

**FIRST AMENDMENT TO LANDFILL GAS PURCHASE AGREEMENT
(Camelot Landfill)**

This First Amendment to Landfill Gas Purchase Agreement (“Amendment”) is made by and between the **City of Farmers Branch, Texas** (“City”), and **WM Renewable Energy, L.L.C.** (“WMRE”) (each a “party” and collectively the “parties”), acting by and through their respective authorized representatives.

RECITALS

WHEREAS, the parties previously entered into a Landfill Gas Purchase Agreement for the City’s Camelot Landfill on September 30, 2009, a copy of which is attached hereto as Exhibit A (the “Landfill Gas Purchase Agreement”); and

WHEREAS, the parties wish to amend the Landfill Gas Purchase Agreement’s term and termination right provisions as provided for in this Amendment to allow for a month-to-month term; and

WHEREAS, the parties desire to leave the remaining provisions of the Landfill Gas Purchase Agreement in place and continue the purchase and sale of landfill gas from the Camelot Landfill as provided thereunder until terminated as provided in this Amendment.

NOW, THEREFORE, for and in consideration of the covenants and promises made one to the other herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Section 1. Existing Agreement

This Amendment is made to the existing Landfill Gas Purchase Agreement attached hereto as Exhibit A; all definitions and terms contained in the Landfill Gas Purchase Agreement are incorporated into this Amendment unless otherwise provided. All guarantees and obligations of the parties made in the Landfill Gas Purchase Agreement are continued for the full term of the agreement as provided by this Amendment. In the event there is a conflict when interpreting the agreement between the parties embodied by the Landfill Gas Purchase Agreement and this Amendment, the terms of this Amendment shall control.

Section 2. Delivery and Purchase Term

The parties hereby agree that Definition 1.7 (“Delivery and Purchase Term”) from the Landfill Gas Purchase Agreement is amended to remove the fifteen (15) year provision, and to reflect the month-to-month term provided in Section 3 below.

Section 3. Term of Agreement

3.1 The term of this Amendment, and of the obligations of the parties hereunder, shall begin on the last date of execution hereof (the “Effective Date”) and shall continue until terminated by either party as provided in this Section.

3.2 The parties agree that the term of obligation under the Landfill Gas Purchase Agreement will be extended on a month-to-month basis. The obligations of the parties under the Landfill Gas Purchase Agreement shall renew on the first day of each month (the “Monthly Renewal Date”) with no further action by the parties and shall continue unless and until terminated as provided in this Section.

3.3 By providing written notice as required by Section 4 at least thirty (30) days before the next upcoming Monthly Renewal Date, either party may terminate the Landfill Gas Purchase Agreement, this Amendment, and all continuing obligations to purchase or sell landfill gas thereunder. Such termination shall be effective at the end of the last day of the month preceding the Monthly Renewal Date. All obligations upon termination provided in the Landfill Gas Purchase Agreement shall remain applicable to the parties after termination under this Section.

3.4 Landfill Gas Purchase Agreement Article VI, Sections 6.2, 6.3, and 6.4, are rescinded and are of no further legal effect as of the Effective Date of this Amendment. Article VI, Section 6.6 is hereby amended to specify the termination right provided in this Section 3 as the sole remedy of the parties for failure to perform.

Section 4. Notice

All notices required by this Agreement shall be in writing and addressed to the parties at the addresses set forth on the signature page(s) of this Agreement (or to such other address that may be designated by the receiving party from time to time in accordance with this Section). All notices shall be delivered by (a) personal delivery, (b) certified or registered mail (in each case, return receipt requested, postage prepaid), (c) nationally recognized overnight courier (with all fees pre-paid), or (d) email of a pdf document containing the required notice. Such notice or document shall be deemed to be delivered or given, whether actually received or not, (i) when received if delivered or given in person, (ii) if sent by United States mail, three (3) business days after being deposited in the United States mail as set forth above, (iii) on the next business day after the day the notice or document is provided to a nationally recognized carrier to be delivered as set forth above, or (iv) if sent by email, the next business day. A confirmation of delivery report that reflects the time that the email was delivered to the recipient’s last notified email address is prima facie evidence of its receipt by the recipient, unless the sender receives a delivery failure notification indicating that the email has not been delivered to the recipient.

Section 5. Miscellaneous

(a) WMRE shall not assign or sublet this Amendment, in whole or in part, without the prior written consent of City. (b) WMRE shall comply with all federal, state, county, and municipal laws, ordinances, resolutions, regulations, rules, and orders applicable to the services under this Amendment. (c) The laws of the State of Texas shall govern this Amendment; and the venue for any action concerning this Agreement shall be in the state district courts of Dallas County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said courts. (d) This Amendment contains the entire understanding of the parties with respect to the subject matter hereof, and there are no oral understandings, statements, or stipulations bearing upon the meaning or effect of this Agreement that have not been incorporated herein. (e) The exhibits attached hereto, if any, are incorporated herein and made a part hereof for all purposes. (f) Unless expressly provided otherwise herein, this Amendment may only be modified, amended, supplemented, or waived by a mutual written agreement of the parties. (g) In the event any one or more of the provisions contained in this Amendment shall for any reason be

held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions, and the Amendment shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it. (h) Any of the representations and obligations of the parties, as well as any rights and benefits of the parties pertaining to a period of time following the termination of this Amendment shall survive termination. (i) This Amendment may be executed by the parties in separate counterparts, each of which, when so executed and delivered, shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of any number of copies hereof, each signed by less than all but together signed by all of the parties. (j) Each party represents that it has full capacity and authority to grant all rights and assume all obligations granted and assumed under this Amendment. (k) Subject to the provisions regarding assignment, this Amendment shall be binding on and inure to the benefit of the parties to it and their respective heirs, executors, administrators, legal representatives, successors, and assigns.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK - SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed and delivered this Amendment as of the Effective Date.

CITY OF FARMERS BRANCH, TEXAS

By: _____
Ben Williamson
City Manager

Date: _____

Notice Address:
City of Farmers Branch
Attn: City Manager
13000 William Dodson Pkwy
Farmers Branch, Texas 75234
E: benjamin.williamson@farmersbranchtx.gov

Approved as to Form:

David Berman, City Attorney

WM RENEWABLE ENERGY, L.L.C.

By: _____
Shahid Malik
Vice President

Date: _____

Notice Address:
WM Renewable Energy, LLC
Attn: Thirumaal Mahalingam
800 Capitol Street, Suite 3000
Houston, Texas 77002
E: TMahlin@wm.com

With Copy to: gclegal@wm.com

EXHIBIT A
LANDFILL GAS PURCHASE AGREEMENT

LANDFILL GAS PURCHASE AGREEMENT

BETWEEN

THE CITY OF FARMERS BRANCH, TEXAS

(CAMELOT LANDFILL)

AND

WM RENEWABLE ENERGY, L.L.C.

LANDFILL GAS PURCHASE AGREEMENT

This Landfill Gas Purchase Agreement ("Agreement") is made this 30 day of September, 2009 by and between the City of Farmers Branch, Texas, a Texas home rule municipality with offices at 13000 Wm. Dodson Parkway, Farmers Branch, Texas 75234 ("Seller"), and WM Renewable Energy, L.L.C., a Delaware limited liability company, with offices at 1001 Fannin, Suite 4000, Houston, Texas 77002 ("Buyer"), with reference to the following recitals:

- A. Seller owns the Camelot Landfill ("Landfill") in Lewisville, Denton County, Texas;
- B. The Landfill is operated by Camelot LF TX, L.P. ("Operator");
- C. Landfill Gas consisting primarily of methane and carbon dioxide is produced as a by-product of the decomposition of waste within the Landfill;
- D. Seller owns and Operator operates facilities that collect and extract Landfill Gas from the Landfill;
- E. Seller owns all Landfill Gas within the Landfill and extracted from the Landfill and Operator has no rights to the Landfill Gas;
- F. Buyer is in the business of owning and operating electric generating facilities fueled by Landfill Gas;
- G. Buyer desires to construct own and operate an electric generating facility fueled by the Landfill and located at the Landfill;
- H. Buyer intends to sell electric energy and renewable energy credits generated by Buyer's electric generating facility;
- I. Seller wishes to sell and Buyer wishes to purchase Landfill Gas extracted from the Landfill to fuel Buyer's generating facility, in accordance with the terms and conditions hereof.

THEREFORE, in consideration of the mutual agreements contained herein, and other good and valuable consideration, receipt of which are hereby acknowledged, Seller and Buyer agree as follows:

ARTICLE I

DEFINITIONS

1.1 "Additional Landfill Gas" shall mean Landfill Gas that Seller becomes able to deliver pursuant to this Agreement which exceeds the maximum quantity of Landfill Gas that can be combusted as fuel for Buyer's Facilities as defined below, but which amount shall be at a minimum flow of Three Hundred Fifty (350) cubic feet per minute.

1.1 "BTU" or "British Thermal Unit" shall mean the amount of heat required to raise the temperature of one pound of water one degree (1°) Fahrenheit at sixty degrees (60°) Fahrenheit. The BTU equivalent on a dry basis at 14.65 psi may be obtained by multiplying the BTU so measured by the factor 1.012.

1.2 "Buyer's Facilities" shall mean that certain electric generating facility fueled by Landfill Gas, and all related equipment, owned and operated by Buyer and located at or adjacent to the Landfill with an initial installed gross generating capacity of 3.2 MW. Buyer's Facilities shall also include such poles, lines, transformers, switches, and other fixtures, equipment and appurtenances as may be required to transfer electricity from Buyer's Facilities into the local electric transmission system for purpose of selling such electricity to third parties.

1.3 "Commercial Operation" shall mean that period of time beginning when Buyer first sells electric energy to a third party purchaser other than for testing purposes.

1.4 "Contract Year" shall mean every twelve (12) month period which begins at 12:01 a.m. Central Standard Time on the first day of the Delivery and Purchase Term or on any

anniversary thereof during the Delivery and Purchase Term.

1.5 "Day" shall mean each twenty-four (24) hour period commencing at 12:01 a.m.

1.6 "Delivery Point" shall mean the interconnection point between Buyer's Facilities and Seller's Facilities located at the "T" Valve attached to Seller's flare.

1.7 "Delivery and Purchase Term" shall commence on the date on which Buyer's Facilities begin Commercial Operation and shall continue thereafter for fifteen (15) years, unless terminated earlier pursuant to the provisions of this Agreement.

1.8 "Effective Date" shall mean the date on which the authorized representatives of all parties to this Agreement have signed the Agreement.

1.9 "Force Majeure" shall mean any cause or causes, whether of the kind herein enumerated or otherwise, not reasonably within the control of the party claiming Force Majeure and which, by the exercise of reasonable diligence, such party is unable to prevent or overcome including without limitation, acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, hurricanes, floods, high-water washouts, arrests and restraints of governments and people, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, freezing of wells or lines of pipe not due to the negligence of Seller, partial or entire failure of wells or supply of Landfill Gas, enactment of statutes, laws or regulations, acts of governmental bodies, the inability of Buyer's Facilities to generate or deliver electric energy at full capacity due to forced outages of Buyer's Facilities, due to a condition of the electric distribution or transmission system with which Buyer's Facilities interconnect or due to an act or omission of the owner of such electric distribution or transmission system or of the Buyer of electric energy generated by Buyer. Force Majeure shall not include increases in the costs

associated with the construction or operation of Buyer's Facilities or Seller's Facilities or a change in market conditions which make uneconomic the operation of Buyer's Facilities or Seller's Facilities or the sale of Landfill Gas or any component thereof.

1.10 "Heating Value" shall mean the amount of heat released when a known volume of Landfill Gas is burned plus the amount of heat released due to the condensation of water vapor from combustion to the liquid state.

1.11 "Landfill" shall mean the Camelot Landfill owned by Seller and located at 580 Huffines Blvd., Lewisville, in Lewisville, Denton County, Texas.

1.12 "Landfill Gas" shall mean that gas consisting primarily of methane and carbon dioxide which is produced as a byproduct of the decomposition of waste within the Landfill.

1.13 "Landfill Operator" or "Operator" shall mean (a) Camelot Landfill TX, L.P., its successor or assigns, (b) any other party with whom City may contract to operate the Landfill or, (c) in the absence of any contract between the City and a third party to operate the Landfill, the City.

1.14 "MMBTU" shall mean one million (1,000,000) British Thermal Units.

1.15 "MW" shall mean megawatt.

1.16 "Price of Renewable Energy Sold" shall mean all revenues received by Buyer for the sale of electric energy and electric capacity associated with electric energy generated using Landfill Gas purchased hereunder.

1.17 "PSIA" shall mean pounds per square inch absolute.

1.18 "RECs" means the renewable energy credits or renewable energy certificates that represent the renewable energy generated by Buyer's Facilities, as more fully defined in (i) Texas Public Utility Commission's Substantive Rules Applicable to Electric Providers, Section 25.173, Goal for Renewable Energy (16 Tex. Admin. Code §25.173); (ii) any successor Texas law or

regulation; (iii) any other state, local or federal law that defines renewable energy credits or renewable energy certificates; or (iv) any other definition of renewable energy credits or certificates accepted by an entity desiring to purchase renewable energy credits or certificates from Buyer .

1.19 "Seller's Facilities" shall mean that certain system of Landfill Gas wells or trenches, lateral piping, blower, flare and other equipment or facilities required for the extraction of Landfill Gas from the Landfill and delivery thereof to Buyer at the Delivery Point, all owned and operated by Seller.

ARTICLE II

PRELIMINARY ACTS OF THE PARTIES

2.1 Permits, Authorizations. Promptly after execution of this Agreement, Seller and Buyer each shall, at no cost to the other party, apply for and use reasonable efforts to obtain, at its sole cost, all permits, authorizations, easements and rights of way required for the performance of its respective obligations hereunder. Buyer shall pay all costs required for Building and Electrical Permits, Rights-of-Way and all federal and state permits required for Buyer's Facility. Seller shall pay for any platting and rezoning expenses required for project start up. Buyer shall be responsible for any costs that result from changes in Buyer's Facility requiring a resubmittal of the Engineering Site Plan to the appropriate entity of the City of Lewisville, Texas. Each party shall provide the other with a copy of all permits and authorizations described above, promptly upon receipt thereof. With respect to any of Buyer's Facilities to be located on Seller's property, Buyer shall obtain Seller's approval of any permit applications filing such applications.

2.2 Public Utility Status. Seller does not intend to hold itself out as a public utility or to submit to the jurisdiction of any local, state or federal regulatory agency by reason of the extraction, delivery or sale of Landfill Gas hereunder. To that end, Seller may, in its sole discretion, seek a

ruling from any such agency or other assurance satisfactory to Seller that the extraction, delivery or sale of Landfill Gas to Buyer will not subject Seller to the jurisdiction of such agency.

2.3 Mutual Assistance. Upon request, the parties hereto shall use reasonable efforts to support and assist one another in the acquisition of any required permit or authorization. Such support shall include, without limitation, participation in regulatory proceedings and provision of information concerning each party's operations.

2.4 Tax Credits and Benefits Associated With Extraction, Sale and Destruction of Landfill Gas. All emission reduction credits and other state, federal or local credits or other benefits other than tax credits that are or may become available in connection with the extraction of Landfill Gas from the Landfill, the sale of Landfill Gas, or the destruction of Landfill Gas shall be the property of Seller. Seller shall not take advantage of any tax credits that are available or might become available to Seller in connection with the collection, extraction, sale or destruction of Landfill Gas. Buyer shall have all rights to any tax credits or other governmental benefits (other than the benefits allocated to Seller as described above) that are or may become available in connection with the Landfill Gas purchased hereunder or in connection with Buyer's generation of electricity using Landfill Gas as fuel, including without limitation the displacement of fossil fuel. Neither Party shall take any actions that would in any way reduce the availability to the other Party of the credits and benefits described above as belonging to such other Party. The Parties intend that Buyer will have the right to the RECs associated with the generation of electricity using Landfill Gas and that, at the same time, Seller will have the right to emission reduction credits associated with the destruction of the Landfill Gas. If, during the term of this Agreement, a change in Federal or state law or regulation prohibits the simultaneous sale of the RECs and emission reduction credits or otherwise prohibits the simultaneous enjoyment by both Parties of the benefits allocated to them

pursuant to this Section 2.4, then the Parties agree to negotiate in good faith to amend this Agreement to reflect the change in law in a manner that maximizes the benefit to both Parties of the continued sale of RECs or of emission reduction credits or of other benefits described above.

ARTICLE III

FACILITIES

3.1 **Seller's Facilities.** At no cost to Buyer, Seller shall design, construct or cause to be constructed, own, operate, and maintain Seller's Facilities. At all times during the term hereof, Seller's Facilities shall be designed, constructed and operated in compliance with all applicable laws, regulations, permits and authorizations.

3.2 **Buyer's Facilities.** At no cost to Seller, Buyer shall design, construct or cause to be constructed, own, operate, and maintain Buyer's Facilities. Buyer's Facilities shall be installed with an initial minimum gross generating capacity of 3.2 MW. Buyer may from time to time, at its sole discretion and cost, increase the gross generating capacity of Buyer's Facilities. At all times during the term hereof, Buyer's Facilities shall be designed, constructed and operated in compliance with all applicable laws, regulations, permits and authorizations. Any of Buyer's facilities to be located on real property owned by Seller shall be at locations reasonably acceptable to Seller. Seller shall have the right to review the design of any such facilities and such review shall not create any warranties in favor of Buyer or any other party. Buyer agrees that the construction, maintenance, and operation of Buyer's Facilities shall not unreasonably interfere with Seller's on-going operation of the Landfill.

3.3 **Grant of License.**

A. *License Granted to Buyer, et.al.* For the consideration stated herein, Seller hereby grants to Buyer, its affiliates, subsidiaries, employees, contractors, subcontractors

and agents (collectively the "Licensees") a license for the term of this Agreement (including any extension of the term of this Agreement agreed to by the Parties), with the right to use those areas and roads of the Landfill shown on Attachment "C," attached hereto and incorporated herein by reference ("the Licensed Area"), for the purpose of purchasing, receiving, processing and compressing Landfill Gas, generating electricity using Landfill Gas as fuel, delivering the electricity so generated to a purchaser, and for all related activities reasonably necessary for the performance of the foregoing purposes.

B. *Authorization to Construct Buyer's Facilities.* Licensees are authorized pursuant to the license granted by this Section 3.3 to construct, own, operate, maintain and repair Buyer's Facilities on the Licensed Area, and such other areas of the Landfill as are reasonably necessary in connection with the generation and sale of electricity as Seller may from time to time authorize in writing, which authorization will not be unreasonably withheld. Seller also grants to Buyer the right to place structures and equipment on the Licensed Area as Buyer deems reasonably necessary, together with all necessary rights of ingress and egress across or over Seller's real property on Landfill Roads designated on Attachment "C" and on other Landfill Roads that may exist from time to time during the term hereof, for the purposes of access to Buyer's Facilities.

C. *Memorandum of Agreement.* Not later than ten (10) business days after the Effective Date of this Agreement, Seller and Buyer shall execute a Memorandum of Landfill Gas Purchase Agreement substantially in the form attached hereto as Attachment "D" and Buyer may record the executed Memorandum of Landfill Gas Purchase Agreement in the Real Property Records of Denton County, Texas.

D. *Character of Grant.* The license granted herein does not convey any interest

in real property to Buyer or any of the Licensees. However, the license granted herein may only be revoked and terminate concurrently with the termination of this Agreement in accordance with Article VI, below.

E. *Reservation of Rights.* Seller reserves the right to use, and the right to authorize the use by others, all or part of the Landfill roadways in conjunction with Buyer and the Licensees, their successors and assigns.

3.4 Timeline. Buyer's Facilities and Seller's Facilities shall be designed, constructed, tested and shall be available to commence operation no later than 455 days after the Effective Date.

ARTICLE IV

DELIVERY AND PURCHASE OBLIGATION AND ASSUMPTION OF SELLER'S

OBLIGATIONS UPON A SALE OF THE LANDFILL

4.1 Sale and Purchase Obligation. Commencing on the date when Buyer's Facilities begin Commercial Operation, Seller shall deliver and sell to Buyer and Buyer shall accept and purchase, or pay for, all Landfill Gas extracted from the Landfill and delivered to Buyer by Seller each Day during the term of this Agreement up to the maximum quantity of Landfill Gas that Buyer's Facilities are able to combust. Title to the Landfill Gas shall transfer from Seller to Buyer upon delivery, free and clear of all liens and encumbrances and claims of third parties.

4.2 Additional Landfill Gas; Expansion of Buyer's Facilities.

A. *Notice of Additional Landfill Gas:* If Seller determines that Seller will be able to deliver Additional Landfill Gas to Buyer on a continuous basis for not less than ninety (90) days, then Seller shall so notify Buyer within thirty (30) days after the aforesaid ninety (90) day period and shall provide reasonable evidence of the flow of Additional Landfill Gas that occurred during such ninety (90) day period. Not later than one hundred

eighty (180) days after receipt of Seller's notice, Buyer shall notify Seller whether Buyer intends to expand Buyer's Facilities to the size reasonably required to combust the Additional Landfill Gas or whether Buyer is unable to obtain all permits and interconnection arrangements required for such expansion on terms acceptable to Buyer.

B. *Buyer Determines Not to Expand Capacity:* If Buyer notifies Seller that Buyer is unable to obtain such permits and interconnection arrangements on terms acceptable to Buyer, then Seller shall be free to sell the Additional Landfill Gas to a third party, and Buyer shall have no further obligation with respect to such Additional Landfill Gas.

C. *Buyer Determines to Expand Capacity:* If Buyer notifies Seller that Buyer intends to expand Buyer's Facilities, then Buyer shall begin to purchase (or pay for) the Additional Landfill Gas on the one hundred eighty-first day (181st) after receipt of Seller's notice. If not later than twelve (12) months after Buyer begins to pay for Additional Landfill Gas, Buyer has not commenced Commercial Operation of the expansion of Buyer's Facilities because Buyer is unable to obtain all required permits and interconnection arrangements on terms acceptable to Buyer, then Buyer shall so notify Seller, Seller shall be free to sell the Additional Landfill Gas to a third party, and Buyer shall have no further obligation with respect to the Additional Landfill Gas. If Buyer fails to so notify Seller, then Buyer shall continue to purchase or pay for the Additional Landfill Gas and shall use commercially reasonable efforts to complete the expansion of Buyer's Facilities.

4.3 Delivery of Landfill Gas for Test Purposes. Seller shall make Landfill Gas available at Buyer's request to enable Buyer to test the performance of Buyer's Facilities before Buyer's facilities begin Commercial Operation.

4.4 Non-Conforming Landfill Gas. Buyer shall have no obligation to pay Seller for Landfill Gas that fails to meet the quality specifications set out in Section 7.1 unless Buyer accepts delivery of such Landfill Gas and combusts such Landfill Gas as fuel for Buyer's Facilities.

4.5 Assumption of Seller's Obligations Upon A Sale of the Landfill. Seller will not sell or otherwise transfer all or any portion of Seller's interest in the Landfill unless the purchaser or transferee agrees in writing to assume all of Seller's obligations pursuant to this Agreement. In such event, Seller will provide Buyer with a copy of such written agreement at least fifteen (15) days in advance of the effective date of any such sale or transfer.

ARTICLE V

DELIVERY POINT; TITLE

The Delivery Point for all Landfill Gas sold hereunder shall be at the interconnection between Buyer's Facilities and Seller's Facilities at the "T" valve which is attached to Seller's flare at the Landfill, as shown on Attachment A. Title to and control and possession of the Landfill Gas sold hereunder shall pass to Buyer upon delivery at the Delivery Point, free and clear of all liens, encumbrances and claims of third parties.

ARTICLE VI

TERM AND RIGHT TO TERMINATE

6.1 **Term.** Subject to the other provisions contained herein, this Agreement shall become effective on the Effective Date and shall continue in effect until the expiration of the Delivery and Purchase Term, unless terminated earlier as set forth below.

6.2 **Extension of Term.** Not later than three (3) years before the end of the Delivery and Purchase Term, Buyer shall notify Seller if Buyer wishes to extend the term of this

Agreement. Such notice shall include Buyer's terms and conditions to be contained in a proposed amendment that would extend the Term of this Agreement. The parties shall commence negotiations with respect to extension of the term of this Agreement promptly after Seller's receipt of Buyer's notice. If, not later than two (2) years after Seller's receipt of Buyer's notice, Buyer and Seller have not signed an amendment to this Agreement extending the term of this Agreement, then the term of this Agreement shall remain as set out above. Nothing herein shall be construed as prohibiting the parties from entering a wholly new agreement regarding this subject matter or continuing to negotiate beyond the period described above.

6.3 **Seller's Termination Right.** Seller may, upon the occurrence of any of the following events, deliver written notice to Buyer of its intention to terminate this Agreement:

A. Any Local, State, or Federal regulatory agency attempts to assert jurisdiction over Seller as an electric or gas utility as a result of the sale of Landfill Gas hereunder, or issues an order stating that the sale of Landfill Gas hereunder would subject Seller to such jurisdiction;

B. Buyer fails to perform its obligations under this Agreement due to an event of Force Majeure which lasts longer than nine (9) months; or

C. Buyer fails to make any payment due hereunder when due or to cure such failure within thirty (30) days after receipt of Seller's notice that payment was not received, or otherwise fails to perform a material obligation hereunder.

This Agreement shall thereafter terminate thirty (30) days after Buyer's receipt of Seller's notice of termination unless (i) Buyer cures its failure to perform or resumes performance of its obligations hereunder within said thirty (30) days, or (ii) if the failure to perform cannot be cured within thirty (30) days, Buyer commences steps toward a cure by such applicable termination date and thereafter diligently pursues such cure to completion within one hundred twenty (120)

days after receipt of Seller's notice.

6.4. \ Buyer's Termination Right. Buyer may, upon the occurrence of any of the following events, deliver written notice to Seller of its intention to terminate this Agreement:

A. Seller fails to perform its obligations under this Agreement due to an event of Force Majeure which lasts longer than nine (9) months; or

B. Seller fails to deliver Landfill Gas to Buyer hereunder as required pursuant to Article IV and Article VII.

This Agreement shall thereafter terminate thirty (30) days after Seller's receipt of Buyer's notice unless (i) Seller resumes performance of its obligations hereunder within said thirty (30) days, or (ii) if the failure to perform cannot be cured within thirty (30) days, Buyer commences steps toward a cure and thereafter diligently pursues such cure to completion within one hundred twenty (120) Days after receipt of Buyer's notice.

6.5 Obligations Upon Termination. Upon termination of this Agreement, neither party shall have any further obligation to the other under this Agreement or otherwise, including special or consequential damages, except:

A. Buyer shall remain obligated to pay Seller for all Landfill Gas delivered hereunder prior to the applicable termination date at the price in effect on the date of delivery; and

B. Unless otherwise agreed by Seller, Buyer shall remove, at Buyer's sole cost, Buyer's Facilities from Seller's property and restore Seller's property in the area in which Buyer's Facilities were located to substantially the condition it was in prior to the Effective Date, reasonable wear and tear except, which removal and restoration shall occur not later than ninety (90) days following the date of termination, unless extension of such removal period is agreed in

writing by Seller.

6.6 Sole Remedy. The right to terminate this Agreement pursuant to this Article VI shall be the sole remedy available to either party for the other party's failure to perform its obligations hereunder.

6.7 Failure to Remove Buyer's Facilities. If upon termination of this Agreement Buyer fails to remove Buyer's Facilities and restore Seller property as required by Section 6.5.B., above, Seller may do so, at Buyer's cost, which amounts shall be reimbursed to Seller not later than thirty (30) days following delivery of written demand to Buyer. The amounts demanded by Seller pursuant to this Section 6.7 shall constitute a debt owed by Buyer to Seller and shall be collectible through an appropriate action filed in a court of competent jurisdiction in Dallas County, Texas. In the alternative, if Buyer fails to pay Seller the amounts owed pursuant to this Section 6.7, and retake possession of Buyer's Facilities, Seller may, subject to the rights of any lien holders, sell any or all of Buyer's Facilities, reimburse Seller for its costs related to the removal, storage, and sale of the items sold, including reasonable attorneys fees, and forward the balance, if any, to Buyer.

ARTICLE VII

GAS QUALITY

7.1 Heating Value and Oxygen Content. Seller shall deliver Landfill Gas hereunder with a minimum BTU content of four hundred (400) BTU's per cubic foot of Landfill Gas when the gas is saturated with water vapor, at a temperature of sixty degrees (60°) Fahrenheit and at an absolute pressure equivalent of thirty inches (30") of mercury and containing no more than two percent (2%) oxygen by volume.

7.2 Buyer's Remedies. Buyer's sole remedy for Seller's failure to deliver Landfill

Gas which meets the quality specifications set out in Section 7.1 shall be to terminate this Agreement pursuant to Section 6.3.

7.3 Disclaimer of Warranties. Seller makes no warranties as to the quality or quantity of the Landfill Gas delivered to Buyer hereunder. The parties hereto agree that the implied warranties of merchantability and fitness for a particular purpose and all other warranties, express or implied, do not apply to the Landfill Gas sold hereunder. Seller shall have no liability to Buyer or any third party. Buyer shall protect, defend, indemnify and hold Seller harmless from and against any claims arising in connection with damage to property or injury or death to persons resulting from the presence of any component within the Landfill Gas delivered to Buyer hereunder after delivery to Buyer, or otherwise arising in connection with such Landfill Gas.

ARTICLE VIII

UNIT OF VOLUME - MEASUREMENT

8.1. Unit of Volume. Except for the determination of heating value, the unit of volume for measurement of Landfill Gas delivered hereunder will be one (1) cubic foot of Landfill Gas at a base temperature of sixty (60) degrees Fahrenheit and at an absolute pressure of fourteen and seventy-three hundredths (14.73) pounds per square inch. All fundamental constants shall be in accordance with the standards prescribed in the National Standard ANSI-API 2530, Second Edition, as reprinted in September 1986, with any subsequent amendments which may be mutually acceptable to Buyer and Seller. All quantities set out herein, unless otherwise expressly stated, are in terms of MMBTU's.

8.2. Metering. Buyer shall, at no cost to Seller, install, operate and maintain in accurate working order at or near the Delivery Point metering devices mutually acceptable to the parties for the measurement of the Landfill Gas delivered hereunder. Seller shall have access to the metering

equipment at all reasonable times, but readings, calibrations and adjustments thereof shall be made by Buyer.

8.3 Meter Tests. At Buyer's expense, Buyer shall keep its metering equipment accurate and in repair, making such periodic tests as Buyer deems necessary, but at least one time during each year. Buyer shall give Seller reasonable advance notice of any such test so that Seller may have its representatives present. Seller may request a special test of the metering equipment at any time. The expense of such special test shall be borne by Seller if the equipment is found to be inaccurate by less than two percent (2%), otherwise, the special test shall be at the expense of Buyer. If, upon any test, the equipment is found to be inaccurate so that it affects the measurement accuracy by more than two percent (2%), meter readings shall be corrected for a period extending back to the date on which such inaccuracy first occurred if that date can be ascertained. If the date the inaccuracy commenced is not ascertainable, corrections shall be made for one half of the elapsed time since the previous meter calibration.

8.4 Meter Out of Service. If, for any reason, Buyer's metering equipment is out of service or out of repair so that the amount of Landfill Gas delivered cannot be ascertained or corrected pursuant to Section 8.3, Buyer shall estimate the amount of Landfill Gas delivered during any period when the metering equipment is out of service or out of repair based on deliveries under similar conditions during earlier periods when the metering equipment was registering properly. Notwithstanding the above, if Seller installs metering equipment reasonably acceptable to Buyer and tests, repairs and maintains such metering equipment in a manner that is comparable to the manner in which Buyer repairs and maintains its metering equipment, then Seller's metering equipment shall be used to measure the quantity of Landfill Gas delivered during periods when Buyer's metering equipment is out of service.

8.5 Reconciliation of Meter Errors. If following a special test of the Meters as described in Section 8.3, above, it is determined the meters were in error by 2% or more of actual Landfill Gas being delivered, payments for the adjusted period shall be as follows:

A. If the meter test indicated that the meter was measuring less Landfill Gas than was actually being delivered, Buyer shall pay the amount attributable to the Landfill Gas for which payment was not made in three installments of 1/3 each of the amount that should have been paid, said installments to be included with the payments made by Buyer for the three calendar months following the month in which the meter error was discovered; or

B. If the meter test indicated that the meter was measuring more Landfill Gas than was actually being delivered, Buyer shall take as a credit against the amounts to be paid to Seller for sales of Landfill Gas in the months following the correction of the meter error the amount attributable to the Landfill Gas for which payment was made but not received. Such credit shall be in three installments of 1/3 each of the amount that should not have been paid by Buyer had the meter read correctly credited against the amounts due Seller from Buyer for the three months following the month in which the meter error was corrected; provided, however, if the amount of such credit exceeds the amount of the payment due to Seller in a given month, the amount of the credit in excess of the amount payable to Seller from current month sales of Landfill Gas shall be carried forward to the next month(s) payment(s) until the credit due under this paragraph is paid in full. Seller shall not be required to refund monies actually paid to Seller as the result of a meter error except in the case where a credit due Buyer has not been fully satisfied on the termination date of this Agreement, in which case Seller will repay Buyer any remaining amounts due upon completion of removal of Buyer's Facilities and restoration of Seller's property as required by Section 6.4.B.

ARTICLE IX

DELIVERY PRESSURE

9.1 Vacuum Settings. In order to maintain sufficient pressure to deliver Landfill Gas to Buyer's Facilities, Buyer will establish a vacuum using Buyer's compressor system. However, only Seller shall determine the required vacuum and tolerable variances. Seller may from time to time change the required vacuum set point to accommodate expansions of Seller's Facilities or changes in regulations with which Seller must comply. Buyer must adjust the vacuum set point not later than ten (10) days following delivery of the request by Seller to make such adjustment. Notwithstanding the foregoing, Buyer shall in no event be required to increase the vacuum set point to a level that would cause delivery to Buyer of more Landfill Gas than Buyer's Facilities can reasonably consume, based on then-current operating conditions.

9.2 Loss of Vacuum Pressure. If Buyer's Facilities temporarily cease operation for any reason such that a loss of vacuum pressure occurs, Buyer must promptly notify Seller and the Landfill Operator of such cessation of operation (which notification in this instance may be verbal, including by telephone, followed by delivery of a written notice by electronic mail, and/or facsimile), and, not later than four (4) hours after the cessation of operations, commence actions that are necessary to reestablish the vacuum on Seller's well field by either re-starting operation of Buyer's Facilities or starting up Seller's blower/flare.

9.3 Temporary Reduction in Demand. In the event Buyer's Facilities experience a temporary reduction in demand for Landfill Gas for any reason resulting in a loss of vacuum pressure on Seller's Facilities, Buyer must notify Seller not later than four (4) hours after the onset of said temporary reduction.

ARTICLE X

PRICE, BILLING AND PAYMENT

10.1 Price. Buyer shall pay Seller for all Landfill Gas delivered hereunder that meets the quality specifications set out in Section 7.1 at the rates set out in Attachment B, attached hereto and incorporated herein by reference. If Buyer accepts and combusts in Buyer's Facilities Landfill Gas that fails to meet the quality specifications set out in Section 7.1, then Buyer shall pay Seller for such Landfill Gas at a price equal to eighty-five percent (85%) of the applicable price set out in Attachment B.

10.2 Rounding. The amount payable for Landfill Gas purchased hereunder shall be rounded to the nearest one tenth of one cent (\$.001).

10.3 Billing and Payment.

A. Billing. On or before the thirtieth (30th) day of each calendar month, Seller shall send a statement to Buyer setting out the amount due hereunder in connection with Landfill Gas delivered or tendered to Buyer during the preceding calendar month. Such statement shall set out the quantity of Landfill Gas purchased by Buyer during the immediately preceding month, the amount due Seller for such Landfill Gas, the amount Buyer is required to pay Seller in connection with Landfill Gas that Buyer failed to purchase as required pursuant to Section 4.1, and any taxes for which Buyer is obligated to reimburse Seller hereunder.

B. Payment. Buyer shall pay to Seller the amount due as shown on Seller's statement not later than thirty (30) days after receipt of each statement.

C. Errors in Billing. If either party hereto shall find at any time within one (1) year after the date of any payment hereunder that there has been an overcharge or undercharge, the party finding the error shall promptly notify the other party in writing. In the event of an

undercharge, Buyer shall pay the amount due within sixty (60) Days of the date of the notice of error. In the event of an overcharge, Seller shall refund the overpayment to Buyer within sixty (60) days of the date of the notice of error. This paragraph shall not apply to reconciliations resulting from errors in the meters as set forth in Section 8.5.

D. Interest. Interest shall accrue on any invoiced amount that remains unpaid on the day following the due date for such payment at an annual rate equal to 12% or the highest interest rate allowed by law, whichever is less.

E. Records. Each party shall have the right, at its sole expense during normal business hours, to examine the other party's records to the extent necessary to verify the accuracy of any statement, charge, notice or computation made hereunder.

F. Wire Transfer of Payment. Payment shall be made by wire transfer to Seller's account in accordance with written instructions provided to Buyer by Seller from time to time and in sufficient time to allow Buyer to make timely payments.

Project Incentive Payment. Buyer shall pay Seller the sum of \$100,000.00 not later than 120 days after the Effective Date. Amounts due Seller hereunder for Landfill Gas delivered to Buyer before December 31, 2010, shall be credited against such payment, after which date any remaining balance in excess of amounts credited to Buyer shall be retained by Seller. Notwithstanding the above, if Buyer fails to purchase Landfill Gas with a total price of \$100,000 before December 31, 2010, because Seller fails to deliver Landfill Gas that meets the quality specifications in Article VII, or because of an event of Force Majeure, then the period during which Buyer may receive credits against the above-described payment shall be extended beyond December 31, 2010, by an amount of time equal to the total number of hours during which Landfill Gas delivered by Seller failed to meet the quality specifications set out in Article VII or

the total number of hours during which Buyer was affected by Force Majeure.

ARTICLE XI

TAXES

Seller shall pay or cause to be paid all taxes and assessments imposed on Seller with respect to the Landfill Gas delivered hereunder prior to its delivery to Buyer, and Buyer shall pay or cause to be paid all taxes and assessments imposed upon Buyer with respect to the Landfill Gas delivered hereunder after its receipt by Buyer, as well as any taxes that Seller is required to collect from Buyer in connection with the Landfill Gas delivered hereunder. Neither party shall be responsible or liable for any taxes nor other statutory charges levied or assessed against any of the facilities or operations of the other party used for the purpose of carrying out the provisions of this Agreement.

ARTICLE XII

FORCE MAJEURE

12.1 **Suspension of Obligations.** If either party is rendered unable, wholly or in part, by an event of Force Majeure to carry out its obligations under this Agreement, then upon such party giving notice describing the nature of the Force Majeure to the other party as soon as possible after the occurrence of the cause relied upon (but in no event later than ninety (90) days after the occurrence of the cause relied upon as an event of Force Majeure) , then the obligations of the party giving such notice, other than the obligation to make any payment due pursuant to this Agreement, and the obligation to provide notice pursuant to this Section 12.1, shall be suspended during the continuance of any inability so to perform caused by the event of Force Majeure but for no longer period, and such cause shall, to the extent possible, be remedied with all reasonable dispatch. A notice of Force Majeure shall include a good faith estimate of the date

on which the Force Majeure is expected to end. The party affected by the Force Majeure event shall update the other party of the progress toward ending the Force Majeure event no less frequently than once every thirty days. If a Force Majeure event lasts for more than 180 days, then the party whose performance is not affected by the Force Majeure may terminate this Agreement without further liability to the other Party.

12.2 Strikes and Lockouts. The parties agree that the settlement of strikes or lockouts shall be entirely within the discretion of the party having the difficulty. The foregoing requirement that any Force Majeure be remedied with all reasonable dispatch shall not require the settlement of strikes or lockouts by acceding to the demands of the opposing party when such course is inadvisable in the sole discretion of the party affected by the strike or lockout.

ARTICLE XIII

WARRANTIES, REPRESENTATIONS AND SELLER OBLIGATIONS

13.1 Buyer Representations and Warranties. Buyer represents and warrants to Seller as follows:

A. Buyer is a Delaware limited liability company with full legal right, power and authority to enter into and to fully and timely perform its obligations hereunder;

B. Buyer has duly authorized, executed and delivered this Agreement and this Agreement constitutes a legal, valid and binding obligation, enforceable against Buyer in accordance with its terms;

C. Neither the execution nor delivery by Buyer of this Agreement, nor the performance by Buyer of its obligations hereunder, conflicts with, violates or results in a breach of any constitution, law or governmental regulation applicable to it, or materially conflicts with, violates or results in a breach of any term or condition of any order, judgment or decree or any

agreement or instrument to which Buyer is a party or by which Buyer or any of its properties or assets are bound, or constitutes a default thereunder;

D. No approval, authorization, order, consent, declaration, registration or filing with any federal, state or local governmental authority is required for the valid execution and delivery of this Agreement by Buyer, except such as have been disclosed to Seller or have been duly obtained or made;

E. Buyer has no knowledge of any action, suit or proceeding, at law or in equity, before or by any court or governmental authority, pending against Buyer, in which an unfavorable decision, ruling or finding would materially adversely affect the performance by Buyer of its obligations hereunder, or that, in any way, would materially adversely affect the validity or enforceability of this Agreement; and

F. There are no bankruptcy, insolvency, reorganization, receivership or other arrangement proceedings pending or being contemplated by it, or to its knowledge threatened against it.

13.2. Seller Representations and Warranties. Seller represents and warrants to Buyer as follows:

A. Seller is a Texas home rule municipality, with full legal right, power and authority to enter into and to fully and timely perform its obligations hereunder;

B. Seller has duly authorized, executed and delivered this Agreement, and this Agreement constitutes a legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms;

C. Neither the execution nor the delivery by Seller of this Agreement, nor the performance by Seller of its obligations hereunder conflicts with, violates or results in a breach

of any constitution, law or governmental regulation applicable to it, or materially conflicts with, violates or results in a breach of any term or condition of any order, judgment or decree, or any agreement or instrument to which Seller is a party or by which Seller or any of its properties or assets are bound, or constitutes a default thereunder;

D. No consent, approval or authorization of, or registration, filing or declaration with, any federal or state governmental authority or other regulatory agency or action of the corporate authorities of the Seller, which has not been received, waived or satisfied as of the date hereof, is required for the valid execution and delivery by Seller of this Agreement, the consummation by Seller of the transactions contemplated hereby or compliance by Seller with the terms and provisions thereof;

E. All persons making up Seller's City Council are the duly elected or appointed incumbents in their positions and hold such positions in good standing in accordance with Seller's charter and other applicable law;

F. The term of this agreement does not extend beyond any applicable limitation imposed by Seller's charter or other applicable law;

G. Seller has no knowledge of any action, suit or proceeding, at law or in equity, before or by any court or governmental authority, pending against Seller, in which an unfavorable decision, ruling or finding would materially adversely affect the performance by Seller of its obligations hereunder, or that, in any way, would materially affect the validity or enforceability of this Agreement; and

H. There are no bankruptcy, insolvency, reorganization, receivership or other arrangement proceedings pending or being contemplated by it, or to its knowledge threatened against it.

I. Seller has good title to all Landfill Gas that has been or will be created within the Landfill during the Term of this Agreement, free and clear of all liens and encumbrances, and the operator of the Landfill has no claim to the Landfill Gas.

ARTICLE XIV

INSURANCE; INDEMNIFICATION

14.1 Insurance Coverage Amounts. Buyer, at its own expense, shall purchase, maintain, and keep in force during the entire Term of this agreement, insurance to protect Seller from claims, whether these claims arise as a result of the operations of Buyer, or any of Buyer's officers, employees, agents, subcontractors, or any party not enumerated for whose acts Buyer may be liable. All policies shall be from an insurer licensed to do business in the State of Texas and possess an A.M. Best rating of no less than A+ and shall be in the following minimum amounts:

A. Commercial General Liability:

- (1) \$2,000,000 per occurrence
- (2) \$4,000,000 Annual Aggregate
- (3) G/L must include the following provisions:
 - i. Must be on an occurrence basis
 - ii. Must include Medical Expense limit of \$10,000
 - iii. Personal and Advertising Injury limit of \$2,000,000
 - iv. Products and Completed Operations limit of \$4,000,000 aggregate
 - v. Fire Damage, any one Fire limit of \$1,000,000

B. Automobile Liability

- (1) Combined Single Limit (CSL) of Liability of \$1,000,000
- (2) Coverage must include any Auto, Owned, Scheduled, Hired, or Non-Owned Autos

C. Workers' Compensation Statutory

- (1) Each accident: Limit \$1,000,000
- (2) Disease, each employee: Limit \$1,000,000
- (3) Disease, Policy Limit: \$1,000,000

14.2 Additional Insured. All policies except the Workers' Compensation Policy shall be endorsed to name Seller as an additional insured on the policies, which endorsement shall be noted on all insurance certificates.

14.3 Insurance Certificates. Before commencing any work with respect to installation of Buyer's Facilities, Buyer shall provide to Seller one or more certificates of insurance to evidence that the required insurance coverage is in effect at all times during the term hereof. No insurance shall be cancelled less than thirty (30) days following notice being provided to City by Buyer or Buyer's insurance company(ies), and the certificate of insurance shall so reflect.

14.5 INDEMNIFICATION. BUYER AGREES TO INDEMNIFY AND SAVE HARMLESS SELLER FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, CLAIMS, SUITS, COSTS (INCLUDING COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION) AND ACTIONS BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO OR LOSS OF PROPERTY TO THE EXTENT CAUSED BY BUYER'S NEGLIGENT PERFORMANCE OF ACTIVITIES ARISING FROM OR RELATED TO THIS AGREEMENT OR BY REASON OF ANY NEGLIGENT OR INTENTIONAL ACT

OR OMISSION ON THE PART OF BUYER, ITS OFFICERS, DIRECTORS, SERVANTS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, SUBCONTRACTORS, LICENSEES, SUCCESSORS OR PERMITTED ASSIGNS IN CONNECTION WITH THE PERFORMANCE OF ACTIVITIES ARISING FROM OR RELATED TO THIS AGREEMENT (EXCEPT WHEN SUCH LIABILITY, CLAIMS, SUITS, COSTS, INJURIES, DEATHS OR DAMAGES ARISE FROM OR ARE ATTRIBUTED TO SOLE NEGLIGENCE OF THE SELLER). IF ANY ACTION OR PROCEEDING SHALL BE BROUGHT BY OR AGAINST SELLER IN CONNECTION WITH ANY SUCH LIABILITY OR CLAIM, BUYER, ON NOTICE FROM SELLER, SHALL DEFEND SUCH ACTION OR PROCEEDINGS AT BUYER'S EXPENSE, BY OR THROUGH ATTORNEYS REASONABLY SATISFACTORY TO SELLER. BUYER'S OBLIGATIONS UNDER THIS SECTION SHALL NOT BE LIMITED TO THE LIMITS OF COVERAGE OF INSURANCE MAINTAINED OR REQUIRED TO BE MAINTAINED BY BUYER UNDER THIS AGREEMENT. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

ARTICLE XV

MISCELLANEOUS

15.1 Condensate. Seller shall dispose of all condensate removed from the Landfill Gas by Buyer's Facilities, provided that Buyer delivers all such condensate to Seller at a mutually agreeable location. Buyer shall reimburse Seller for any costs incurred by Seller to dispose of Buyer's condensate to the extent such costs exceed the cost to dispose of condensate or leachate that would be disposed of by Seller or Seller's contractors in the absence of Buyer's Facilities.

15.2 Assignment. Except for assignment by Buyer to an entity which is controlled by Buyer, which controls Buyer, or which is under common control with Buyer, or assignment by

either Party to a third party who acquires the assigning Party's facilities required for the performance of such party's obligations hereunder, neither Party may assign this Agreement without the prior written consent of the other Party, such consent not to be unreasonably withheld. Notwithstanding the foregoing, no assignment shall be effective if the assigning Party is in default in its obligations hereunder at the time of the assignment. No permitted assignment shall be effective unless the assignor provides written notice to the other party to this Agreement, whether consent is required or not, and assignee assumes and agrees in writing to be bound by this Agreement. In the event of a transfer of either Party's facilities as described above, the transferring Party shall provide the other Party with a certified or confirmed copy of any instrument of sale or transfer. All covenants, stipulations, terms, conditions, and provisions of this Agreement shall be binding upon the parties hereto and shall extend to and be binding upon their permitted successors and assigns.

15.3 Notices. Any notice, request, demand, statement and or payment provided for in this Agreement shall be in writing and, except as otherwise provided herein, shall be sent to the Parties hereto at the following addresses:

If to Buyer: WM Renewable Energy, L.L.C.
1001 Fannin
Suite 4000
Houston, Texas 77002
Attn: Vice President

If to Seller: Shane Davis, Landfill Administrator
City of Farmers Branch
13000 William Dodson Pkwy
Farmers Branch, TX 75234

With Copies to: Gary D. Greer, City Manager
City of Farmers Branch
13000 William Dodson Pkwy
Farmers Branch, TX 75234

Peter G. Smith
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

Notices and other communications shall be deemed to have been given and received when personally delivered or upon receipt as evidenced by a U.S. Postal Service Receipt for Certified Mail or evidence of delivery by a private express mail service or courier. Either Party may change the address to which notices are to be sent by written notice to the other Party as provided herein.

15.4 Entire Agreement. This Agreement is intended by the Parties to constitute a final, complete and exclusive expression of their agreement on the subject matter hereof, and shall not be changed, modified, discharged, extended, or renewed except by a written amendment executed by both Parties.

15.5 No Joint Venture. It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the parties, nor to cause Seller to be deemed to be a constituent partner of the Buyer.

15.6 Legal Construction. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

15.7 Exhibits. All exhibits to this Agreement are incorporated herein by reference for
**LANDFILL GAS PURCHASE AGREEMENT BETWEEN THE CITY OF FARMERS BRANCH
(CAMELOT LANDFILL) AND WM RENEWABLE ENERGY, L.L.C. – PAGE 29**

all purposes wherever reference is made to the same.

15.8 Recitals. The recitals to this Agreement are incorporated herein.

15.9 Counterparts. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

15.10 Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, specifically referring to a period of time following the termination of this Agreement shall survive termination hereof.

15.11 No Waiver. The waiver by either Buyer or Seller of any failure on the part of the other Party to perform any of its obligations under this Agreement shall not be construed a waiver of any future or continuing failure of failures, whether similar or dissimilar thereto.

15.12 Choice of Law; Venue. This Agreement and provision contained herein shall be interpreted under the law of the State of Texas, without regard to conflicts of law provisions. Venue for any disputes between the parties arising from or related to this Agreement shall be in Dallas County, Texas.

15.13. Seller Ordinances. Within fifteen (15) days after execution of this Agreement, and as a condition to the obligations of Buyer under this Agreement, Seller shall deliver to Buyer (a) certified copies of all ordinances, resolutions, public notices or other documents evidencing the necessary authorizations with respect to the execution and delivery of this Agreement and the performance by Seller of its obligations pursuant to this Agreement.

(Signatures on Following Page)

IN WITNESS WHEREOF, the parties hereto have caused the execution of this Agreement as of the date first written above by the officers whose names appear below.

SELLER:

CITY OF FARMERS BRANCH

ATTEST:

By:

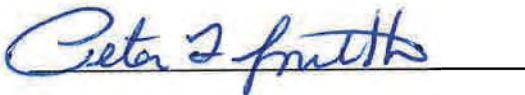


Gary D. Greer, City Manager



Cindy Peters, City Secretary

APPROVED AS TO FORM:



Peter G. Smith, City Attorney

BUYER: WM Renewable Energy, L. L. C.

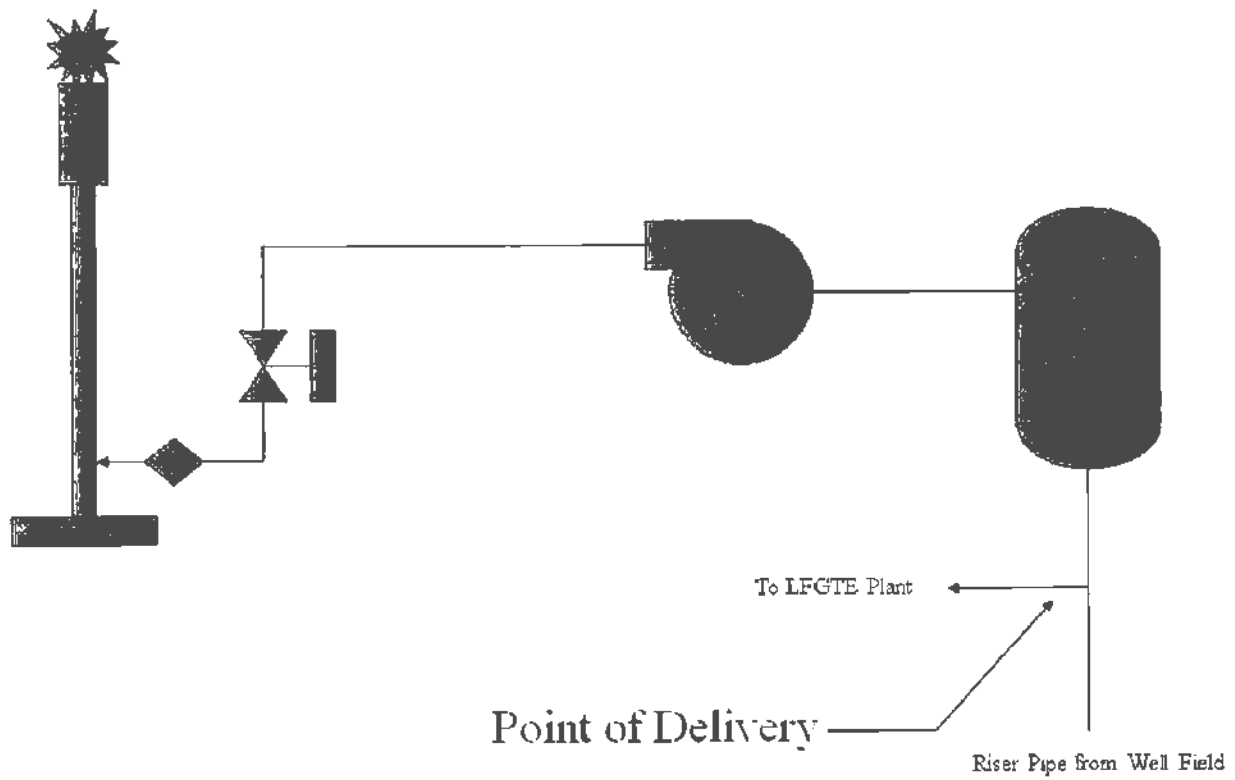
By: Paul Pabor

Name: Paul Pabor

Title: Vice President

ATTACHMENT A

Diagram Showing Point of Delivery



ATTACHMENT B

Price of Renewable Energy Sold
\$/MWH

Price paid to Farmers Branch per
\$/MMBTU

≤ \$55	-----	\$1.00
≤ \$56	-----	\$1.04
≤ \$57	-----	\$1.08
≤ \$58	-----	\$1.12
≤ \$59	-----	\$1.16
≤ \$60	-----	\$1.20
≤ \$61	-----	\$1.23
≤ \$62	-----	\$1.26
≤ \$63	-----	\$1.30
≤ \$64	-----	\$1.33
≤ \$65	-----	\$1.36
≤ \$66	-----	\$1.40
≤ \$67	-----	\$1.43
≤ \$69	-----	\$1.46
≤ \$70	-----	\$1.50
≤ \$71	-----	\$1.55
≤ \$72	-----	\$1.60
≤ \$73	-----	\$1.65
≤ \$74	-----	\$1.70
≤ \$75	-----	\$1.75
≤ \$76	-----	\$1.80
≤ \$77	-----	\$1.85
≤ \$78	-----	\$1.90
≤ \$79	-----	\$1.95
≤ \$80	-----	\$2.00
≤ \$81	-----	\$2.10
≤ \$82	-----	\$2.20
≤ \$83	-----	\$2.30
≤ \$84	-----	\$2.40
> \$84	-----	\$2.50

If Buyer receives more than \$84.00 per megawatt hour for electric energy, capacity, generated by Buyer's Facilities together with the associated renewable energy credits or certificates and other products, then the amount payable hereunder for the Landfill Gas utilized to generate such electricity, capacity and associated products shall be increased by \$0.05 per MMBTU for each dollar by which the price received by Buyer for electric energy exceeds \$84.00.

**ATTACHMENT C
LICENSED AREA OF LANDFILL**



The landfill gas to energy facility shall be located 25 feet south of the southern fence line of the flare facility and 25 feet east of the western property line for Camelot Landfill, Lot 1, Block A, Farmers Branch Camelot Landfill Addition, an addition to the City of Lewisville, Denton County, Texas, according to the plat recorded as Document Number 2009-129, in the Plat Records, Denton County, Texas. The facility shall be 45 feet wide (east/west) by 225 feet long (north/south).

ATTACHMENT D
FORM OF MEMORANDUM OF AGREEMENT

After Recording, Return to:
Kevin B. Laughlin
Nichols, Jackson, Dillard, Hager & Smith, LLP
1800 Lincoln Plaza
500 N. Akard
Dallas, Texas 75201

MEMORANDUM OF LANDFILL GAS PURCHASE AGREEMENT (WITH A LICENSE)

This Memorandum of Landfill Gas Purchase Agreement ("Memorandum"), dated 30 September, 2009, between the City of Farmers Branch, Texas ("City") and WM Renewable Energy, L.L.C. ("WMRE"), concerns the property described in Exhibit "A," attached hereto and incorporated herein ("Premises").

A. For good and valuable consideration, City and WRME have entered into that certain *Landfill Gas Purchase Agreement* of even date herewith ("the Agreement") which, among other agreements, grants to WRME, its affiliates, subsidiaries, employees, contractors, subcontractors and agents certain rights, including a license, pertaining to the use of the Premises, including, but not limited to, the exclusive right to purchase landfill gas extracted from City's municipal solid waste landfill ("the Camelot Landfill") located on the Premises and to construct, operate, and maintain on the Premises an electric generating facility fueled by said extracted landfill gas, and the right to market and sell the electricity generated.

B. The term of the Agreement is fifteen (15) years from the date the generating facility constructed by WRME on the Premises pursuant to the Agreement begins commercial operation as defined in the Agreement.

C. The Agreement, while granting a license in the Premises to WRME, conveys no interest in real property.

D. In the event of a conflict between the terms of this Memorandum and the terms of the Agreement, the terms of the Agreement shall control.

E. A true and correct copy of the Agreement and all amendments thereto, if any, may be reviewed and obtained from the Office of the City Secretary, City of Farmers Branch, 13000 William Dodson Parkway, Farmers Branch, Texas 75234.

F. Pursuant to Article III of the Agreement, City and WMRE have executed and acknowledged this Memorandum which will be recorded in the Real Property Records of

Denton County, Texas, for the purpose of providing notice to third parties of the Agreement.

WHEREFORE, City and WMRE have executed this Memorandum this 30th day of September, 2009.

WM RENEWABLE ENERGY, L.L.C.

By: Paul Paly

Attest Paul Paly

Title: Vice President

CITY OF FARMERS BRANCH, TEXAS

By: Gary D. Greer
Gary D. Greer, Manager

ATTEST:

Cindee Peters

Cindee Peters, City Secretary

APPROVED AS TO FORM:

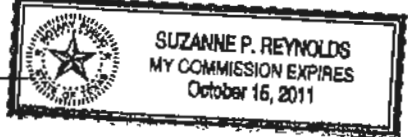
Peter G. Smith
Peter G. Smith, City Attorney

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the 30 day of September 2009 by Gary D. Greer, City Manager, City of Farmers Branch, a Texas home rule municipality, for and on behalf of said municipality.

Suzanne P. Reynolds
Notary Public, State of Texas
Suzanne P. Reynolds
Printed Name

My Commission Expires:

10-15-2011 

STATE OF TX §
 §
COUNTY OF Harris §

This instrument was acknowledged before me on the 21st day of September 2009, by Paul Pabor, _____, WM Renewable Energy, L.L.C., a Delaware limited liability company, for and on behalf of said company.

Mary Heckaman
Notary Public, State of TX
Mary Heckaman
Printed Name

My Commission Expires:

9/12/10

Exhibit "A"
Memorandum of Landfill Gas Purchase Agreement
Description of Premises



The landfill gas to energy facility shall be located 25 feet south of the southern fence line of the flare facility and 25 feet east of the western property line for Camelot Landfill, Lot 1, Block A, Farmers Branch Camelot Landfill Addition, an addition to the City of Lewisville, Denton County, Texas, according to the plat recorded as Document Number 2009-129, in the Plat Records, Denton County, Texas. The facility shall be 45 feet wide (east/west) by 225 feet long (north/south).