, directly or indirectly, its properties or effects.

Section 12.02 Indemnification and Related Obligations

A. To the fullest extent permitted by law, the Licensee shall indemnify, defend and hold the City, including its officials and employees, harmless against any and all claims, liens, demands, judgments, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature (including, without limitation, attorneys’ fees, and disbursements) arising out of or related to any of the operations under this Concession (regardless of whether or not the Licensee itself had been negligent) and/or the Licensee’s failure to comply with the law or any of the requirements of this Concession. Insofar as the facts or law relating to any of the foregoing would preclude the City or its officials and employees from being completely indemnified by the Licensee, the City and its officials and employees shall be partially indemnified by the Licensee to the fullest extent permitted by law.

B. The Licensee’s obligation to defend, indemnify and hold the City and its officials and employees harmless shall not be (i) limited in any way by the Licensee’s obligations to obtain and maintain insurance under this Concession, nor (ii) adversely affected by any failure on the part of the City or its officers and employees to avail themselves of the benefits of such insurance.

ARTICLE 13

[RESERVED]

ARTICLE 14

[RESERVED]

ARTICLE 15

INVESTIGATIONS

15.1 The parties to this Agreement agree to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State of New York (“State”) or City of New York (“City”) governmental 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 concession that is the subject of the investigation, audit or inquiry.

15.2(a) 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 concession entered into with the City, the 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 of New York, or;

15.2(b) 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 concession entered into with the City, the State, or any political subdivision thereof or any local development corporation within the City, then:

15.3(a) The commissioner or agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or concession 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.

15.3(b) If any nongovernmental 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 concession pending the final determination pursuant to paragraph 15.5 below without the City incurring any penalty or damages for delay or otherwise.

15.4 The penalties which may attach after a final determination by the commissioner or agency head may include but shall not exceed:

(a) The disqualification for a period not to exceed five (5) 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 concession with or from the City; and/or

(b) The cancellation or termination of any and all such existing City contracts, leases,

permits, or concessions 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.

15.5 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 (a) and (b) below. He or she may also consider, if relevant and appropriate, the criteria established in paragraphs (c) and (d) below in addition to any other information which may be relevant and appropriate:

(a) 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.

(b) 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.

(b) The nexus of the testimony sought to the subject entity and its contracts, leases, permits or concessions with the City.

(c) 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 15.4 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 15.3(a) 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.

15.6 (a) The term "concession" or "permit" as used herein shall be defined as a concession, permit, franchise or concession not granted as a matter of right.

(b) The term "person" as used herein 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.

(c) The term "entity" as used herein shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, concessions, leases, or permits from or through the City or otherwise transacts business with the City.

(d) The term "member" as used herein shall be defined as any person associated with another person or entity as a partner, director, officer, principal or employee.

15.7 In addition to and notwithstanding any other provision of this Concession, the commissioner or agency head may in his or her sole discretion terminate this Concession upon not less than three (3) days' written notice in the event Licensee fails to promptly report in writing to the Commissioner of Investigation of the City of New York any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this Concession by the Licensee, or affecting the performance of this Concession.

ARTICLE 16

NO DISCRIMINATION

(a) Licensee shall not unlawfully discriminate against any customer because of actual or perceived age, race, creed, religion, sex, gender, color, disability, sexual preference or orientation, national origin, alienage, citizenship status, partnership status, marital status, military status, presence of a service animal or any other class of individuals protected from discrimination in public accommodations by City, State, or Federal laws, rules or regulations.

(b) Licensee shall not unlawfully discriminate against any employee or applicant for employment because of actual or perceived age, race, creed, religion, religious practice, sex, gender, color, disability, sexual preference or orientation, national origin, alienage, citizenship status, partnership status, marital status, pregnancy, childbirth or condition relating to pregnancy or childbirth, political beliefs or affiliations, arrest or conviction record, military status, predisposing genetic characteristics, unemployment status, status as a victim of domestic violence, stalking, and sex offenses, presence of a service animal, or any other protected class of individuals as defined by City, State or Federal laws, rules or regulations. All advertising for employment shall indicate that Licensee is an Equal Opportunity Employer.

ARTICLE 17

NO CONFLICT OF INTEREST

Licensee warrants and represents that no officer, agent, employee, or representative of the City of New York has received any payment or other consideration for the making of this Concession and that no officer, agent, employee or representative of The City of New York has any interest, directly or indirectly, in this Concession or the proceeds thereof.

ARTICLE 18

OTHER AGREEMENTS

It is understood that all other agreements between the parties with respect to this Concession shall be superseded by this Concession, and any obligations between the parties shall be determined solely by this Concession until such time as this Concession is superseded by another agreement.

ARTICLE 19

NOTICES

Except as otherwise in this Concession specifically provided, a notice or communication which either party is required to give to the other shall be in writing by personal delivery or by overnight mail or by registered or certified mail, return receipt requested, addressed to the other at the address set forth below or to such other address as either party may from time to time direct by written notice given in the manner herein prescribed. Such notice or communication shall be deemed to be received as follows: if by personal delivery upon receipt, if by overnight mail the next day following the date of mailing, or if by registered or certified mail the third day following such mailing.

To Licensor:

New York City Department of Sanitation
Attn: Deputy Commissioner of Strategic Initiatives
125 Worth Street, 7th Floor
New York, New York 10013

To Licensee:

Duramax Holdings LLC (d/b/a Otto Environmental Systems)
Attn: Travis Dowell, Vice President
12700 General Drive
Charlotte, North Carolina 28273

ARTICLE 20

WARRANTY

The undersigned signatory for Licensee personally warrants and represents that he/she has full power and authority to enter into this agreement on behalf of Licensee and to bind Licensee to its terms.

ARTICLE 21

JURY WAIVER; WAIVER OF COUNTERCLAIM

(a) To the fullest extent permitted by law, the Licensee waives its right to a jury trial in any action, proceeding, or counterclaim brought by the City or by Licensor in any matter related to this License. In the event of any action or proceeding brought by the Licensor, Licensee waives its right to counterclaim or set-off therein, which waiver shall survive the revocation or termination of this Concession.

(b) No action at law or proceeding in equity against the City shall lie or be maintained upon any claim based upon this License Agreement or arising out of this License Agreement or in any way connected with this License Agreement unless Licensee shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims, all as herein provided.

(c) No action shall lie or be maintained against the City by Licensee upon any claims based upon this License unless such action shall be commenced within one (1) year of the termination or conclusion of this License, or within one (1) year after the accrual of the cause of action, whichever first occurs.

(d) In the event any claim is made or any action brought in any way relating to this License Agreement herein other than an action or proceeding in which Licensee and the City are adverse parties, Licensee shall diligently render to the City of New York without additional compensation any and all assistance which the City of New York may reasonably require of

Licensee.

(e) No claim whatsoever shall be made by the Licensee against any officer, agent or employee of the City for, or on account of, anything done or omitted in connection with this License.

ARTICLE 22

[RESERVED]

ARTICLE 23

[RESERVED]

ARTICLE 24

RIGHT TO AUDIT

Licensee shall make available to the office of the Comptroller of the City of New York and Licensor's auditor, on demand, all books, records, documents, and correspondence pertaining to the Concession, for the purpose of examination, audit, review or any purpose deemed necessary by the office of The Comptroller of the City of New York and/or Licensor.

ARTICLE 25

CHOICE OF LAW; CONSENT TO JURISDICTION AND VENUE

(a) This License Agreement shall be deemed to be executed in the City of New York, State of New York, regardless of the domicile of the Licensee, and shall be governed by and construed in accordance with the laws of the State of New York.

(b) Any and all claims asserted by or against the City arising under this License or related thereto shall be heard and determined either in the courts of the United States located in New York City ("Federal Courts") or in the courts of the State of New York ("New York State Courts") located in the City and County of New York. To effect this License Agreement and its intent, Licensee agrees:

(i) If the City initiates any action against the Licensee in Federal Court or in New York State Court, service of process may be made on the Licensee either in person, wherever such Licensee may be found, or by registered mail addressed to the Licensee at its address set forth in this License, or to such other address as the Licensee may provide to the City in writing; and

(ii) With respect to any action between the City and the Licensee in New York State Court, the Licensee hereby expressly waives and relinquishes any rights it might otherwise have (A) to move to dismiss on grounds of forum non conveniens, (B) to remove to Federal Court; and (C) to move for a change of venue to a New York State Court outside New York County.

(c) With respect to any action between the City and the Licensee in Federal Court located in New York City, the Licensee expressly waives and relinquishes any right it might otherwise have to move to transfer the action to a United States Court outside the City of New York.

(d) If the Licensee commences any action against the City in a court located other than in the City and State of New York, upon request of the City, the Licensee shall either consent to a transfer of the action to a court of competent jurisdiction located in the City and State of New York or, if the court where the action is initially brought will not or cannot transfer the action, the Licensee shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in New York City.

SIGNATURES ARE ON THE FOLLOWING PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date hereinabove set forth.

LICENSOR:
THE CITY OF NEW YORK
DEPARTMENT OF SANITATION

By: _____
Kirk Eng
Agency Chief Contracting Officer

LICENSEE:
DURAMAX HOLDINGS LLC

By: _____ (Signature)
_____(Print Name)
_____(Title, If any)

APPROVED AS TO FORM AND
CERTIFIED AS TO LEGAL AUTHORITY

Acting Corporation Counsel

UNIFORM FORM OF ACKNOWLEDGMENT

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

On the day of , in the year 2024, before me, the undersigned, personally appeared, KIRK ENG, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual executed the instrument.

Notary Public

STATE OF)
) SS.:
COUNTY OF)

On this day of , 2024, before me, the undersigned, personally appeared , personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity and that by his/her signature on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

(Notary Public)←*Strike-out*→(Commissioner of Deeds)

Appendix I - Intellectual Property Terms and Conditions

SECTION I (License)

Subject to the limitations, terms and conditions set forth herein, the City hereby grants to Licensee a limited, revocable non-exclusive license to use the trademarks and service marks listed in Exhibit I hereto (individually and/or collectively the “Property”) solely in the manner approved in advance in writing by Licensor during the Term in connection with the manufacture, advertising, promotion, sale, and offering for sale of the NYC Waste Bins in the United States (including its territories and possessions) and Canada (“Territory”).

The license granted herein shall be personal in nature, and it is expressly understood and agreed that Licensee has no right to sublicense, assign, convey or transfer in any manner to any other person or entity any rights granted to it hereunder. Any attempt by Licensee, or anyone acting on its behalf, to sublicense, assign, convey or otherwise transfer the license granted herein shall be null and void and shall be grounds for immediate termination of this License Agreement by the City. All sales of the NYC Waste Bin (the “Licensed Product”) pursuant to this License Agreement shall be made by or through Licensee, who agrees to account to Licensor for all sales in the Territory.

SECTION II (Express Conditions and Limitations)

The license granted herein is subject to the following express conditions and limitations:

(a) Licensee agrees to use the applicable trademark and copyright notices as directed by Licensor (™, ® or ©), as well as any additional notations directed by Licensor in connection with the first and most prominent usages of the Property on or in connection with all Licensed Products, hang tags, and packaging: “All New York City logos and marks depicted herein are the property of the City of New York and may not be reproduced without written consent. © 2024 (or other year of initial publication). City of New York. All rights reserved.” Licensee agrees to display the applicable notices and notations as directed by the City on all web sites, displays, advertising, sales brochures, and other promotional materials for each Licensed Product (hereinafter the “Promotional Materials”): “All New York City logos and marks depicted herein are the property of the City of New York and may not be used or reproduced without prior written consent. © 2024 (or other initial year of publication). City of New York. All rights reserved.” Any shortened version of such notices may be used only with the City’s prior written approval.

(b) Licensee agrees that it will not use the Property in any advertising, promotion, sale, or offering for sale of the Licensed Products except as described in Exhibit “A” of the Concession Agreement, or as approved by the City in advance in writing.

(c) The Property shall not be used in connection with the trademarks, service marks, trade names, corporate names, or personal names of any third party, except with the prior written consent of the City.

(d) The Property shall not be used by Licensee or any entity or individual controlled directly or indirectly by Licensee as or as any part of its corporate name, trade name, fictitious name, “d/b/a,” symbol, logo, or other identifier.

(e) The Licensed Product and Licensee’s manufacture, sales, promotion, marketing and selling of the NYC Waste Bins shall be in full compliance (at Licensee’s sole cost and expense) with all applicable federal, state and local statutes, rules, regulations and orders. If Licensee is required to or chooses to recall or remove the Licensed Product to maintain conformity to any such statutes, rules, regulations or orders, Licensee shall bear all costs, expenses and charges caused by or related to such recall or modification.

(f) No license is granted hereunder for the use of the Property for any purpose other than upon or in connection with the Licensed Product. No license is granted hereunder for the manufacture, sale or distribution of Licensed Products to be used for publicity purposes, in combination sales, as giveaways, or to be disposed of under similar methods of merchandising. In the event that Licensee desires to sell Licensed Products for such purposes, Licensee acknowledges and agrees that it must first seek and obtain a separate license therefore from the City, and that the user thereof must also obtain a separate license from Licensor for such use of the Licensed Products. Licensee acknowledges that such separate license may be withheld for any reason.

(g) Licensee may manufacture, promote, advertise, sell, and offer for sale the Licensed Product only in the form approved by the City.

(h) Subject to the City's prior written approval in the City's sole discretion, Licensee agrees to adhere to such quality and ethical standards as may be provided by the City from time to time. The current quality control guidelines and ethical standards in effect are attached hereto as Exhibit 5 and 6.

(i) Subject to the City's prior written approval in the City's sole discretion, Licensee shall sell the Licensed Products in the Territory. The City may object to the continued sale of any Licensed Products that the City determines in its sole discretion to be inconsistent with the goodwill and reputation represented by the Property, or otherwise not in the best interests of the City.

(k) Licensee agrees and acknowledges that its license extends only to the Territory, and that it has no rights in the Property or to export, sell or authorize or permit the sale of any Licensed Products or other products or services bearing or otherwise associated with the Property outside the Territory, or any such proposed or potential sales that Licensee reasonably knows or should know would occur outside the Territory.

(l) Except to the extent that exclusive rights are explicitly granted hereunder, the parties agree and acknowledge that the City reserves the right to use itself or license to others the right to use the Property on any products or services.

SECTION III (No Assignment)

This License Agreement is personal to Licensee and may not be assigned in whole or in part by Licensee without the prior written consent of the City, which may be withheld in the sole discretion of the City. Any attempted or purported assignment or other transfer, sublicense, mortgage or other encumbrance of this License Agreement by Licensee without the prior written approval of the City shall be null and void and grounds for immediate termination of this License Agreement by the City.

SECTION IV (Trademark Ownership)

(a) Licensee agrees that by virtue of this License Agreement it does not and shall not claim any right, title, or interest in the Property or any part thereof (except the right to use them in accordance with this License Agreement), and that any and all uses thereof by Licensee shall inure to the benefit of the City. Licensee acknowledges the City's sole right, title, and interest in and to, and ownership of the Property and the validity of the trademarks and service marks that are part of the Property and the City's rights therein. Licensee agrees that it will not raise or cause to be raised any challenges, questions, or objections to the validity, registrability, or enforceability of the Property, to this License Agreement or to the validity of the Property and the City's rights therein, and shall not contest such right and title, nor do or permit to be done any act or omission which will in any way impair the rights of the City with respect to such Property. Any violation of this paragraph shall constitute an immediate breach of this License Agreement and cause for immediate termination by the City.

(b) Licensee agrees to reasonably assist the City in protecting the City's rights to the Property, including but not limited to reporting to the City any infringement or imitation of the Property of which Licensee

becomes aware. The City shall have the sole right to determine whether to institute litigation with respect to such infringements, as well as the sole right to select counsel. The City may commence or prosecute any claims or suits for infringement of the Property in its own name or the name of Licensee or join Licensee as a party thereto. The City shall be entitled to keep the entire amount of any recovery. If the City brings an action against any infringement of the Property, Licensee shall cooperate with the City and lend whatever assistance is necessary, subject to being reimbursed for its reasonable and pre-approved out-of-pocket expenses.

(c) If claims are made against the City, NYC Tourism+Conventions, or Licensee with respect to the use of the Property in connection with the Licensed Products, then the parties agree to consult with each other on a suitable course of action. In no event shall Licensee, without the prior written consent of the City, have the right to acknowledge the validity of the claim of such party, to obtain or seek a license from such party, or to take any other action which might impair the ability of the City to defend or otherwise contest the claim of such party. The City shall have the right to participate at its own expense in the defense of any claims or suit instituted against Licensee with respect to the use by Licensee of the Property.

(d) Licensee agrees to make modifications requested by the City in Licensee's use of the Property or to discontinue use of the Property on the Licensed Products which are involved, if the City, in its sole discretion, determines such action to be necessary or desirable to resolve or settle a claim or suit or to eliminate the threat of a claim or suit by any party.

(e) Licensee further agrees that it shall not undertake any registration of any trademark, service mark, or trade dress with the United States Trademark Office or any other governmental entity, in connection with the NYC Waste Bins or the Portal, without the prior, express consent of DSNY. Should Licensee initiate any such registration, with or without DSNY's prior consent, Licensee shall, at its own sole cost and expense, provide such assistance as DSNY may, in its sole discretion, deem necessary, including but not limited to assignment of any such application(s) or registration(s), at no cost to the City. Notwithstanding anything else contained in this Agreement, any trademark, service mark, trade dress, website, or domain used (including but not limited to the Portal) used specifically to market and sell the NYC Waste Bin ("NYC Waste Bin IP") shall be the exclusive property of the City, and for the purposes of this Section, the definition of Property shall include any such NYC Waste Bin IP.

SECTION V (Goodwill)

(a) Licensee recognizes and acknowledges that the Property and the City's name and reputation are the exclusive property of the City and that they communicate to the public, worldwide, a reputation for high standards of quality and service, which reputation and goodwill have been and continue to be unique to the City. Licensee further recognizes and acknowledges that the Property has acquired secondary meaning in the mind of the public. Licensee shall not use the Property in connection with any illegal, illicit or immoral purpose or activity, or in any manner which would be inconsistent with or damaging to the City's name and reputation. The City shall have the right to terminate this License Agreement immediately, upon written notice, in the event that any part of the Property is used by Licensee in connection with any illegal, illicit or immoral activity. In addition, in the event that any part of the Property is used by Licensee in any way which, in the reasonable judgment of the City, is inconsistent with or damaging to the City's name or reputation, the City shall so notify Licensee in writing and this License Agreement shall terminate unless Licensee ceases and halts all such uses immediately.

(b) Licensee shall use the Property only in the manner specified by the City. Licensee acknowledges and agrees that all use of and goodwill in the Property shall inure to the sole benefit of the City. Licensee shall not acquire any rights in the Property by virtue of any use it makes of the Property. Licensee shall not attempt to register the Property alone or as part of any other trademark, service mark, trade name, or corporate identifier (including without limitation its own trademark), nor shall Licensee use, adopt as its own, or attempt to register any marks, names, domain names, designations, or indicia that are the same as or similar to the Property.

(c) Licensee agrees that it will apply the proper notations on all Licensed Products, tags, labels, package inserts, containers, packaging, advertising, promotional and display materials or the like containing the Property as set forth in Exhibit "A" of the Concession Agreement.

(d) Any art work or other materials conceived under or resulting from this License Agreement, including but not limited to copyrighted materials and trademarks, trade names, service marks, service names and trade dress and the like, whether developed by Licensee or on behalf of Licensee shall be considered "work made for hire" within the meaning of 17 U.S.C. §101 and is the exclusive property of the City upon creation. In the event that such materials are deemed not to be a work made for hire, Licensee hereby irrevocably assigns to the City its entire right, title, and interest in and to such work and any derivative works thereof (including without limitation all rights of copyright). Licensee agrees to execute any documents as may be deemed necessary or desirable by the City to register in its own name, record, confirm, clarify, or otherwise cause the foregoing assignment of rights to the City to have full legal effect worldwide. If Licensee desires to develop any new or different design for any mark, symbol, logo character or other element included within the Property, Licensee shall first obtain the City's written approval, and in any event all such designs shall be fully subject to the provisions of this paragraph and owned in full by the City.

(e) Licensee acknowledges that, from time to time and without notice to Licensee, it may be necessary or desirable for the City to modify certain elements of the Property in connection with the Licensed Products, to include additional elements to the Property, or to discontinue use of some or all of the elements of the Property. Accordingly, the City does not represent or warrant that the Property or any elements thereof will be maintained or used in any particular fashion. Any new elements or modifications to existing elements used by the City following the execution of this License Agreement may be included in, or deleted from (as applicable), the Property at the sole discretion of the City. Licensee agrees to comply with the City's written request to include such elements as, or to delete such elements from, the Property within a reasonable period of time from Licensee's receipt of such written request.

(f) The City shall have the right, but shall not be under any obligation, to use the Property, Licensed Products, and/or the name of Licensee so as to give the Property, and/or the Licensed Products full and favorable prominence and publicity. The City shall be under no obligation whatsoever to use or continue using the Property, the Licensed Products and/or the name of Licensee in connection with its products or services.

SECTION VII (Termination Rights)

Without prejudice to any other rights, the City has the right to terminate this License Agreement upon written notice to Licensee, effective immediately, at any time that any of the following occurs:

(a) If Licensee shall cease to manufacture and sell the Licensed Products for any reason (except for a cause beyond the control of Licensee, including "acts of God"), for a period of three (3) consecutive months or more.

(b) If Licensee shall fail to make any payment due hereunder or to deliver any of the statements herein referred to, or breaches any other obligation hereunder, and if such default shall continue for a period of thirty (30) days after written notice of such default is sent by the City to Licensee.

(c) If Licensee defaults on any obligation that is secured by a security interest in any Licensed Product, Licensee shall immediately and automatically no longer have the right to sell or otherwise transfer Licensed Products or otherwise use the Property until it notifies the City of the occurrence of such default on any such obligation, and Licensor notifies Licensee that Licensor has elected to waive its right to terminate this License Agreement.

(d) If Licensee makes any assignment for the benefit of creditors, or files any petition under Title 11, United States Code, or files in bankruptcy or is adjudicated as bankrupt or insolvent, or if any trustee in bankruptcy or insolvency is appointed under the laws of the United States or of any State. No assignee for the benefit of creditors, custodian, receiver, trustee in bankruptcy, sheriff or any other officer of the court or official

charged with taking over custody of Licensee's assets or business may continue this License Agreement or exploit the Property if this License Agreement terminates pursuant to this paragraph. Notwithstanding, if, pursuant to Title 11, United States Code, or any amendment or successor thereto, a trustee in bankruptcy or Licensee, as debtor, is permitted to assume this Agreement and does so and, thereafter, wishes to assign this License Agreement to a third party, and that assignment complies with Title 11 of the United States Code, the trustee or Licensee shall notify Licensor of same. Said notice shall set forth the name and address of the proposed assignee, the proposed consideration for assignment and all other relevant details of the assignment. Such notice shall be deemed to grant the Licensor the option to have this License Agreement assigned to such assignee for such consideration, or its equivalent in money and upon such terms as specified in the notice. The option may be exercised by written notice to the trustee or Licensee by Licensor within fifteen (15) days from Licensor's receipt of the notice, or within such shorter time as may be deemed appropriate by the court in a bankruptcy proceeding. If Licensor fails to give notice to the Licensee or trustee within said period, the Licensee or trustee may execute the assignment to the entity referred to in the notice for the consideration and on the terms specified therein. Nothing contained herein shall be deemed to preclude or impair any rights Licensor may have as a creditor in any bankruptcy proceeding.

(e) If Licensor determines that this License Agreement should be terminated without cause.

(f) If Licensee violates the non-assignment or change in controlling interest provisions of this License Agreement.

(g) If Licensee fails to sell Licensed Products within six months of the date of this License Agreement.

Upon termination or expiration of this License Agreement, except as otherwise provided in Section XIII, during the sell-off period, all royalties earned and all applicable guaranteed minimum royalties shall become immediately due and payable.

SECTION VIII (Post Termination)

Upon the expiration of this License Agreement (but not upon termination pursuant to Section XII), Licensee shall be permitted ninety (90) days to sell its remaining inventory of Licensed Products. Sales under this section shall require payment of royalties and all other duties and obligations of Licensee under this License Agreement shall remain in force during the sell off period. At the end of such sell-off period, or upon termination pursuant to any other provision this License Agreement Licensee shall immediately discontinue manufacture, promotion, advertisement, and sale of Licensed Products. In addition, upon expiration or termination of this License Agreement for any reason, Licensee shall deliver to Licensor, or destroy or alter under Licensor's supervision, all molds, dies, prints or other equipment used to manufacture the Licensed Products and Promotional Materials so that such equipment no longer can be used to manufacture products or promotional materials bearing, displaying, or otherwise including the Property and shall provide Licensor with a letter confirming depletion or destruction of such inventory. Licensee acknowledges and agrees that its failure to cease manufacture, sale, advertising, or promotion of the Licensed Products upon expiration or termination of this License Agreement will result in immediate and irreparable harm to Licensor. Licensee further acknowledges and admits that Licensor has no adequate remedy at law for Licensee's failure to cease manufacture, sale, advertising, or promotion of the Licensed Products upon termination or expiration of this License Agreement, except as expressly provided for above. Licensee acknowledges and admits that, in the event of any such failure by it to cease manufacture, sale, advertising, or promotion of the Licensed Products, Licensor shall be entitled to equitable or injunctive relief against Licensee's failure, in addition to any and all other remedies at law that are available to Licensor.

Upon the expiration or sooner termination of this Agreement, Licensee shall, at its sole expense, transfer ownership of any website domains used to market the NYC Waste Bins, including but not limited to the Portal, to City ownership, as the City may reasonably require.

SECTION IX (Samples and Approvals)

(a) The NYC Waste Bins shall meet or exceed the requirements imposed by any and all laws, regulations, government standards, guidelines, manufacturing codes, rules, and the like applicable to the NYC Waste Bins. Without limiting the foregoing, no NYC Waste Bins shall be manufactured from any flammable, explosive, toxic, or otherwise inherently dangerous materials or substances, nor designed so as to constitute any inherent danger to the consumer. Further, Licensee agrees that the NYC Waste Bins shall be of a standard of quality at least as high as that of the product samples initially approved by Licensor so as to be suited to their exploitation and to the protection and enhancement of the Property and the goodwill pertaining thereto.

(b) The NYC Waste Bins shall be manufactured in accordance with the manufacturing specifications contained in the Agreement.

(c) Licensee agrees to submit, at the Licensor's request and at no cost to Licensor (i) initial sketches and/or design concepts; (ii) finished artwork or final proofs; (iii) prototypes or pre-production samples; and (iv) a minimum of one (1) and maximum of twelve (12) final production samples (the "Samples") of the Licensed Products (and any variations thereof), as well as initial samples of subsequent production run(s) if such subsequent production run(s) vary in any manner from prior runs, for Licensor's inspection, testing, analysis and approval prior to any sale or shipment of the NYC Waste Bins. If requested by Licensor, such samples (together with the Specifications) shall be submitted by Licensee to an independent laboratory or other test facility approved in writing by Licensor. All costs associated with such inspection, testing and analysis shall be borne by Licensee, and the results of such inspection, testing and analysis shall be submitted to Licensor for its approval. Licensee shall also provide a reasonable number of samples of the NYC Waste Bins to Licensor in accordance with this paragraph at reasonable intervals of no less than once every twelve (12) months during the Term, with such additional inspection, testing and analysis as Licensor may require in the manner set forth in this paragraph for purposes of product review and quality control.

(e) Licensor shall use reasonable efforts to communicate its written approval or disapproval within forty (40) days of receipt of Samples of the NYC Waste Bins. Any Samples not expressly approved shall be deemed disapproved. If Licensor does not approve the Samples of the NYC Waste Bins, the reasons for disapproval shall be communicated to Licensee. After the Samples are approved pursuant to this paragraph, Licensee shall not depart therefrom in any material respect without Licensor's prior written consent, and Licensor shall not withdraw its approval of the Samples except for good cause.

(f) Licensee shall adhere to Licensor's graphic and packaging standards and guidelines in the use of the Property. Licensee shall submit to Licensor for Licensor's prior written approval all tags, labels, package inserts, containers, packaging, advertising, promotional, display or sales materials or the like containing or referring to the Property. Licensor shall use reasonable efforts to communicate its written approval or disapproval within forty (40) business days of its receipt of items under this paragraph. Any materials not specifically approved shall be deemed disapproved. If Licensor does not approve an item under this paragraph, the reason for such disapproval shall be communicated to Licensee.

(g) Licensee shall at its own cost handle all product warranty and/or guarantee issues, responses and compliance requirements, as well as all consumer inquiries or complaints (collectively, "Consumer Inquiries") relative to any of the NYC Waste Bins. Licensor shall forward to Licensee for handling any and all such Consumer Inquiries that Licensor receives. Upon request by Licensor, Licensee shall advise Licensor in writing of the manner in which it handled any Consumer Inquiry. In addition, Licensee shall provide Licensor with a quarterly report containing all data and information regarding Consumer Inquiries handled during the quarter.

(h) Licensee shall immediately advise Licensor of any product recall considerations or deliberations and provide Licensor with the right to attend and have input into such deliberations. Licensor shall have the ability to declare a product recall of such Licensed Products as Licensor determines in good faith after consulting with Licensee that any product recall is necessary for reasons of public health, safety, welfare or damage

to reputation or good will. Licensee shall bear any and all costs related to any product recall of the Licensed Products using the Property whether voluntary, required by a governmental authority or the Licensor. Licensee shall have in place a comprehensive lot tracking program, starting with raw materials, to ensure such recall effectiveness.

(i) Licensee agrees not to use child labor in the manufacture of or otherwise in connection with any Licensed Products. The term “child” shall refer to a person younger than the local legal minimum age for employment or the age for compelling compulsory education, but in no case shall any children younger than fifteen (15) years of age (or fourteen (14) years of age where local law allows) be used to manufacture, package or sell the Licensed Products. In addition, Licensee agrees to comply with all applicable minimum wage, overtime, occupational safety and health and environmental protection laws in the manufacture and packaging of Licensed Products. Licensee shall perform all obligations under this License Agreement in accordance with applicable provisions of federal, state and local laws, rules and regulations as are in effect from time to time.

SECTION X (Purchase Rights)

Licensor shall have the right to purchase from Licensee, at Licensee’s lowest available wholesale price, such number of royalty-free units of any Licensed Product as Licensor may from time to time specify in a notice to Licensee.

SECTION XI (Indemnification)

To the greatest extent permitted by law, Licensee hereby agrees to be solely responsible for and shall indemnify, defend and hold harmless Licensor, NYC & Company, their respective affiliates and respective officers, officials, agents, and employees from and against any claims, judgments, demands, causes of action, damages, losses, costs and expenses, including but not limited to reasonable attorneys’ fees (collectively and individually, “Claims”), which may be made or asserted by third persons in connection with the manufacture, design, sale, offering for sale, advertising, promotion or use of the Licensed Products, including those based on Licensee’s use of the Property authorized by this License Agreement. Licensee’s defense and indemnification obligations shall further extend to Claims arising from or related to Licensee’s failure to comply with the terms of this License Agreement and Licensee’s unauthorized use of any patent, process, idea, method or device, or unfair trade practice, false advertising, trademark, copyright infringement or the like in connection with the manufacture, design, sale, advertising, promotion or use of the Licensed Products. Without limiting the applicability of any other provision of this Agreement, Licensee expressly agrees that its obligations hereunder shall survive and continue beyond any termination or expiration of this License Agreement.

SECTION XII (Existing Licenses)

Licensee hereby acknowledges that Licensor has previously granted and may continue to grant licenses to third parties for the use of the Property.

SECTION XIII (No Manufacturers, Importers, or Sublicensees)

Licensee shall provide Licensor with a list of the names and addresses of Licensee’s manufacturers, importers and distributors and will notify Licensor of any change in such list. From time to time, Licensor may request that Licensee provide the names of its designers, raw material suppliers and/or authorized importers of the NYC Waste Bins, and Licensee agrees to provide such information upon the request of Licensor. Licensee may sublicense rights under this License Agreement (“Sublicense”) only with the prior, written approval of the Licensor, which may be withheld in Licensor’s sole discretion. Each and every Sublicense granted under this

License Agreement shall contain such provisions as Licensor may require, including without limitation that the Sublicense shall be assignable to the Licensor upon the written demand of the Licensor.

Manufacturer Acknowledgements of Receipt and Compliance with City of New York Ethical Standards for Manufacture of Licensed Product

IN WITNESS WHEREOF, each entity signing below acknowledges receipt and full compliance with Exhibit 6 (Ethical Standards for the City of New York) of this License Agreement.

Duramax Holdings LLC
12700 General Drive, Charlotte, NC 28273

By:
NAME

Its:
TITLE

Date of Signature: _____

LICENSEE SHOULD ADD AS MANY SIGNATURE BLOCKS AS NECESSARY TO INCLUDE ALL AUTHORIZED SOURCES OF LICENSED PRODUCT

Exhibit I
The Property

Word Marks:

New York City Department of Sanitation
DSNY

Logos are on the following page.



sanitation



sanitation

nyc sanitation

NYCsanitation

NYC

DSNY

Exhibit 2

Not Used

Exhibit 3

Not Used

Exhibit 4

Product Labels and Graphics

City Seal Hologram

All products must include a permanent copyright notice and trademark designation etched on the back of the product. It must read “© 2024 [or current year] City of New York. All Rights Reserved.”

If too little room is available to accommodate this etching, individual decisions will be made in consultation with NYC & Company, which shall have the right of prior approval over the final version.

All packaging must include at least the copyright notice “© 2024 [or current year] City of New York. All Rights Reserved.”

Exhibit 5 Quality Control Guidelines

1. All Licensed Products and related materials associated with DSNY's licensing program, including but not limited to packaging, print ads, advertising initiatives, point of purchase displays, story boards, scripts, molds, brochures, videos, DVDs, labels, hangtags, catalogs, sales sheets and all collateral materials must be submitted to NYC & Company for written approval prior to any production.
2. All prototypes of any items which utilize trademarks discussed herein must be submitted at each stage of production. Based on written approval, Licensee may proceed to the next step.
4. The following brief steps will be required for all product submissions:
 - Initial sketches and/ or design concepts
 - Finished artwork or final proofs
 - Prototypes or pre-production samples
 - Production samples
5. Licensee are required to submit all licensed products in each style and variation.
6. Product submissions shall be reviewed and evaluated for:
 - Accuracy of logo representation
 - Proper use of Pantone colors
 - Proper use of trademark designations
 - General appearance and quality of product
 - City policies and standards
7. Each logo is distinctive and therefore must be used separately on Licensed Product and collateral materials. Logos may not be reversed and/ or turned to appear in an opposite direction.
8. All hard goods must include a permanent copyright notice and trademark designation etched on the bottom or other approved location on the product.
9. Licensee agrees to use the following notice, TM, ® or ©, as specified by the Licensor, in connection with the first most prominent usage of the Property on all Licensed Products, hang tags and packaging: "All New York City logos and marks depicted herein are the property of New York City and may not be reproduced without written consent. © 2024 (or other year of initial publication). City of New York. All rights reserved." Licensee agrees to use the following notice, TM, ® or ©, in connection with all displays, advertising, sales brochures, instruction manuals and other promotional materials for each Licensed Product (hereinafter the "Promotional Materials"): "All New York City logos and marks depicted herein are the property of the City of New York and may not be used or reproduced without prior written consent. © 2024 (or other initial year of publication). City of New York. All rights reserved." If impracticable in a particular situation, a shortened version of such notices may be used with Licensor's prior written approval.
10. Licensee must have any vendor or factory that is used to produce Licensed Products acknowledge in writing receipt and compliance with the Ethical Standards Form attached as Exhibit 6. Licensee agrees to provide to DSNY the factory name and factory contact information (foreign or domestic) where production of a particular item will occur once such factory has been assigned for such item. No product approvals will be given without this information.

Exhibit 6

Ethical Standards for the City of New York

The City of New York (“City”) is committed to conducting business in an ethical and responsible manner in all countries, and requires the same from all of its business partners. While the City recognizes that there are different legal and cultural environments in which factories operate throughout the world, these Ethical Standards for Vendors (“Standards”), set forth the basic minimum requirements all factories must meet in order to do business with the City.

These Standards apply to City rights holders of specific licensed products (“Licensees”) and factories that produce goods for the City (“Licensed Products”), including manufacturers, contractors and subcontracted manufacturers (hereinafter collectively referred to as “Vendors”). Under the agreement in place with each Licensee, the City has the right to approve all Vendors of Licensed Products. No Vendor will be approved and no currently approved Vendor will be retained who does not comply with these Standards. The City strongly encourages Vendors to exceed these Standards and promote best practices and continuous improvement throughout their factories.

Legal Requirements:

The City requires that its Vendors must operate in full compliance with all applicable laws and regulations of the countries in which they manufacture and compliance with all local environmental laws applicable to the workplace.

Forced Labor:

The City requires that its Vendors not use forced labor, including, but not limited to, prison, indentured, bonded or involuntary labor.

Child Labor:

Vendor agrees not to use child labor in the manufacture of or otherwise in connection with any Licensed Products. The term “child” shall refer to a person younger than the local legal minimum age for employment or the age for compelling compulsory education, but in no case shall any children younger than fifteen (15) years of age (or fourteen (14) years of age where local law allows) be used to manufacture, package or sell the Licensed Products. In addition, Vendor agrees to comply with all applicable minimum wage, overtime, occupational safety and health and environmental protection laws in the manufacture and packaging of Licensed Products.

Harassment or Abuse:

The City requires that its Vendors treat their employees with respect and dignity. Vendors must provide a work environment free of harassment, abuse or corporal punishment in any form. In addition, Vendors will not use monetary fines as a disciplinary practice.

Discrimination:

The City requires that its Vendors ensure that employment, including but not limited to hiring, salary, benefits, advancement, discipline or termination, is based solely on ability and not on any personal characteristics.

Health and Safety:

The City requires that its Vendors provide a safe and healthy working environment in accordance with applicable local law to prevent accidents and injury arising out of, linked with, or occurring in the course of work or as a result of the operation of employer facilities. Vendors who provide residential facilities must ensure these facilities

are also safe and healthy in accordance with applicable local laws.

Freedom of Association:

The City requires that its Vendors recognize and respect the legal right of employees to freely associate. Employees should not be subject to intimidation or harassment as a result of the peaceful exercise of their legal right to join or to refrain from joining any organization.

Compensation and Benefits:

The City requires that its Vendors pay employees at least the minimum compensation required by local law, and to provide all legally mandated benefits. In addition to their compensation for regular hours of work, employees shall be compensated for overtime hours at such premium rate as is legally required or, in those countries where such laws do not exist, at a rate at least equal to their regular hourly compensation rate.

Hours of Work:

The City requires that its Vendors ensure that, except in extraordinary business circumstances, on a regularly scheduled basis, employees shall (i) not be required to work more than the lesser of (a) sixty (60) hours per week or (b) the limits on regular and overtime hours allowed by the law of the country of manufacture, and (ii) be entitled to at least one day off in every seven day period.

Communication:

The City requires that its Vendors take appropriate steps to ensure that the provisions of these Standards are communicated to employees.

Monitoring and Compliance:

The City requires that its Vendors maintain on file all documentation necessary to demonstrate compliance with the City's Standards. Vendors must allow the City and its designated agents (including third parties) to engage in announced and unannounced monitoring visits, including confidential employee interviews.

City Vendors are required to take necessary corrective actions to promptly remediate any noncompliance. The City reserves the right to ultimately terminate its business relationship and/or cancel existing orders with any Vendor who is unwilling or unable to comply with these Standards.

EXHIBIT "A"
SCOPE OF SERVICES

SCOPE OF SERVICES

A. Timetable

The Program will be implemented by the New York City Department of Sanitation (“DSNY” or “the Department”) in a phased rollout to occur over the span of two (2) years.

The initial Citywide distribution of the NYC Waste Bin by Duramax Holdings LLC, doing business as Otto Environmental Systems (“the Concessionaire”), will begin no later than 6 months following the start of the concession. All of the following Program components shall be in place no later than five (5) months following the start of the concession: (1) production of all bins required in the first phase of implementation; (2) production schedule for the remaining full number of containers; (3) an online sales portal with systems infrastructure to support financial transactions, data privacy, and delivery address validation; (4) a toll-free Helpline where residents can order bins; and (5) a distribution mechanism to deliver bins to residents in a timely manner. The period commencing on “Milestone 1” and continuing through “Milestone 2” – the first 6 month of sales – is referred to in this document as the “Initial Bin Distribution Period.”

The Department reserves the right to delay the Initial Bin Distribution Period by up to six (6) months if a written statement is provided to the Concessionaire.

Phased Rollout		
Milestone	Borough(s)	Delivery Date
Milestone 1	Citywide	6 months after Concession start date
Initial Bin Distribution Period	<i>Citywide</i>	<i>Milestone 1 – Milestone 2</i>
Milestone 2	Citywide	6 months after Milestone 1
Milestone 3	Citywide	6 months after Milestone 2
Milestone 4	Citywide	1 year after Milestone 3
<i>Milestone X</i>	<i>Citywide</i>	<i>Milestone X time is to be determined at the Department’s sole discretion with 6 months prior written notice to the Concessionaire, and only after Milestone 2.</i>

B. Requirements

Program Requirements

1. The Concessionaire shall mass manufacture outdoor waste bins for deployment across all 1–9-unit residential properties in New York City.
2. Bins shall be made for four waste streams: refuse; mixed paper recycling; metal, glass, plastic (“MGP”) recycling; and organics.
3. The Concessionaire must meet the production targets defined below for each waste stream, on the following phased delivery schedule:

Bins Delivered By	Production Total				
	Refuse	MGP	Paper	Organics	All Streams
Friday, November 1, 2024	750,000	80,000	80,000	50,000	960,000
Thursday, May 1, 2025	100,000	95,000	95,000	50,000	340,000
Monday, October 27, 2025	100,000	95,000	95,000	50,000	340,000
Friday, May 1, 2026	200,000	600,000	600,000	350,000	1,750,000
Subtotal	1,150,000	870,000	870,000	500,000	3,390,000

4. Bins shall be made exclusively in three capacities (Sizes “A,” “B”, and “C”) in the approximate proportion of overall production targets provided by DSNY. The Department has the exclusive right to activate a fourth size (“Size D”) for Refuse, MGP, and/or Mixed Paper, so long as six (6) months’ notice is provided to the Concessionaire in writing prior to expected bin delivery.

Size	Gallons	Refuse	MGP	Mixed Paper	Organics
Size A	20-25	-	-	-	100%
Size B	30-35	20%	20%	20%	-
Size C	45-50	80%	80%	80%	-
Size D	60-65	-	-	-	-

5. The Concessionaire shall be responsible for the collection of payment for receptacles.
6. The Concessionaire shall provide weekly updates of all sales and distribution numbers to the Department during Initial Bin Distribution Period for all zones, and monthly reports thereafter for the duration of the concession. Reports must include the total unsold inventory on-hand, number of direct sales overall, number of bins sold directly (by material stream, size, and number of household units), total deliveries, total wholesales to distributors (by retailer location, bin size, and material stream), and any new inventory requests from retailers.
7. The Concessionaire shall be responsible for all storage of the bins until they are distributed directly to residents or to a retailer. The Concessionaire is responsible for all transportation and delivery.
8. The Concessionaire shall host, develop, and maintain a website (the "Portal") specifically for this Program to allow NYC Residents to purchase NYC Waste Bins, and link to the Department's website and other sites, to be determined in writing by the Department, to obtain additional information on the Department's bin regulations and requirements. The website shall contain, but not be limited to, the following information and services:
 - a. A user interface design to be agreed to in writing by the Department;
 - b. Address validation;
 - c. Payment processor;
 - d. A list of participating retailers, with appropriate search engine, to locate retailers by zip code;
 - e. Links to the Department of Sanitation's website;
 - f. Capability of receiving inquiries, complains and information requests; and
 - g. Answers to Frequently Asked Questions ("FAQ").
9. The Concessionaire shall maintain the Portal and fulfill bin orders for NYC residents for the entire duration of the concession agreement.
10. The City shall own all right, title and interest in (a) all trademarks, service marks, trade dress, website URLs, and other intellectual property used to identify the NYC Waste Bins or the Portal ("Trademarks"); and (b) all reports, documents, data, photographs, deliverables, website content (including but not limited to the design elements of the Portal), promotional materials and/or other materials, and any and all drafts and/or other preliminary materials in any format related to the foregoing produced pursuant to this Agreement (collectively, "Copyrightable Materials"). Copyrightable Materials shall upon their creation become the exclusive property of the City, and 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 Concessionaire 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 Concessionaire shall retain no copyright or intellectual property interest in the Copyrightable Materials. The Copyrightable Materials shall be used by the Concessionaire for no purpose other than in the performance of this Agreement without the prior written permission of the City. The Concessionaire 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 Concessionaire shall fully cooperate in this effort, and agrees to provide any and all documentation necessary to accomplish this. The Concessionaire 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 Concessionaire 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. The foregoing shall not prevent the Concessionaire 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. Concessionaire agrees to, at any time, execute such documents or provide such assistance as the City may require in connection with the rights granted pursuant to this paragraph. **Concessionaire shall not register any Trademark with any governmental entity with jurisdiction without the prior written consent of DSNY.** Co-branding will be permitted only with the Department’s written permission.

To the greatest extent permitted by law, the Concessionaire shall defend, indemnify and hold harmless the City, including its officials and employees, against any claim to which any of them may be subject to or which any of them 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 Concessionaire or anyone acting on its behalf.

11. The Concessionaire shall provide human translation of the online ordering portal in all nine (9) Local Law 30 languages: Spanish, Chinese, Russian, Bengali, Haitian, Arabic, Urdu, French, and Polish; additional languages must be offered through machine translation.

12. The Concessionaire shall provide and staff a six (6) day per week, twelve (12) hours per day, Customer Assistance toll-free Helpline to assist Program users with the Program during the entire Concession period. Residents must be able to order a bin through this help line. The Concessionaire will have bi-lingual Spanish/English staff and other language translation capabilities as necessary. The Concessionaire will also have the capability to serve the hearing impaired.
13. The Concessionaire is encouraged but not required to establish a brick-and-mortar sales presence – either direct or through a third-party retailer – in all five boroughs during the Initial Bin Rollout Period.
14. The Concessionaire shall establish a formal dispute and complaint process to be managed by the Concessionaire’s Customer Assistance toll-free helpline.
15. The Concessionaire shall safeguard the confidentiality of information obtained about residents purchasing bins through the website. It is understood that no commercial use shall be made of the names, addresses, or other information concerning website users except for the purposes of the concession.

Purchase, Delivery, and Distribution Requirements

1. The Concessionaire shall make NYC Waste Bins available for purchase both via the online ordering portal and the help line at the start of the Initial Bin Distribution Period.
2. The Concessionaire shall deliver bins purchased directly by Residents within a twenty (20) day window to commence at the point of order following a minimum of three (3) months of production; this does not apply to a “pre-order” period to be determined at the Department’s sole discretion.
3. All items delivered shall arrive fully assembled and in good order.
4. The NYC Waste Bin retail prices – both direct sales and any sales through third-party retail locations – cannot exceed the pricing provided in Exhibit “D” of this Concession Agreement. These prices must be inclusive of the proposer’s entire operating costs, as there will be no additional reimbursement or expenses from the Department.
5. Bins must be constructed for a minimum useful life of ten (10) years under normal conditions with expected wear and tear.

Design Requirements

1. Baseline Construction:

- a. All receptacles must meet the American National Standards Institute (“ANSI”) Type B Container specifications (ANSI Z245.60 – 2008).
Requirements for all bins include, but are not limited to:
 - i. All receptacles must have two (2) wheels.
 - ii. Receptacles must be manufactured to be compatible with mechanical cycling by a “bar-lock” lifter.
 - iii. Receptacles shall be designed and manufactured in accordance with dimensional requirements enumerated in the ANSI specifications.
 - iv. Receptacles must meet safety standards enumerated in ANSI Z245.30-2008.

2. Additional Construction and Materials Requirements

- a. All receptacles shall be made from lightweight durable plastic.
- b. All receptacles over forty (40) gallons in capacity must have handle(s) that can be used by residents to carry bins more easily and for DSNY Sanitation Workers to service bins manually.
 - i. Bin handle placement must not substantially interfere with bin stacking at all sizes.
 - ii. “Handles” can be either separate attachable parts or handgrips integrated into the mold of the bin.
- c. The bins must be lightweight, with a target total weight of 0.5 pounds per gallon for bins greater than 40 gallons. Additional light-weighting of bins is encouraged but not required.
- d. The refuse and organics receptacles must have hinged lids with a secure latching mechanism.
- e. Bin lids should be able to connect to bins during the dumping process so that their movement is sufficiently restricted to prevent any potential harm to a person manually dumping the bin.
- f. All materials and finishes shall be anti-graffiti. Paint, permanent markers, and stickers shall be easy to remove by power washing.

3. Color and Graphics

- a. The Concessionaire shall be required to manufacture receptacle lids and/or bodies using the following standard colors for each waste stream: black or grey bins for refuse; blue bins for metal, glass, and plastic recycling; green bins for mixed paper recycling; and brown bins for organic recycling. Specific color tones for each stream are at the sole discretion of the Department.
- b. The receptacle shall include graphics and messaging as directed by the Department, applied by hot stamp, stickering, or in-mold label.
- c. The Department reserves the right to change color, material finish, and graphics at a later date, with 3-months' prior written notice from the Department.
- d. All receptacles must include a serial number.

Other Requirements

1. Design Changes

- a. The Department reserves the sole right to make additional changes to the bin design and construction during the Contract term. The Concessionaire may submit a change to the unit price to reflect fair and reasonable changes to actual production or delivery costs when a substantial change is made.

2. Price Adjustments

- a. A price increase may be requested by the Concessionaire three (3) months after the start of the Contract term. Thereafter, price increases may be requested three (3) months after the date of the previous request.
- b. Price adjustment requests must be submitted to DSNY in writing. DSNY will respond to any price adjustment requests within thirty (30) days. The request must be addressed to the Agency Chief Contracting Officer.
- c. The documentation on price increases must substantiate the change in price. Acceptable documentation to be provided, at a minimum, includes (1) Manufacturer notice of price increase, (2) Changes in the producer price index, (3) Changes in the cost of average price of comparable products sold at locations similar to the Concessionaire's own products in terms of quality, size, materials, and component parts, or (4) Changes to unit price resulting from substantial design changes by the Department.

- d. No price change will become effective unless approved by the DSNY Agency Chief Contracting Officer, or his/her designee.

3. Data Security

- a. All third-party service providers must comply with all Citywide Information Security Policies and Standards, as defined by the New York City Office of Technology and Innovation (“OTI”).

4. Replacement

- a. Residents will be responsible for bin replacement as the result of normal wear and tear and other conditions not covered by the existing commercial warranty.

5. Intellectual Property Terms and Conditions

- a. Concessionaire shall comply with all terms of the Intellectual Property Terms and Conditions, and all exhibits thereto.

EXHIBIT "B"

EXHIBIT “B”
CERTIFICATES OF INSURANCE

Instructions to New York City Agencies, Departments, and Offices

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

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

-- OR --

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

CITY OF NEW YORK
CERTIFICATION BY INSURANCE BROKER OR AGENT

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

[Name of broker or agent (typewritten)]

[Address of broker or agent (typewritten)]

[Email address of broker or agent (typewritten)]

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

[Signature of authorized official, broker, or agent]

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

State of)

) ss.:

County of)

Sworn to before me this ____ day of _____ 20__

NOTARY PUBLIC FOR THE STATE OF _____

EXHIBIT “C”

NYC EARNED SAFE AND SICK TIME ACT CONCESSION AGREEMENT RIDER

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. Licensees 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 Licensee 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 Licensee 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 Licensee 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 Licensee 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, Licensee will receive a findings letter detailing any employee relief and civil penalties owed. Pursuant to the findings, Licensee 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 Licensee. The Licensee is advised to review the ESSTA and the DCWP Rules in their entirety. The Licensee 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 Licensee can get more information about how to comply with the ESSTA and the DCWP Rules. The Licensee 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;

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

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.

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.

EXHIBIT “D”: PRICE SCHEDULE

Schedule of Prices

Refuse Containers

<u>Gallons</u>	<u>Price</u>
30-35	\$45.88 per bin
45-50	\$53.01 per bin

Mixed Glass and Plastic and Mixed Paper Containers

<u>Gallons</u>	<u>Price</u>
30-35	\$45.88 per bin
45-50	\$53.01 per bin

Organics Containers

<u>Gallons</u>	<u>Price</u>
20-25	\$43.47

Oversize Bins

<u>Gallons</u>	<u>Price</u>
60-65	\$60.08