

**THIRD AMENDMENT TO LANDFILL GAS UTILIZATION,
COOPERATION AND ROYALTY AGREEMENT**

This contract amendment (“**Amendment Number Three**”) is an amendment to the Original Contract (as defined below) and is entered into as of the _____ day of _____, 2012, between MP Durham LLC (“**Contractor**”), Durham Landfill Electricity LLC (“**DLE**”) and City of Durham (“**City**”).

For the purposes of this Amendment Number Three, the “Original Contract” means the Landfill Gas Utilization Cooperation and Royalty Agreement entered into between Contractor, DLE and City dated July 26, 2008 as amended.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the parties hereto agree to further amend the Original Contract as set out below, with effect from the date hereof:

1. **Definitions**

All capitalized and defined terms used in this Amendment Number Three shall have the meanings ascribed to them in the Original Contract unless otherwise stated herein.

2. **Section 5 (Royalties)**

Section 5 (Royalties) shall be replaced in its entirety with the following:

“In addition to the electricity provided to City to operate the LFG Collection System, Contractor agrees to pay to City, as royalty for the LFG from the Landfill, the sum determined and paid as follows:

- a) **Amount of Royalty.** The royalty due from Contractor to City hereunder shall be determined on the basis of the quantity of useable LFG from the Landfill that is made available to Contractor, as determined by reference to the actual energy output from Contractor’s LFG to energy generators at the Landfill, at a rate of 1.0 cent (\$0.01) per kWh.
- b) **Royalty Paid Semi-Annually.** The royalty shall be paid by Contractor to City by check on each June 1 (for the immediately preceding period from November 1 through to April 30), and each December 1 (for the immediately preceding period from May 1 through to October 31) of each year of the term of this Agreement. Each such check shall be accompanied by supporting evidence of the actual kWh output of Contractor’s LFG to energy generators at the Landfill over the applicable period in the form of meter readings provided to Contractor by Duke Energy (a third party corporation) pursuant to Contractor’s contract to sell electricity to Duke Energy (or by any other third party corporation where the contract with Duke Energy has terminated and been replaced with a contract to sell electricity to such third party corporation).

- c) Royalty Suspended if Sales Suspended. In the event Contractor's contract to sell electricity to Duke Energy is interrupted, the royalty payments will be suspended for the same amount of time as the suspension of the Duke Energy Contract.
- d) Royalty Suspended if Duke Contract Terminated. In the event Contractor's contract to sell electricity to Duke Energy is terminated, then the royalty payments to City shall be suspended. Contractor shall have an obligation to use reasonable efforts to establish a contract to sell energy from the Landfill to another third party, and a new royalty schedule will then be negotiated.
- e) Termination for Failure to Replace Duke Contract. If Contractor has not established a contract to sell energy from the Landfill within one (1) year of the termination of the contract with Duke Energy, the City shall have the right to terminate the Agreement.

City agrees to provide Contractor with such cooperation as is reasonably requested by Contractor in connection with Contractor's sale of energy and to execute and deliver such documents as are reasonably required in connection therewith.

In consideration of receipt of said royalties, City agrees that all rights associated with the LFG utilized by Contractor, except for Greenhouse Gas Credits, shall be conveyed to Contractor. Said rights shall include, but not be limited to, the energy content, the right to tax credits for utilization of the LFG, and the right to renewable energy credits."

3. Except as amended herein, all other terms of the Amended Contract remain in full force and effect.

IN WITNESS WHEREOF, City, DLE and Contractor have signed this Amendment Number Three on the day and year first hereinabove written.

MP Durham, LLC

 (Name)
 (Title)

Durham Landfill Electricity, LLC

(Name)
(Title)

Attest:

CITY OF DURHAM
