Contract for Maintenance and Repair
Of Landfill Gas System at Durham Sanitary Landfill

This contract is made and entered into as of the 5 day of January, 2011, by the City of Durham ("**City**") and MP Operations, LLC ("**Contractor**"), a Delaware limited liability company.

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 the following terms as set out below with effect from the date hereof:

Sec. 1 Background and Purpose. The City has a closed landfill at 2115 East Club Boulevard (the "**Landfill**") that must be maintained. The Landfill has a landfill gas ("**LFG**") management system (the "**System**") that is needed for air quality control as well as for safety purposes to avoid gas migration, and is used as part of a landfill gas to energy project at the Landfill. It is important to keep the System operating in the most efficient manner, in order for the City to comply with landfill gas/energy contractual responsibilities. This contract involves the maintenance and operation of the System by the Contractor. Both City and Contractor will share information regarding the system in order to assist the City in developing a long term plan for continued maintenance and repair for the System and avoid potential disruptions in operation of the landfill gas to energy project.

Sec. 2 Services and Scope to be Performed. In this contract, "**Work**" means the services that the Contractor is required to perform pursuant to this contract and all of the Contractor's duties to the City that arise out of this contract. Unless the context requires otherwise, if this contract states that a task is to be performed or that a duty is owed, it shall be presumed that the task or duty is the obligation of the Contractor. "**Record**" means to note at the time of inspection, then to provide in a written report to the City.

The existing System at the Landfill consists of approximately 66 vertical gas wells, condensate sumps, LFG header and lateral piping, a blower and control station, and a candlestick flare. Under the scope of work for this contract, Contractor shall perform three categories of service during a 1 - year period of time, beginning on the contract date, which includes the following:

1. Routine Operation and Maintenance (O&M) Services
    a. Daily maintenance activities;
    b. Weekly Blower/Flare Station Checks;
    c. Monthly Wellfield Tuning;
    d. Quarterly Blower/Flare Station Maintenanceand Methane Migration Survey;
    e. Annual activities.
2. Operations and Maintenance Reporting;
3. Non-routine and Emergency Services; and

4. Co-ordination with Site Personnel.

Unless otherwise expressly stated herein, the fee payable to Contractor for the Work to be carried out pursuant to the termshereof (the "**Base Fee**") shall be as set out in the Fee Schedule attached to and made part of this contract at **Attachment A**.

2.1A Daily Maintenance Activities

Contractor staff shall be on site on a daily basis and do the following:

- Monitor Flare and blower;
- Inspect Control System and igniter;
- Pump wells as required;
- Maintain comprehensive log sheets which shall outline date, type of work completed and observations relevant to operations at the Landfill and any other information reasonably required by City and communicated to Contractor in writing;
- Blow down compressor condensate line.

2.1 B Weekly Blower/Flare Station Checks

Contractor staff will visit the site once per week to do the following:

- Blower/flare station (BFS) monitoring
  - Monitor LFG composition (methane, oxygen, carbon dioxide and balance gas percent by-volume), pressure and temperature at the BFS inlet and flare inlet;
  - To the extent that the flare is running at the time of such site visit, record LFG flow rate to the flare and thermocouple temperature as displayed on the circular chart recorder or control panel indicator;
  - Change the BFS chart paper and/or memory disk as necessary;
  - Observe and Record problems with the LFG moving equipment; and
  - Complete form to be provided by City to Contractor based on flare shutdowns as noted in the chart recorder and/or memory disk when downtime exceeds 4 hours;

2.1C Monthly Wellfield Tuning

Contractor staff will spend two (2) days per month performing the following routine O&M services on the System:

- Blower/Flare Station (BFS) monitoring:
  - Observe and record pilot gas level, nitrogen tanks, and moisture separator liquid level (if applicable);
  - Check air compressor operation and record air pressure and hour meter; and
  - Observe and notate problems with the LFG moving equipment.

- Wellhead monitoring:
    - Monitor LFG composition, static pressure, system pressure, and temperature (sample ports required);
    - Monitor LFG flow rate and/or differential pressure (Accuflo wellhead or orifice plate flow device required);
    - Adjust and balance wellheads based on mutually agreed goals (e.g. NSPS compliance, fuel gas quality, odor concerns, and/or a combination of goals); and,
    - Inspect wellhead for damage or required repairs and inspect Landfill surface around each well for settlement.

- Condensate collection system inspection:
    - Inspect condensate sumps, condensate traps, and pumping systems to ensure proper operation.

- Contractor will provide to City an O&M schedule for significant parts replacement including but not limited to, compressors, valves, flow meters and other appurtenances.

2.1 D <u>Quarterly Blower/Flare Station Maintenance</u>

Contractor will spend one (1) day per month performing a quarterly maintenance service on the existing blower/ flare station, which includes the condensate knock-out tank, blowers, control panel, flow meter, valves, flame arrestor, and open flare. This maintenance will include, but not be limited to the following:

- Blower grease, belt replacement (as needed);
- Assessment of Condensate KO pot function, differential pressure check;
- Assessment of flame arrestor function, differential pressure check;
- Assessment of flare operation, temperature and flow checks, start-up and shutdown checks, emergency call-out check;
- Assessment of LFG flow meter, check flow using pitot tube;
- Assessment of LFG system controls and operation; and
- Assessment of LFG emergency shutdown valve function.

2.1 E <u>Annual Activities</u>

Contractor will spend the time necessary on site to do the following activities:

- Change compressor oil
- Replace flare ignition
- Calibrate gas meters
- Assist the City of Durham in preparing State and Federal reports and permit renewals.

2.2 Operations and Maintenance Reporting

In support of the Routine O&M Services described above, Contractor will prepare and submit via email in PDF format the following reports:

- Weekly email updates to the City containing the weekly System check data.
- Monthly O&M report for City, site managers, and other personnel (as needed) summarizing the System monitoring results, adjustments, and additional activities performed during Contractor's site visits. Report will contain recommendations to improve system performance to meet the project goals.
- Quarterly BFS inspection report that will include a punch list and cost estimate of any items that require additional inspection, maintenance, replacement or repair.
- Annual update of O&M plan: The Contractor will provide an annual summary of O&M activities, a projection of next year's anticipated activities, a projected cost estimate and a written recommendation of future activities and modifications to the O &M plan.

2.3 Non-Routine and Emergency Services

2.3 A Non-Routine Services

Tasks identified outside of the services detailed in the Routine O&M Services work scope that would need to be performed to repair, improve or modify the System are considered non-routine. Non-routine services include, but are not limited to, rechecks for NSPS wellfield compliance, BFS maintenance and repairs, LFG construction activities, heavy maintenance, assistance to landfill personnel on repairing landfill cover problems and settlement, and time delays to Routine O&M Services not under Contractor's reasonable control. Contractor will coordinate with the City to discuss the details of the identified tasks, develop a work scope, and project budget prior to beginning any work. The fee for the work would be based either on a unit cost agreed between Contractor and City at the time of agreeing the work scope for such Work,or on a time and materials basis, determined in accordance with the Fee Scheduleattached to and made part of this contract as **Attachment A**.

2.3 B Emergency Services

Emergency services are defined as services that must be performed immediately toprevent or respond to a dangerous situation, compliance problem, or site safety issue, and prior approval from the City may not be available. For example, these services would include Contractor responding to a System and/or BFS shutdown due to unknown causes, a landfill or LFG system fire, etc. Contractor will respond as quickly as possible (typically within 4 hours of notice) to address these situations, will make reasonable attempts to provide notice to the emergency contact for the City, which contact shall be provided in writing by the City to Contractor, and will stabilize the System in order to provide the City with information to proceed with any required repairs. Contractor assumes in determining the Base Fee that the time on-site to perform such emergency services will be approximately 4 working hours per month. The fee for any additional

emergency services provided will be based on a time and materials basis determined in accordance with the Fee Schedule attached to and made part of this contract at **Attachment A**.

2.4 Coordination with Site Personnel

2.4A Contractor will update and/or review the daily activity log book and site personnel records on the System and ensure appropriate operator certification as well as comply with such other reasonable requests relating to coordination with site personnel that City communicates to Contractor in writing; and

2.4B Contractor will perform the Routine O&M Services accompanied by City site personnel where necessary for coordination purposes. However, it is understood that due to the time sensitive nature of most LFG O&M services, there may be times when City personnel are not available. Contractor and City shall make reasonable efforts to coordinate schedules so that unanticipated expenses can be captured within an acceptable time frame for Contractor and City.

2.5 Assumptions and Conditions

1. Unrestricted site access for personnel, equipment and materials to enable completion of the work.
2. Work can be performed in OSHA Level D protection and in accordance with the SWANA Landfill Gas Divisions Health and Safety Task Force, "A Compilation of Landfill Gas Laboratory and Field Practices and Procedures," dated March, 1992.
3. The collection and disposal of landfill materials, landfill gas, condensate, leachate, and other landfill by-products are the responsibility of City and shall be coordinated on a case by case basis. The Contractor will not be responsible for permits and ultimate disposal of any condensate, leachate or solid materials generated in the operation and maintenance of the wellfield. However, the solids generated from maintenance activities must be inspected and classified before disposal actions are taken by the Contractor. The aqueous wastes shall be handled as per the mutually agreed upon method of disposal and any accidental or unpermitted discharges shall be brought to the attention of the City.
4. The responsibility for hazardous waste, flare gas, petroleum products, leachate, condensate, or any other regulated substance, either federal or state, will not pass to Contractor.
5. All applicable permits (i.e., air, solid waste, etc.) will be provided by others or by Contractor where required by City under a separate agreement.
6. All collection and monitoring devices are to be clearly labeled in the field and depicted accurately on a scaled site map.
7.
8. City will provide or reimburse Contractor for all System supplies and consumables, such as blower grease, chart paper, memory cards, Kannaflex hose,

sampling ports, bolts, wellheads, and pipe at the actual purchase cost plus 20 percent. Contractor will provide hand tools, , labor, and mobilization as part of its fees.

9. City allows Contractor to use the pipe welding machine and 2x LandTECGEM2000 monitoring equipment belonging to City without charge provided that Contractor will be responsible for all calibration and maintenance of said equipment. Serial Number: GEM 2000 GM 05742, GEM 2000 07090. The Contractor will make the units available to the City for its or its designee's use on a quarterly basis.
10. The City allows the Contractor to use the Toro Groundmaster 72", City number Equipment number 7200. The Contractor may use the mower for limited mowing purposes around the gas extraction wells. All equipment will be returned to the City shop between uses. The equipment shall be kept in good working order by the contractor while on site. The Contractor is responsible for anyfuel, and significant damage to the unit. Regular wear and tear for the unit shall be the responsibility of the City. The City has no liability for any damage done by the Contractor or injury while the Contractor is operating the equipment.
11. Contractor will take an inventory of existing spare parts belonging to City and store spare parts accordingly.
12. Routine O&M Services do not include engineering services, rental of heavy equipment, LFG sampling, laboratory services, repairs to buried LFG collection piping, major condensate system repairs, landfill cover replacement, confined space entry, etc. These services will be provided by Contractor on a non-routine basis as approved by the City.
13. Contractor will provide all standard tools during O&M events. Additional equipment such as electric generators, fusion machines, GPS, and water level indicators, unless available from the City, will be billed on a time and materials basis at the applicable daily rate, in accordance with **Attachment A**, Fee Schedule, or the actual rental cost plus 20 percent.
14. Unless expressly stated otherwise herein, Contractor's Base Fee includes all labor, travel and standard equipment for the work specified under each category. Additional work performed under the non-routine or emergency call-outs in excess of the lump sum portion specified in this contract will be billed on a time and materials basis, in accordance with **AttachmentA**,Fee Schedule. City payment to Contractor for necessary rental equipment, materials, or other subcontractors's labor to perform authorized non-routine or emergency work will be for the actual cost to Contractor, plus a 20 percent markup.
15. The health and safety of Contractor and subcontractor personnel on-site will be the responsibility of Contractor or its subcontractors. Contractor does not accept responsibility for the health and safety of City or LFG utilization contractor personnel, third-parties, or others not under Contractor's reasonable control.

Sec. 3.Complete Work without Extra Cost. Except to the extent otherwise specifically stated in this contract, the Contractor shall obtain and provide, without additional cost to the City, all labor, materials, equipment, transportation, facilities, services, permits, and licenses necessary to perform the Work.

Sec. 4.Contractor's Billings to City. Compensation. The Contractor shall send invoices to the City on a monthly basis for the amounts to be paid pursuant to this contract. Each invoice shall document, to the reasonable satisfaction of the City:date, percentage of work done, time spent and materials used. Within thirty days after the City receives an invoice, the City shall send the Contractor a check in payment for all undisputed amounts contained in the invoice.

The City shall not be obligated to pay the Contractor any payments, fees, expenses, or compensation other than those authorized by this section.

Sec. 5.Prompt Payment to Subcontractors. (a) Within 7 days of receipt by the Contractor of each payment from the City under this contract, the Contractor shall pay all Subcontractors (which term includes subconsultants and suppliers) based on work completed or service provided under the subcontract that is referrable to such payment received by Contractor from the City. Should any payment to the Subcontractor be delayed by more than 7 days after receipt by the Contractor of the relevant payment from the City under this contract, the Contractor shall pay the Subcontractor interest, beginning on the 8th day, at the rate of 1% per month or fraction thereof on such unpaid balance as may be due. By appropriate litigation, Subcontractors shall have the right to enforce this subsection:
(a) directly against the Contractor, but not against the City of Durham.

(b) If the individual assigned to administer this contract for the City (in this section, titled "Prompt Payment to Subcontractors," he or she will be referred to as the "Project Manager") determines that it is appropriate to enforce subsection (a) in this manner, the City may withhold from progress or final payments to the Contractor the sums estimated by the Project Manager to be:

(i) the amount of interest due to the Subcontractor under subsection (a), and/or

(ii) the amounts past-due under subsection (a) to the Subcontractor but not exceeding 5% of the payment(s) due from the City to the Contractor.

This subsection (b) does not limit any other rights to withhold payments that the City may have.

(c) Nothing in this section (titled "Prompt Payment to Subcontractors") shall prevent the Contractor at the time of invoicing, application, and certification to the City from withholding invoicing, application, and certification to the City for payment to the Subcontractor for unsatisfactory job progress; defective goods, services, or construction not remedied; disputed work; third-party claims filed or reasonable evidence that such a claim will be filed; failure of the subcontractor to make timely payments for labor, equipment, and materials; damage to the Contractor or another subcontractor; reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum; or a reasonable amount for retainage not to exceed 10%.

(d) The Project Manager may require, as a prerequisite to making progress or final payments, that the Contractor provide statements from any Subcontractors designated by

the Project Manager regarding the status of their accounts with the Contractor. The statements shall be in such format as the Project Manager reasonably requires, including notarization if so specified.

Sec. 6.Insurance. Contractor shall purchase and maintain insurance coverage for not less than the following:

Commercial General Liability, covering:

- Premises/operations
- Products/completed operations (two years minimum, from project completion)
- Broad form property damage
- Contractual liability
- Independent contractors, if any are used in the performance of this contract
- City of Durham must be named additional insured, and an original of the endorsement to effect the coverage must be attached to the certificate (if by blanket endorsement, then agent may so indicate in the GL section of the certificate, in lieu of an original endorsement)
- Combined single limit not less than $1,000,000 per occurrence, with an annual aggregate on not less than $2,000,000.

Commercial Auto Liability, covering:

- Symbol 1, all Scheduled, Hired, and Non-owned vehicles
- Combined single limit of $1,000,000
- City of Durham must be named additional insured, and an original of the endorsement to effect the coverage must be attached to the certificate (if by blanket endorsement, then agent may so indicate in the AL section of the certificate, in lieu of an original endorsement)

Workers' Compensation Insurance, covering:

- Statutory benefits;
- Covering employees; covering owners partners, officers, and relatives (who work on this contract) (this must be stated on the certificate)
- Employers' liability, $1,000,000
- Waiver of subrogation in favor of the City of Durham

Insurance shall be provided by:

- Companies authorized to do business in the State of North Carolina
- Companies with Best rating of A-, VII or better.

Insurance shall be evidenced by a certificate:

- Providing notice to the City of not less than 30 days prior to cancellation or reduction of coverage
- Certificates shall be addressed to:

City of Durham, North Carolina

Attention: Finance Director
101 City Hall Plaza
Durham, NC 27701

- The insurance certificate and the additional insured endorsement must be originals and must be approved by the City's Finance Director before Contractor can begin any work under this contract.

Sec. 7.Performance of Work by City. If the Contractor fails to perform the Work in accordance with the schedule referred to in section 2 above, the City may, in its discretion, in order to bring the project closer to the schedule, perform or cause to be performed some or all of the Work, and doing so shall not waive any of the City's rights and remedies. Before doing so, the City shall give the Contractor notice of its intention. The Contractor shall reimburse the City for additional,reasonable costs incurred by the City in exercising its right to perform or cause to be performed some or all of the Work pursuant to this section.

Sec. 8.Notice. (a) All notices and other communications required or permitted by this contract shall be in writing and shall be given either by personal delivery, fax, or certified United States mail, return receipt requested, addressed as follows:

To the City:
Director of Department of Water Management
City of Durham
101 City Hall Plaza
Durham, NC 27701
The fax number is (919)560-4479.

Tothe Contractor:
President
MP Operations LLC
121 Edinburgh South Drive
Suite 207
Cary, NC 27511

(b) Change of Address. Date Notice Deemed Given. A change of address, fax number, or person to receive notice may be made by either party by notice given to the other party. Any notice or other communication under this contract shall be deemed given at the time of actual delivery, if it is personally delivered or sent by fax. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

Sec. 10.Indemnification.

(a) To the maximum extent allowed by law, the Contractor shall defend, indemnify, and

save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this contract as a direct result of acts or omissions of the Contractor or its subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection "a," the Contractor shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City.

(b) Definitions. As used in subsections "a" above and "c" below -- "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within "Charges" are (1) interest and reasonable attorneys' fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this contract). "Indemnitees" means City and its officers, officials, independent contractors, agents, and employees, excluding the Contractor.

(c) Other Provisions Separate. Nothing in this section shall affect any warranties in favor of the City that are otherwise provided in or arise out of this contract. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this contract.

(d) Survival. This section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract.

(e) Limitations of the Contractor's Obligation. If this section is in, or is in connection with, a contract relative to the design, planning, construction, alteration, repair or maintenance of a building, structure, highway, road, appurtenance or appliance, including moving, demolition and excavating connected therewith, then subsection "a" above shall not require the Contractor to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

Sec. 11. Miscellaneous

(a) Choice of Law and Forum. This contract shall be deemed made in Durham County, North Carolina. This contract shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this contract shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This subsection (a) shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this section.

(b) Waiver. No action or failure to act by the City shall constitute a waiver of any of its rights or remedies that arise out of this contract, nor shall such action or failure to act

constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

(c) Performance of Government Functions. Nothing contained in this contract shall be deemed or construed so as to inany way estop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

(d) Severability. If any provision of this contract shall be unenforceable, the remainder of this contract shall be enforceable to the extent permitted by law.

(e) Assignment. Successors and Assigns. Without the City's written consent, the Contractor shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out of this contract. The City Manager may consent to an assignment without action by the City Council. Unless the City otherwise agrees in writing, the Contractor and all assignees shall be subject to all of the City's defenses and shall be liable for all of the Contractor's duties that arise out of this contract and all of the City's claims that arise out of this contract. Without granting the Contractor the right to assign, it is agreed that the duties of the Contractor that arise out of this contract shall be binding upon it and its heirs, personal representatives, successors, and assigns.

(f) Compliance with Law. In performing all of the Work, the Contractor shall comply with all applicable law.

(g) City Policy. THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CITY CONTRACTS.

(h) EEO Provisions. During the performance of this Contract the Contractor agrees as follows: (1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Contractor shall take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth these EEO provisions. (2) The Contractor shall in all solicitations or advertisement for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. (3) The Contractor shall send a copy of the EEO provisions to each labor union or representative of workers with which it has a collective bargaining agreement or other

contract or understanding. (4) In the event of the Contractor's noncompliance with these EEO provisions, the City may cancel, terminate, or suspend this contract, in whole or in part, and the City may declare the Contractor ineligible for further City contracts. (5) Unless exempted by the City Council of the City of Durham, the Contractor shall include these EEO provisions in every purchase order for goods to be used in performing this contract and in every subcontract related to this contract so that these EEO provisions will be binding upon such subcontractors and vendors.

(i) SDBE. The Contractor shall comply with all applicable provisions of Title III of Chapter 18 of the Durham City Code (Equal Business Opportunity Program), as amended from time to time. The failure of the Contractor to comply with Title III of Chapter 18 shall be a material breach of contract which may result in the rescission or termination of this contract and/or other appropriate remedies in accordance with the provisions of Title III of Chapter 18, this contract, and State law. The Participation Plan submitted in accordance with Title III of Chapter 18 is binding on the Contractor. Section 18-59 (f) of Title III of Chapter 18 provides, in part, "If the City Manager determines that the Contractor has failed to comply with the provisions of the Contract, the City Manager shall notify the Contractor in writing of the deficiencies. The Contractor shall have 14 days, or such time as specified in the Contract, to cure the deficiencies or establish that there are no deficiencies." It is stipulated and agreed that those two quoted sentences apply only to the Contractor's alleged violations of its obligations under Title III of Chapter 18 and not to the Contractor's alleged violations of other obligations.

(j) No Third Party Rights Created. This contract is intended for the benefit of the City and the Contractor and not any other person.

(k) Principles of Interpretation and Definitions. In this contract, unless the context requires otherwise: (1) The singular includes the plural and the plural the singular. The pronouns "it" and "its" include the masculine and feminine. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words "include," "including," etc. mean include, including, etc. without limitation. (2) References to a "Section" or "section" shall mean a section of this contract. (3) "Contract" and "Agreement," whether or not capitalized, refer to this instrument. (4) Titles of sections, paragraphs, and articles are for convenience only, and shall not be construed to affect the meaning of this contract. (5) "Duties" includes obligations. (6) The word "person" includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (7) The word "shall" is mandatory. (8) The word "day" means calendar day.

(*l*) Modifications. Entire Agreement. A modification of this contract is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the City unless the City Manager or a deputy or assistant City Manager signs it for the City. This contract contains the entire agreement between the parties pertaining to the subject matter of this contract. With respect to that

subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this contract.

(m) City's Manager's Authority. To the extent, if any, the City has the power to suspend or terminate this contract or the Contractor's services under this contract, that power may be exercised by City Manager or a deputy or assistant City Manager without City Council action.

IN WITNESS WHEREOF, Cityand Contractor have signed this contract on the day and year first hereinabove written.

MP Operations, LLC

(Name)
(Title) President Methane Power Operations

Attest:

CITY OF DURHAM

ATTACHMENT A

FEE SCHEDULE

1. Contractor's Base Fee is $40,000 per annum (i.e. $3,333 per month).

2. Work required to provide the quarterly survey of the Landfill's gas migration monitoring wells will be billed at a rate of $30.00 per hour.

3. Unless expressly agreed in writing between Contractor and City, all work required to provide non-routine or emergency services pursuant to Section 2.3 will be billed on a time and materials basis, with time being billed at a rate of $30.00 per hour and materials (including authorized subcontractors) being billed at actual purchase or rental (as applicable) cost plus twenty (20) percent.