

CITY OF HOUSTON, TEXAS, ORDINANCE NO. 2014 - \_\_\_\_\_

**AN ORDINANCE GRANTING TO ANDERSON POLLUTION CONTROL, INC., A TEXAS CORPORATION, THE RIGHT, PRIVILEGE, AND FRANCHISE TO COLLECT, HAUL, AND TRANSPORT SOLID WASTE AND INDUSTRIAL WASTE FROM COMMERCIAL PROPERTIES LOCATED WITHIN THE CITY OF HOUSTON, TEXAS, PURSUANT TO CHAPTER 39, CODE OF ORDINANCES, HOUSTON, TEXAS; PROVIDING FOR RELATED TERMS AND CONDITIONS; AND MAKING CERTAIN FINDINGS RELATED THERETO.**

\* \* \* \* \*

**WHEREAS**, Anderson Pollution Control, Inc., a Texas Corporation, is in the business of collecting, hauling, and transporting solid waste and industrial waste from commercial properties, and has applied pursuant to the requirements of Chapter 39, Code of Ordinances, Houston, Texas, for the City of Houston's (the "City") consent to use its public ways to provide the service within the City; and

**WHEREAS**, the City Council find that it is in the best interests of the City to grant such authority to Anderson Pollution Control, Inc., subject to the terms and conditions provided herein; **NOW, THEREFORE;**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:**

**ARTICLE I.  
DEFINITIONS AND INTERPRETATIONS**

**Section 1.01. Short title.** This ordinance shall be known and may be cited as the Anderson Pollution Control, Inc., Commercial Solid Waste Hauling Franchise.

**Section 1.02. Definitions.** Except as may be specifically defined herein, all terms and phrases used herein shall have the meanings ascribed to them first as defined in Article VII, Chapter 39 of the City's Code of Ordinances (the "Code"), and if not defined therein, second, in Article I, Chapter 39 of the Code, and if not defined therein, third, in Section 1-2, Chapter 1 of the Code, as presently adopted or hereafter amended and all such definitions are hereby incorporated herein; in addition, the following terms, phrases, words, and their derivations shall have the meaning given herein unless more specifically defined within other sections of this franchise. When not inconsistent with the context, words used in the present tense include the future tense; words in the single number include the plural number. The word "shall" is always mandatory, and not merely directory.

*Article VII* means Article VII of Chapter 39 of the City's Code of Ordinances.

*Authorized Area* means the incorporated area of the City and such additional areas as may be included in the corporate limits of the City during the term of this Franchise.

*Director* means the director of the City's Administration and Regulatory Affairs Department or his designee.

*Effective Date* is defined in **Section 8.14**.

*Franchise* means the *Commercial Solid Waste Hauling Franchise* ordinance described in Section 1.01 and includes the rights, obligations, and privileges granted to the Grantee hereof.

*Grantee* means Anderson Pollution Control, Inc., a Texas Corporation.

*Gross Revenue* means all revenues collected by the Grantee from the collection, hauling, or transport of solid waste or industrial waste from commercial properties located within the Authorized Area.

Gross Revenue includes by way of illustration and not limitation all fees charged customers for any and all services provided by the Grantee related to its collection, hauling, or transport of solid waste or industrial waste from commercial properties located within the Authorized Area, including all delivery charges, hauling charges, disposal charges, and daily rental charges.

Revenue of an affiliate derived from the Grantee's collection, hauling, or transport of solid waste or industrial waste from commercial properties located within the Authorized Area shall be Gross Revenue to the extent the treatment of such revenue as revenue of affiliate and not the Grantee has the effect of avoiding the payment of Franchise Fees which would otherwise be paid to the City. In no event shall revenue of an affiliate be Gross Revenue to the Grantee if such revenue is otherwise subject to Franchise Fees to be paid to the City. Gross Revenue does not include revenue that is not actually received, even if billed (e.g., bad debt).

Gross Revenues shall not include the franchise fees collected pursuant to this Franchise or any taxes or fees which are imposed on any customer by any governmental unit and collected by the Grantee for such governmental unit.

## **ARTICLE II. GRANT OF AUTHORITY AND TERM**

**Section 2.01. Rights granted.** The applicable terms of **Article VII**, as presently adopted or hereafter amended, are hereby incorporated in this Franchise. There is hereby granted to the Grantee, subject to the reasonable and timely compliance by the Grantee with the provisions contained herein, the non-exclusive right and franchise to use the public way specifically for the purpose of collecting, hauling, and transporting commercial solid waste and industrial waste from commercial properties located within the Authorized Area.

**Section 2.02. Term.** The rights granted hereunder shall be for a 10-year term beginning on the Effective Date.

**Section 2.03. Specific limitations.** This Franchise does not grant the Grantee the right to provide, directly or indirectly, any services not specifically authorized by the terms of this Franchise. This Franchise does not grant the Grantee any right to use the public way for the purpose of placing, locating, or maintaining containers for the collection of solid waste or industrial waste.

**Section 2.04. Use of the public way by other persons.**

a. Nothing in this Franchise shall ever be held or construed to confer upon the Grantee exclusive rights or privileges of any nature whatsoever. The City may permit other persons to, and the Grantee acknowledges that the City or other persons may, make use of its public ways for the purpose of collecting, hauling, and transporting solid waste or industrial waste from commercial properties located within the Authorized Area.

b. The authorization of use of the public ways by other parties as provided in the above shall not create any additional liability to the City as a result thereof.

**Section 2.05. Additions to the authorized area by annexation or otherwise.** The Authorized Area shall include the territory currently included within the boundaries of the City, plus any territory annexed by the City during the term of this Franchise. To the extent allowed by law, following an annexation, the Grantee is required to comply with all of the terms of this Franchise with regard to its operations in the annexed area, including without limitation: (i) applying for a franchise within 45 days after the effective date of the annexation; (ii) pursuing the franchise with diligence; and (iii) making payments related to the annexed area pursuant to **Article III** below as of the earlier of the first day of the month following 45 days after the date of the notice of the City's intent to annex, but not earlier than the effective date of the annexation.

**ARTICLE III.  
PAYMENTS TO CITY**

**Section 3.01. Amount and Time of Payment.**

a. As compensation for the right, privilege, and franchise herein conferred, the Grantee shall pay to the City each year during the term of this Franchise a **Franchise Fee** equal to four percent (4%) of the Grantee's Gross Revenues for such year, or portion thereof. The Franchise Fee is payable to the City each calendar quarter in quarterly payments. The Grantee shall deliver payments to the Director by 12:01 p.m. on or before the 45<sup>th</sup> day following the close of the calendar quarter for which the quarterly payment is calculated. The initial quarterly payment shall cover the period beginning as of the Effective Date. Any necessary prorations shall be made. At the time such payments are delivered, the Grantee shall file with the Director a

sworn financial report itemizing the components of the Grantee's Gross Revenues during the payment period. This report shall incorporate a statement reflecting the market value of all "trade" revenue (revenues from exchanges or barter which do not involve monetary compensation). The Franchise Fee payable hereunder shall be exclusive of, and in addition to, all ad valorem taxes, special assessments for municipal improvements, and other lawful obligations of the Grantee to the City.

b. The Director shall, upon 15 days' advance notice, have the right to inspect those records of the Grantee the Director deems necessary to determine the Grantee's compliance with any term or condition of this Franchise. In the event the Director determines that the Grantee has not complied with any term or condition of this Franchise, the Director shall have the right to use those records in any manner necessary to resolve the Grantee's noncompliance. Without limitation, the Grantee shall keep comprehensive records relating to the computation of sums due to the City.

c. The Grantee shall pay a late penalty of twelve (12) percent per annum, compounded daily, on Franchise Fee payments, or portions thereof, that are paid subsequent to the payment dates specified in **Subsection a** above. If the City identifies, as a result of an audit under this section, amounts owed by the Grantee from prior periods, the Grantee shall pay, in addition to the amount owed, a late penalty of ten (10) percent per annum on the amount identified.

d. Acceptance of Payment. No acceptance of payment shall be construed as a release or as an accord and satisfaction of any claim the City may have for further or additional sums payable under this Franchise or for the performance of any other obligation hereunder.

#### **ARTICLE IV. RECORDS**

**Section 4.01. Record keeping.** In addition to other records or filings required hereunder or by law, the Grantee shall:

a. Maintain records of its solid waste or industrial waste collection, hauling, and transportation business. Such records shall include but are not limited to a complete listing of all accounts within the Authorized Area, identified by customer name, time periods served, rates charged, service address, telephone number, and account number.

b. File copies, upon the Director's request, of any reports made to federal and state authorities pertaining to the regulation of any solid waste or industrial waste collection, hauling, or transporting activity of the Grantee in the public way.

c. Retain all records necessary for the City to review compliance with this Franchise until the final resolution of a franchise audit and any resulting collection action commenced within two (2) years of the termination date specified in Section 2.02 of this Franchise. The

Grantee shall, at the Grantee's expense, make the records available to the Director for inspection or copying within the City during regular business hours upon ten business day's written notice.

d. Maintain records, accounts, and financial and operating reports in a manner that will allow the City to determine the Grantee's compliance with the terms of this Franchise.

The Director may require the keeping of additional records or accounts reasonably necessary to determine the Grantee's compliance with the terms of this Franchise.

#### **Section 4.02. Confidential information.**

a. The Director shall have the right to inspect Grantee's records, accounts and financial and operating information, including, but not limited to, customer lists, contracts and any other information clearly designated by the Grantee to be confidential or proprietary ("confidential information") to determine the Grantee's compliance with this commercial solid waste franchise. The Director will not reproduce any confidential information not specifically required for documentation of audit issues. In the event that the Director requests a copy of confidential information, the Grantee may redact the customer name, service and billing addresses (other than zip code) and telephone number from any copy of confidential information provided to the Director, provided, however, that the Grantee shall retain the unredacted original of the confidential information until notified by the Director of the close of the audit and shall provide the City with an unredacted copy of confidential information upon request of the Director in the event of an audit dispute. If the Grantee fails or is unable to provide an unredacted copy of confidential information to the Director during an audit dispute, any issue with regard to the unavailable information shall be resolved in favor of the City.

b. The Director shall not disclose any confidential information reproduced for documentation of audit issues unless the City has received a request to review or copy confidential information under the Texas Public Information Act or related law. Upon receipt of such request, the City shall notify the Grantee that a request to review or copy confidential information has been submitted to the City.

### **ARTICLE V. RELEASE, INDEMNIFICATION AND INSURANCE**

**SECTION 5.01 THE GRANTEE HEREBY RELEASES AND DISCHARGES THE CITY FROM AND FURTHER COVENANTS AND WARRANTS THAT IT WILL PROTECT, DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY, ITS AGENTS, OFFICERS, DIRECTORS, OFFICIALS, LEGAL REPRESENTATIVES, EMPLOYEES, AND ASSIGNS (COLLECTIVELY REFERRED TO IN THIS SECTION AS "THE CITY") FROM ANY AND ALL FINES, DEMANDS, DAMAGES, INJURIES OR CLAIMS AND CAUSES OF ACTION ARISING BY REASON OF OR IN CONNECTION WITH:**

- (a) THE ACTUAL OR ALLEGED ERRORS, INTENTIONAL ACTS, OMISSIONS OR NEGLIGENT ACTS OF THE GRANTEE (INCLUDING ITS OFFICERS, AGENTS, BONDING COMPANIES, EMPLOYEES AND ANY OTHER PARTY EMPLOYED OR CONTRACTED BY GRANTEE TO PERFORM UNDER THIS FRANCHISE) RELATING TO THIS FRANCHISE; OR
- (b) ANY ACTION OR FAILURE TO ACT BY THE GRANTEE (INCLUDING ITS OFFICERS, AGENTS, BONDING COMPANIES, EMPLOYEES AND ANY OTHER PARTY EMPLOYED OR CONTRACTED BY THE GRANTEE TO PERFORM UNDER THIS FRANCHISE IN CONNECTION WITH THE SYSTEM OR THIS FRANCHISE; OR
- (c) ANY ACTUAL OR ALLEGED NEGLIGENT ACTS OR OMISSIONS OF THE CITY (INCLUDING WITHOUT LIMITATION, THE CITY'S CONCURRENT OR SOLE NEGLIGENCE) IN ANY WAY RELATING TO THE ISSUANCE OR ADMINISTRATION OF THIS FRANCHISE, INCLUDING WITHOUT LIMITATION, THE CITY'S RECEIPT OF INSURANCE POLICIES, ANY CITY APPROVALS OF ASSIGNMENTS AND ANY OTHER SIMILAR ACT OF THE CITY IN CONNECTION WITH FULFILLING ITS DUTIES OR ENABLING THE GRANTEE TO BENEFIT FROM THE RIGHTS ALLOWED UNDER THIS FRANCHISE.

THIS INDEMNITY CLAUSE SHALL APPLY TO THE GRANTEE WHETHER THE GRANTEE IS IMMUNE FROM LIABILITY OR NOT. AS TO ANY MATTERS ARISING UNDER THIS INDEMNITY PROVISION FOR WHICH THE GRANTEE HAS AGREED TO INDEMNIFY THE CITY. THE CITY RESERVES THE EXCLUSIVE RIGHT, BUT NOT THE DUTY, TO SELECT COUNSEL OF ITS CHOICE TO REPRESENT ITS INTERESTS AND THE GRANTEE SHALL INDEMNIFY THE CITY FOR THE REASONABLE AND NECESSARY ATTORNEY FEES OF SUCH COUNSEL.

GRANTEE'S LIABILITY UNDER THIS INDEMNITY CLAUSE IS SEPARATE FROM ITS DUTIES UNDER THE INSURANCE PROVISIONS OF THIS FRANCHISE AND

**SHALL NOT EXCEED \$1,000,000 PER OCCURRENCE,  
EXCLUSIVE OF COSTS OF DEFENDING THE CITY.**

(d) The following procedures shall apply to indemnification under this ordinance:

(1) Notice of Claims. If the City or the Grantee receives notice of any claim or circumstances that could give rise to an indemnified loss, the receiving party shall give written notice to the other party within 10 days. The notice must include the following:

- a. A description of the indemnification event in reasonable detail;
- b. The basis on which indemnification may be due; and
- c. The anticipated amount of indemnified loss;

This notice does not stop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the 10 day period, it does not waive any right to indemnification except to the extent that the Grantee is prejudiced, suffers loss, or incurs expense because of the delay.

(2) Defense of Claims. The Grantee may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. The Grantee shall then control the defense and any negotiations to settle the claim. Within 10 days after receiving written notice of the indemnification request, the Grantee must advise the City as to whether or not it will defend the claim. If the Grantee does not assume the defense, the City shall assume and control the defense, and all defense expenses shall constitute an indemnification loss.

(3) Continued Participation. If the Grantee elects to defend the claim, the City may retain separate counsel at its own expense to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. The Grantee may settle the claim without the consent or agreement of the City unless the settlement (i) would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City; (ii) would require the City to pay amounts that the Grantee does not fund in full; or (iii) would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

**Section 5.02. Insurance.**

a. Before the Effective Date of this Franchise, Grantee shall file with the City an insurance policy evidencing insurance coverage complying with the requirements contained in subsection (b) below or give proof that the Grantee he has qualified as a self-insurer, as the term is defined in the Texas Motor Vehicle Safety Responsibility Act (or any successor) as now in force or hereafter amended.

b. The insurance required in subsection (a) shall be in the form of commercial auto liability coverage in no less than the minimum coverage amounts specified in the Texas Motor Vehicle Safety Responsibility Act issued by a company listed as an authorized auto liability lines carrier on the Texas Department of Insurance's List of Authorized Insurance Companies. Proof of insurance coverage shall be maintained at all times and shall be accepted only in the authorized form that has been promulgated by the City and adopted by the Texas Automobile Insurance Plan Association.

c. The Grantee shall continuously and without interruption, maintain in force the required insurance coverage and limits set forth above as a material term of this Franchise. Failure to do so will be a default under this Franchise, allowing the City, at its option, to terminate this Franchise in accordance with the provisions of **Article VI**.

## **ARTICLE VI. DEFAULT AND TERMINATION**

**Section 6.01. Defaults.** The occurrence of any of the following shall be an event of default under this Franchise:

- a. failure of the Grantee to comply with any material term, condition or provision (including but not limited to timely payment of all sums due hereunder) of this Franchise;
- b. any false statement or misrepresentation as to a material fact in the Grantee's application for this Franchise;
- c. the Grantee's loss of or failure to obtain all licenses, permits, and certification lawfully required by any statute, ordinance, rule or regulation of any regulatory body having jurisdiction over the Grantee's operations under this Franchise and pay all fees associated therewith; or

**Section 6.02. Cure period.** If the Grantee defaults under section 6.01 of this Franchise for a period of 30 days after the Grantee has been notified in writing by the City to cure the specific alleged violation or failure to comply, then the City may follow the procedures set forth herein to declare that all the Grantee's rights and privileges granted by this Franchise are terminated subject to City Council's ratifying ordinance; provided that if the Grantee is alleged to be in violation of any material provision of this Franchise other than the payment of any fee due hereunder and if the Grantee commences efforts to cure the alleged violation(s) within 30 days after receipt of written notice and thereafter prosecutes the curative efforts with reasonable diligence until the curative efforts are completed, then the alleged violation(s) shall not be deemed a default and the City will take no further action at that time.

**Section 6.03. A. Termination.** The City may terminate this Franchise for an uncured default after notice and opportunity to cure as provided in sections 6.01 and 6.02 herein.

Termination is final upon the effective date of City Council's adoption of a City ordinance ratifying the termination. The City's written notice of default and opportunity to cure under section 6.02 herein shall recite that the City Council may vote on an ordinance to terminate this Franchise upon the expiration of 30 days from the date of the notice and shall include the causes and reasons for termination. The Grantee shall be provided the opportunity to appear before the City Council prior to the City Council's consideration of an ordinance to terminate this Franchise. Notice of the time, date, and place when the Grantee may appear before the City Council shall comply with the Texas Open Meetings Law, Chapter 551 of the Texas Government Code. Upon any termination of this Franchise, all amounts owed by the Grantee to City shall immediately become due and payable and Grantee's obligation to pay such sums shall survive the termination of this Franchise.

**B. City's Option to Maintain Franchise in Force.** In the event of an uncured noticed default hereunder, the City, at its sole option and discretion and without waiving such uncured default, may determine to: (a) maintain this Franchise in full force and effect and file suit against Grantee; (b) or pursue such other remedies as may be available to the City at law or in equity.

#### **SECTION 6.04. LIQUIDATED DAMAGES**

**A. THE GRANTEE EXPRESSLY AGREES THAT THE ACTUAL DAMAGES THAT MIGHT BE SUSTAINED BY THE CITY BY REASON OF THE GRANTEE'S VIOLATION OF THIS COMMERCIAL SOLID WASTE HAULING FRANCHISE ARE UNCERTAIN AND WOULD BE DIFFICULT TO ASCERTAIN, AND THAT PAYMENT SPECIFIED HEREIN REPRESENTS REASONABLE LIQUIDATED DAMAGES TO THE CITY FOR THE VIOLATION. IN ADDITION TO ANY OTHER REMEDIES OTHERWISE AVAILABLE TO THE CITY FOR VIOLATIONS OF THIS FRANCHISE, THE CITY MAY CHARGE TO AND COLLECT FROM GRANTEE THE FOLLOWING LIQUIDATED DAMAGES:**

**1. FOR FAILURE TO PROVIDE DATA, DOCUMENTS, REPORTS OR INFORMATION OR TO COOPERATE WITH THE CITY DURING AN AUDIT PURSUANT TO SECTION 3.01 ABOVE, THE CITY'S DAMAGES SHALL BE \$100.00 PER DAY.**

**2. FOR FAILURE OF THE GRANTEE TO COMPLY WITH THE PAYMENT PROVISIONS OF THIS FRANCHISE, THE CITY'S DAMAGES SHALL BE \$200.00 PER DAY.**

**3. FOR FAILURE TO COMPLY WITH ANY OF THE PROVISIONS OF THIS FRANCHISE FOR WHICH A PENALTY IS NOT OTHERWISE SPECIFICALLY PROVIDED, THE CITY'S DAMAGES SHALL BE \$100.00 PER DAY.**

**B. THE DIRECTOR MAY IMPOSE LIQUIDATED DAMAGES HEREUNDER UPON THIRTY (30) DAYS WRITTEN NOTICE TO THE GRANTEE, IF**

**AT THE EXPIRATION OF THE THIRTIETH DAY THE GRANTEE HAS FAILED TO EITHER REMEDY THE VIOLATION OR MAKE ARRANGEMENTS TO DO SO WITH THE APPROVAL OF THE DIRECTOR.**

**C. ANY PAYMENTS TO THE CITY UNDER THIS SECTION SHALL NOT BE CONSIDERED FRANCHISE FEES NOR SHALL THE PAYMENTS BE OFFSET AGAINST THE PAYMENTS REQUIRED PURSUANT TO SECTION 3.01. ABOVE.**

**ARTICLE VII.  
TRANSFER OF AUTHORITY**

**Section 7.01. Prohibition.** The rights, privileges, and franchise granted hereunder may not be assigned, in whole or in part, without the prior consent of the City expressed by resolution or ordinance, and then only under the conditions that may therein be prescribed, except as otherwise provided in **Section 7.04**. No assignment in law or otherwise shall be effective until the assignee has filed with the Director an instrument, duly executed, reciting the fact of the assignment, accepting the terms hereof, and agreeing to comply with all of the provisions hereof. A mortgage or other pledge of assets in a bona fide lending transaction shall not be considered an assignment of this Franchise for the purposes of this Article.

**Section 7.02. Process.** Upon receipt of a request for consent to an assignment, the Director shall diligently investigate the request in a timely manner and place the request on the City Council agenda at the earliest practicable time. The City Council shall proceed to act on the request within a reasonable period of time. An assignment of this Franchise, other than under section 7.04 of this Franchise, is effective as to this Franchise on the effective date of the Ordinance by which City Council grants its consent to the assignment.

**Section 7.03. Scope of review.** In reviewing a request for assignment, the City may inquire into the legal, technical and financial qualifications of the prospective assignee, and the Grantee shall assist the City in so inquiring. The City may condition any assignment upon the terms and conditions it deems reasonably necessary, provided its approval and any terms and conditions so imposed shall be related to the legal, technical, and financial qualifications of the prospective assignee as well as the Grantee's compliance with the terms hereof.

**Section 7.04. Assignments not requiring approval.** Notwithstanding anything to the contrary contained in this Article, the prior approval of the City shall not be required for any assignment to any entity controlling, controlled by, or under common control with the Grantee, as long as the entity has expertise in the operation of a business for the collection, hauling, and transporting of solid waste and/or industrial waste. The Grantee shall give to the Director written notice of the effective date of any assignment made pursuant to this Section accompanied by documentation demonstrating the assignee's financial resources.

**Section 7.05. Release.** Upon receiving the City's consent to an assignment, or, in the event of an assignment qualifying under **Section 7.04**, upon giving notice under **Section 7.04**,

the Grantee shall be relieved of all conditions, obligations, and liabilities arising under this Franchise from and after the effective date of the assignment. Provided however, Grantee shall never be relieved of its obligation to pay any past due sums owing or to perform any unperformed obligations arising under this Franchise prior to the effective date of the assignment.

**ARTICLE VIII.  
MISCELLANEOUS**

**Section 8.01. Notice.**

**a.** All notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received (if by personal delivery) or, on the third business day (Monday–Friday) following deposit in a United States Postal Service post office or receptacle with proper postage affixed and sent by certified mail, return receipt requested, addressed to the respective other party at the address prescribed below or at another address that the receiving party may have theretofore designated by notice to the sending party.

Notice to the City or Director shall be addressed as follows:

Director	<i>and to</i>	City Attorney
Administration and Regulatory		City of Houston Legal Department
Affairs Department		P.O. Box 368
City of Houston		Houston, Texas 77001-0368
611 Walker, 13th Floor		City Hall Annex Fourth Floor
Houston, Texas 77002		900 Bagby, Houston, Texas 77002
Fax Number: 713-837-0631		Fax Number: 832.393.6259

Notice to the Grantee shall be addressed as followed:

Davian Ploger, Director  
Anderson Pollution Control, Inc.  
1011 W. Lewis  
Conroe, TX 77301  
Facsimile Number: 713-947-3802

**b.** If a facsimile number is specified above, notice may also be given by facsimile transmission if receipt is proven by a facsimile confirmation statement. Facsimile notice shall be deemed received (if documented by confirmation) on the date received if receipt is before 5:00 p.m. on a business day (Monday-Friday). If the time of receipt is after 5:00 p.m., the notice shall be deemed received on the next calendar business day.

**Section 8.02. Force Majeure.** Other than the Grantee's failure to pay amounts due and payable under this Franchise, the Grantee shall not be in default or be subject to sanction under

any provision of this Franchise when its performance is prevented by Force Majeure. Force Majeure means an event caused by strike or other labor problem; embargo; epidemic; act of God; fire; flood; adverse weather conditions, or other major environmental disturbance; act of military authority; war or civil disorder. Provided, however, that such causes are beyond the reasonable control and without the willful act, fault, failure or negligence of the Grantee. Performance is not excused under this section following the end of the applicable event of Force Majeure.

**Section 8.03. Controlling laws.** This Franchise and the authority granted herein are subject to the applicable provisions of the Constitution and laws of the United States and of the State of Texas, the Charter of the City, Article VI and the provisions of general applicability of the Code of Ordinances, City of Houston. All obligations of the parties hereunder are performable in Harris County, Texas. In the event that any legal proceeding is brought to enforce the terms of this Franchise, it shall be brought in the Texas State District Courts of Harris County, Texas.

**Section 8.04. Cumulative effect.** This Franchise shall be cumulative of all provisions of the Code of Ordinances, City of Houston, as amended, except in those instances where the provisions of this Franchise are in direct conflict with the provisions of the Code of Ordinances, in which instances the provisions of this Franchise shall supersede the conflicting provisions of the Code as they apply to the City.

**Section 8.05. Severability.** It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections of this Franchise are severable, and, if any phrase, clause, sentence, paragraph or section of this Franchise shall be declared void, ineffective or unconstitutional by the valid judgment or final decree of a court of competent jurisdiction, the voidness, ineffectiveness or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Franchise because the same would have been enacted by the City Council without the incorporation herein of any void, ineffective or unconstitutional phrase, clause, sentence, paragraph or section.

**Section 8.06. Entire agreement.** This Franchise merges the prior negotiations and understandings of the parties hereto and embodies the entire agreement of the parties, and there are no other agreements, assurances, conditions, covenants (expressed or implied) or other terms, whether written or verbal, antecedent or contemporaneous with the execution hereof.

**Section 8.07. Captions.** Captions contained in this Franchise are for reference purposes only, and therefore will be given no effect in construing this Franchise and are not restrictive of the subject matter of any section of this Franchise. Any reference to gender shall include the masculine, feminine and neutral.

**Section 8.08. Acceptance and approval; consent.** An approval by the Director, or any other instrumentality of the City, of any part of the Grantee's performance shall not be construed to waive compliance with this Franchise or to establish a standard of performance other than required by this Franchise or by law. Where this Franchise contains a provision that either party

approve or consent to any action of the other party, the approval or consent shall not be unreasonably withheld or delayed.

**Section 8.09. Non-waiver.** Failure of either party hereto to insist on the strict performance of any of the terms and conditions hereof or to exercise any rights or remedies accruing hereunder upon default or failure of performance shall not be considered a waiver of the right to insist on, and to enforce by any appropriate remedy, strict compliance with any other obligation hereunder or to exercise any right or remedy accruing as a result of any future default or failure of performance. Waiver of the City's rights hereunder may only be effected by a written instrument signed by the Director or Grantee, and approved by City Council.

**Section 8.10. Written amendment.** This Franchise may be amended only by an ordinance duly adopted by the City Council.

**Section 8.11. Publication.** The City Secretary is hereby directed to publish notice of this Franchise in compliance with Article II, Section 18 of the Charter of the City of Houston, Texas. The Grantee shall pay all costs of publication of notice of this Franchise.

**Section 8.12. Acceptance.** No Franchise shall be read and voted on by City Council unless the Grantee has previously accepted and agreed in writing to the Franchise.

**Section 8.13. Representations and warranties.** In addition to the representations, warranties, and covenants of the Grantee to the City set forth elsewhere herein, the Grantee represents and warrants to the City and covenants and agrees (which representations, warranties, covenants and agreements shall not be affected or waived by any inspection or examination made by or on behalf of the City) that, as of the Effective Date and throughout the term of this Franchise:

**a. Organization, standing and power.** The Grantee is a Texas Corporation, duly organized, validly existing and in good standing under the laws of the State of Texas and is duly authorized to do business in the State of Texas and in the City. The Grantee has all requisite power and authority to own or lease its properties and assets, to conduct its businesses as currently conducted and to execute, deliver and perform this Franchise and all other agreements entered into or delivered in connection with or as contemplated hereby.

**b. Compliance with law.** The Grantee is, to the best of its knowledge and belief, in compliance with all laws, ordinances, decrees and governmental rules and regulations applicable to the business of collecting, hauling and transporting solid waste or industrial waste and has obtained all government licenses, permits, and authorizations necessary for the provision of these services.

**c. Full disclosure.** Without limiting the specific language of any other representation and warranty herein, all information furnished by the Grantee to the City in connection with this Franchise by authorized officers of the Grantee, is, to the best of the Grantee's knowledge and

belief, accurate and complete in all material respects on the date of passage of this Franchise, and includes all material facts required to be stated therein and does not contain any untrue statement of a material fact or omit any material fact necessary to make the statements therein not misleading. There is no fact known to the Grantee, to the best of its knowledge, which materially and adversely affects or in the future could reasonably be expected to materially and adversely affect the business, operations, properties, assets or financial condition of the Grantee which has not been set forth in this Franchise or the other documents, certificates, and instruments delivered to the City by or on behalf of the Grantee specifically for use in connection with the transactions contemplated by this Franchise.

**d. Truthful statements.** The Grantee warrants, to the best of its knowledge and belief, that information provided and statements made in its application for this Franchise were true and correct when made and are true and correct upon execution of acceptance hereof.

**e. Survival of representations and warranties.** All representations and warranties contained in this Franchise shall survive the term of this Franchise.

**Section 8.14. Effective Date.** This Franchise, having been published as required in Article II, Section 18 of the Charter of the City of Houston, shall become effective on the 31<sup>st</sup> day following its final passage by the City Council and approval by the Mayor.

**ACCEPTED AND AGREED TO ON BEHALF OF:**

ANDERSON POLLUTION CONTROL  
(Name of Grantee)

INC. TEXAS  
(Legal Identity and State of Formation)

By: Darwin M. Blazer  
(Signature of Officer or Authorized Person)

Title: President/COO  
(Capacity of Signer)

Dated this 20<sup>th</sup> day of November, 2013.

PASSED first reading this \_\_\_ day of \_\_\_\_\_, 2014.

PASSED second reading this \_\_\_ day of \_\_\_\_\_, 2014.

PASSED third reading this \_\_\_ day of \_\_\_\_\_, 2014.

APPROVED this \_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Mayor of the City of Houston

*mc*

Prepared by Legal Dept.

YSC/nj 9/19/14

*Josh Chy*  
\_\_\_\_\_  
Sr. Assistant City Attorney

Requested by: Tina Paez, Director, Administration and Regulatory Affairs Department

L.D. File No. 0371400151001