

**SEVENTH AMENDMENT TO  
SERRF OPERATIONS AND MAINTENANCE AGREEMENT  
AGREEMENT NO. 23336**

THIS SEVENTH AMENDMENT to the SERRF Operations and Maintenance Agreement (this “Seventh Amendment”) is made and entered, in duplicate, as of January 17, 2023 for reference purposes only, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting held on January 17, 2023, by and between the CITY OF LONG BEACH, a municipal corporation of the State of California (the “City”) and COVANTA LONG BEACH RENEWABLE ENERGY CORP., a Delaware corporation (“Operator”).

**1. RECITALS**

- 1.1 City and Operator entered into that certain Agreement dated March 1, 1994, entitled “SERRF Operations and Maintenance Agreement,” also identified as Contract Number 23336, together with the First Amendment to Agreement dated July 31, 1996, the Second Amendment dated March 12, 2008, the Third Amendment dated April 22, 2015, the Fourth Amendment dated July 11, 2016, the Fifth Amendment dated January 1, 2018, and the Sixth Amendment dated September 7, 2021, providing for the day-to-day operation and long term maintenance of the City’s Southeast Resource Recovery Facility (the “SERRF”), a waste-to-energy facility serving the City of Long Beach and adjacent communities (collectively, the “Agreement”); capitalized terms used but not defined in the Seventh Amendment shall have the meanings provided in the Agreement.
- 1.2 Operator has notified the City, that for Operator to properly and effectively operate through the end of the existing term of the Agreement, certain significant changes are required to, among other things, the SERRF operational cost and revenue sharing provisions of the Agreement
- 1.3 City is willing to negotiate exclusively with Operator to explore the potential long term operation of SERRF
- 1.4 City and Operator wish to amend the Agreement as provided in this Seventh Amendment, and therefore, in consideration of the mutual terms, covenants, and conditions herein contained, the Parties agree as follows:

**2. AMENDMENTS TO ARTICLE I DEFINITIONS**

- 2.1 **Deletions.** The following definitions are deleted in their entirety from Section 1.2 of the Agreement:

“Adjusted Base Operating Fee”  
 “Avoided Costs”  
 “Base Operating Fee”  
 “Bonds”  
 “Energy Generation Shortfall”  
 “Energy Revenue Credit”  
 “Energy Revenue Shortfall Adjustment”  
 “Excess Operating Fee”  
 “Facility Operating Revenue”  
 “Ferrous Materials Recovery Credit”  
 “Ferrous Materials Recovery Credit Adjustment”  
 “Forced Outage”  
 “Full Loan Equivalent Maintenance Hours”  
 “Guaranteed Annual Energy Generation”  
 “Guaranteed Annual Facility Throughput”  
 “HHV Failure”  
 “HHV Monitoring Procedures”

“HHV Range”  
 “Lost Boiler Day”  
 “Major Maintenance and Replacement Budget”  
 “Major Maintenance and Replacement Costs”  
 “Minimum Level”  
 “MM&R Escrow Account”  
 “Net Facility Operating Revenue”  
 “Net Ferrous Materials Revenues”  
 “Operating Fee”  
 “Operating Fee Adjustment”  
 “Operator Reimbursement”  
 “Pass Through Costs”  
 “Pass Through Costs Adjustment”  
 “Preventative Maintenance Report”  
 “Rated Performance”  
 “Required Level”  
 “Service Fee”  
 “Throughput Shortfall”  
 “Throughput Shortfall Adjustment”  
 “Year End Adjustment”

**2.2 Amended Definitions.** The following definitions in Section 1.2 of the Agreement are amended and restated in their entirety to read as follows:

“Change in Law” means (i) the enactment, adoption, promulgation or modification after the date hereof of any law, or any change in the interpretation thereof, or (ii) the imposition of any material conditions on the issuance or renewal of any Permit after the date hereof, or any change in the interpretation thereof, which, in either case, establishes requirements making the operation and maintenance of SERRF financially more burdensome than the most stringent requirement in effect on the date hereof and is applicable to SERRF, unless (a) Operator has agreed to accept the change, (b) Operator has been compensated for such change pursuant to a Change Order or amendment to this Agreement executed pursuant to Section 4.3, or (c) Operator has failed to submit a request for Change Order or other amendment to this Agreement pursuant to Section 4.3 for such change.

“Cost Substantiation” means, with respect to Decommissioning Costs, a certificate signed by an Operating Representative of Operator, setting forth Operator’s reason for incurring the costs, the amount of the costs with supporting documentation, the event or section of this Agreement or any Change Order giving risk to Operator’s right to incur such costs, and certifying that the costs are reasonable and proper for the services or materials supplied.

“Disposal Fee” means the per Ton charge levied by Operator to City for each Ton of City MSW accepted for processing by Operator at SERRF which shall be: (a) \$61.50 (Sixty-One and 50/100 dollars) per Ton for each Ton of City MSW processed up to and including the Reserved Capacity Caps; and (b) a per Ton amount to be mutually agreed upon in writing between the Parties for each Ton of City MSW processed in excess of the Reserved Capacity Caps.

“Ferrous Materials Processing Costs” mean the costs incurred by Operator in connection with the recycling of Ferrous Materials pursuant to Section 2.11 (a).

“Ferrous Materials Revenues” mean the revenues received by Operator from the sale of Ferrous Materials.

“Landfill” means the appropriately permitted disposal site or sites used by Operator for Unprocessable Waste, Hazardous Waste, Bypass Waste and Residue.

**2.3 New Definitions.** The following new definitions are added to Section 1.2 of the Agreement:

“California ISO” means the California Independent System Operator, a public benefit corporation which manages most of the electric grid in California.

“City Cap-and-Trade Cost Allocation” has the meaning given to such term in Section 5.4 (b).

“City Pass Through Expenses” has the meaning given to such term in Section 5.4 (b).

“Decommissioning Costs” has the meaning given to such term in Section 6.3 (a).

“Decommissioning Plan” has the meaning given to such term in Section 6.3 (a).

“Decommissioning Services” has the meaning given to such term in Section 6.3 (a).

“Decommissioning Service Fees” has the meaning given to such term in Section 6.3 (a).

“Energy Revenues” mean any and all revenues received by City from City’s sale of electricity generated by SERRF to California ISO.

“Exclusivity Period” has the meaning given to such term in Section 7.5.

“Monthly Disposal Fee” has the meaning given to such term in Section 5.1.

“Monthly Energy Revenues” means Energy Revenues received by the City in each calendar month.

“Monthly Waste Volume” means the volume of City MSW in Tons delivered by City to SERRF and accepted by Operator for processing during each calendar month.

“Reserved Capacity Caps” has the meaning given to such term in Section 2.3 (b).

“Unprocessable Waste Costs” mean any and all costs and expenses incurred by Operator in each calendar month to lawfully dispose of Unprocessable Waste delivered by City trucks to SERRF and accepted by Operator.

**3. AMENDMENTS TO ARTICLE II OPERATION AND MAINTENANCE SERVICES**

**3.1 Amendment of Section 2.1.**

Paragraphs (a) and (b) Section 2.1 of the Agreement are amended and restated in their entirety to read as follows:

“(a) Responsibilities. Except as otherwise expressly set forth herein, Operator shall be solely responsible for operation and maintenance of SERRF and for the maintenance of the SERRF Site, in each case, in accordance with the terms and conditions of (i) this Agreement, (ii) the Operations and Maintenance Manuals, (iii) the Permits, (iv) all Laws to which SERRF, the SERRF Authority, City or Operator may be subject, including, without limitation, all rules and regulations of the Division of Occupational Health and Safety of the State of California Department of Industrial relations and all rules, regulations, procedures, requirements, guidelines and policies of California ISO, (v) all warranties or guaranties provided for SERRF, (vi) all insurance requirements under insurance policies required to be provided by Operator pursuant to Section 4.6 or obtained by the City or the SERRF Authority for SERRF, (vii) the Interconnection Agreement dated December 8, 2018 between Southern California Edison Company and City, and (viii) the Site Acquisition Documents; provided Operator shall have no obligation to maintain the interior of the City Administration building.

(b) Standards. Operator shall at all times maintain and operate SERRF in a good, aesthetic and safe condition in accordance with California utility industry standards and good engineering and operating practices for well managed MSW handling and processing facilities.”

The following paragraphs are added to Section 2.1 of the Agreement:

“(e) Waste Procurement. Operator shall be solely responsible for procurement and delivery of all Waste other than City MSW to SERRF.

(f) Landfills. Operator shall designate the Landfill or Landfills to be used for Unprocessable Waste, Hazardous Waste, Bypass Waste and all other Waste other than Residue throughout the Term.

(g) Collection of Disposal Fees. Operator shall be solely responsible for collecting the Waste Disposal Fees from City and for collecting all other Waste disposal fees for all other deliveries of Waste to SERRF.”

### 3.2 Amendment of Section 2.2.

Paragraphs (a) and (b) of Section 2.2 the Agreement are amended and restated in their entirety to read as follows:

“(a) Delivery of City MSW. City shall be solely responsible for delivery of City MSW to SERRF.

(b) Landfills. City shall designate the Landfill or Landfills to be used by Operator for the disposal of Residue throughout the Term.”

Paragraph (d) of Section 2.2 of the Agreement is amended and restated in its entirety to read as follows:

“(d) ISO Billing. City shall be solely responsible for billing California ISO for any amounts due City for the sale of electricity produced by SERRF to California ISO and for collecting such amounts.”

Paragraph (e) of Section 2.2 of the Agreement is deleted in its entirety.

### 3.3 Amendment of Section 2.3.

Paragraphs (a), (b) and (c) of Section 2.3 of the Agreement are amended and restated in their entirety to read as follows:

“(a) General Responsibility. City shall deliver or cause to be delivered all available City MSW to the tipping floor of SERRF in accordance with the Waste Delivery Schedule.

(b) Reserved Capacity Caps. Notwithstanding paragraph (a) above, City shall not deliver or cause to be delivered to SERRF more than 180,000 Tons of MSW per Operating Year, more than 3,500 Tons of MSW per calendar week or more than 700 Tons of MSW per calendar day (“Reserved Capacity Caps”), provided that Operator may accept City MSW delivered to SERRF above the Reserved Capacity Caps to the extent that SERRF has capacity to do so and the Parties have mutually agreed in writing upon the Disposal Fee for such City MSW above the Reserved Capacity Caps.

(c) Quality. City shall use reasonable efforts to cause only Processible Waste to be delivered to SERRF, provided, that any inadvertent deliveries of Unprocessable Waste shall not constitute a breach by City of its obligations hereunder.”

### 3.4 Amendment of Section 2.6.

Paragraph (d) of Section 2.6 is amended and restated in its entirety to read as follows:

“(d) Payment of Costs. All costs of cleaning, storing, handling, transportation and disposal of Hazardous Waste delivered to the SERRF Site shall be borne by Operator, unless such Hazardous Waste is delivered to SERRF by City, in which event such costs for such Hazardous Waste shall be borne by City.”

**3.5 Amendment of Section 2.7.**

The following new paragraph is added to Section 2.7 of the Agreement:

“(d) System Access. City shall provide Operator with access to, and assist Operator with the use of, the existing collection vehicle truck scale information technology system and software currently used by City so that Operator will have the necessary information to bill its customers for deliveries of Waste to SERRF.”

**3.6 Amendment of Section 2.9.**

Section 2.9 of the Agreement is amended and restated in its entirety to read as follows:

“**Section 2.9 Transfer Station**. During periods when SERRF is not fully operational, Operator shall, if requested to do so by City, accept and dispose of City MSW which is Processible Waste as Bypass Waste to the extent of SERRF’s transfer capacity.”

**3.7 Amendment of Section 2.10.**

Section 2.10 of the Agreement is amended and restated in its entirety to read as follows:

“**Section 2.10 Disposal of Waste and Residue**. Operator shall transport and dispose of Bypass Waste and Unprocessable Waste at the appropriate Landfill at Operator’s discretion. Operator shall transport and dispose of Residue at the appropriate Landfill designated by City. Operator shall treat bottom ash and combined ash in accordance with the Wes-PHix Process, unless otherwise agreed by the Parties. Operator shall also screen bottom ash and arrange for the proper Landfill disposal as provided herein or the recycling of Ferrous Materials pursuant to Section 2.11(a), as applicable.”

**3.8 Amendment of Section 2.11.**

Section 2.11 (a) of the Agreement is amended and restated in its entirety to read as follows:

“(a) Ferrous Materials. City and Operator shall each use reasonable efforts to identify available markets for Ferrous Materials. Operator shall recover Ferrous Materials from the Residue to the extent that Operator believes that such recovery will be profitable for it or otherwise upon the request of the City. Operator shall also be responsible for marketing and selling recovered Ferrous Materials and for collecting all amounts and making all payments that may be necessary in connection with the sale thereof. Operator shall pay all Ferrous Materials Processing Costs and shall have the right to retain all Ferrous Materials Processing Revenues. Operator shall provide City with a monthly report setting forth the amount in Tons of Ferrous Materials recovered.”

**3.9 Amendment of Section 2.13.**

Section 2.13 (b) of the Agreement is amended and restated in its entirety to read as follows:

“(b) Spare Parts, Special Tools and Furnishings. Operator shall, at its expense and in its sole discretion, maintain an inventory of spare parts, special tools and furnishings.”

Section 2.13 (c) of the Agreement is amended and restated in its entirety to read as follows:

“(c) Consumables. Operator shall provide all consumables, at its expense and in its sole discretion, including, but not limited to, boiler and water treatment chemicals, sanitary sewer disposal, lime reagent and ammonia for air pollution control, cement and phosphate chemicals for ash treatment and continuous emissions monitoring calibration.”

Sections 2.13 (g) and (h) of the Agreement are deleted in their entirety.

**3.10 Amendment of Sections 2.16 and 2.17.**

Sections 2.16 and 2.17 of the Agreement are deleted in their entirety.

**4. AMENDMENTS TO ARTICLE IV FURTHER AGREEMENTS**

**4.1 Amendment of Section 4.1.**

Section 4.1 (a) of the Agreement is e deleted in its entirety.

Section 4.1 (b) of the Agreement is amended and restated in its entirety to read as follows:

“(b) Waste and Residues. Title to all Waste received by SERRF and all Residues and other materials discharged from SERRF shall remain with Operator, and City shall have no title or interest therein.”

**4.2 Amendment of Section 4.4.**

Sections 4.4 (b) and (c) are deleted in their entirety.

**4.3 Amendment of Section 4.15.**

Section 4.15 of the Agreement is amended and restated in its entirety to read as follows:

“**Section 4.15 Annual Appropriations.** City hereby covenants to take such action as is necessary under the Laws applicable to City to annually budget for, and appropriate and maintain funds from legally available revenues sufficient to discharge, its obligations under Article V. The amount of reasonable estimate of the Monthly Disposal Fees and the City Cap-and-Trade Cost Allocation payable in any Operating Year shall be included in the City Manager’s estimate included in any City budget for such Operating Year. The covenants on the part of City herein contained shall be deemed to be and shall be construed to be ministerial duties imposed by Law and it shall be the ministerial duty of each and every public official of City to take such action and to do such things as are required by Law in the performance of such official duty of such officials to enable City to carry out and perform this covenant and agreement to be carried out and performed by City hereunder.”

**4.4 New Section 4.16. A new Section 4.16 is added to Article IV of the Agreement as follows:**

“**Section 4.16 Organics Project Proposal.** During the first six (6) months of the calendar year 2023 Operator shall research the feasibility of developing, financing and constructing a facility on the SERRF Site for the recycling of organic waste, and Operator shall provide City with a proposal for the same on or before June 30, 2023. Neither Operator nor City shall be under any obligation to implement the proposal but agree that the proposal may be considered and negotiated by the Parties as part of negotiations (if any) between the Parties pursuant to Section 7.5 of this Agreement.”

## 5. AMENDMENTS TO ARTICLE V PAYMENTS TO OPERATOR

Article V of the Agreement is deleted in its entirety and replaced with the following:

“**Section 5.1 Monthly Disposal Fee.** For disposing of City MSW at SERRF, Operator shall receive a monthly disposal fee from City (“Monthly Disposal Fee”), payable in arrears out of funds legally available therefore, and computed as set forth below.

The Monthly Disposal Fee shall be calculated for each calendar month as follows:

$$\text{MDF} = \text{MWV} \times \text{DF} + \text{UWC}$$

where:           MDF means Monthly Disposal Fee  
                   MWV means Monthly Waste Volume  
                   DF means Disposal Fee  
                   UWC means Unprocessable Waste Costs

**Section 5.2 Electricity Revenues.** For operating SERRF at Operator’s own cost and expense, City shall assign, transfer and pay to Operator all Energy Revenues without any deduction or withholding whatsoever on a pass-through basis, with Monthly Energy Revenues being paid in arrears at the end of each calendar month.

### **Section 5.3 Invoicing and Payment.**

(a) **Monthly Disposal Fee.** Operator shall send to City, not later than thirty (30) days after the end of each calendar month, an invoice showing the Monthly Disposal Fee due to Operator hereunder along with a calculation thereof and supporting documentation evidencing the Monthly Waste Volume and Unprocessable Waste Costs, if any. Each invoice for the Monthly Disposal Fee shall be paid by City within thirty (30) days after receipt (except for any portions that may be disputed). Disputed payments shall be resolved in accordance with the dispute resolution provisions set forth in section 8.1. Payment of invoiced amounts by City to Operator will not affect City’s right to independently pursue any claim it might have against Operator for non-performance of its obligations hereunder.

(b) **Monthly Energy Revenues.** City shall pass through and pay to Operator Monthly Energy Revenues for each calendar month within thirty (30) days of the last day of the calendar month in which they were received by City to a bank account designated in writing by Operator to City. Within fifteen (15) days of the end of each calendar month City shall provide Operator with documentation substantiating the Monthly Energy Revenues for that calendar month. Operator shall have the right to dispute payments of the Monthly Energy Revenues with disputed payments being resolved in accordance with the dispute resolution provisions set forth in section 8.1.

### **Section 5.4 Other Revenues and Expenses.**

(a) **Other Revenues.** Operator shall have the sole and exclusive right to market and sell the capacity of SERRF to the extent not used to process City MSW and to receive all revenues from the receipt and processing of Waste at SERRF. The Parties further agree that Operator shall have the sole and exclusive right to market and sell all Ferrous Materials and to receive all Ferrous Materials Revenues.

(b) **Expenses.** Operator shall be responsible for and pay all costs and expenses in connection with the operation and maintenance of SERRF other than the costs and expenses in connection with the California Cap-and-Trade Program attributable to City MSW processed by SERRF in each Operating Year which shall be borne and paid by City in accordance with the following calculation: total Tons of City MSW processed by SERRF in the Operating Year divided by the total

Tons of Waste (including City MSW) processed by SERRF in the Operating Year multiplied by all costs and expenses incurred by SERRF in connection with the California Cap-and-Trade Program for the Operating Year (“City Cap-and-Trade Cost Allocation”). In the event that City incurs any costs and expenses for the disposal of Residue or for any Permits (“City Pass Through Expenses”) City shall pass those costs and expenses through to Operator by invoicing Operator for such City Pass Through Expenses within thirty (30) days of the end of each calendar month billing period in which such City Pass Through Expenses were incurred. All such invoices shall include supporting documentation substantiating such City Pass Through Expenses. Each invoice for the City Pass Through Expenses shall be paid by Operator within thirty (30) days after receipt (except for any portions that may be disputed). Disputed payments shall be resolved in accordance with the dispute resolution provisions set forth in section 8.1.

**Section 5.5. City Audit.** The City Auditor’s Office may audit all amounts paid to Operator under this Article V for each Operating Year and issue a draft report on the results of the audit within 365 days after the end of the Operating Year. The draft report shall be delivered to Operator and within thirty (30) days thereafter, or such additional time as may be granted at the sole discretion of the City Auditor, Operator shall identify in writing any items in the draft audit report that are disputed. The City Auditor shall review the disputed items, if any, and issue a final audit report indicating any additional payments due either to or from Operator. Any additional payments required or determined by the final audit report shall be made within thirty (30) days of receipt of said report, unless otherwise agreed by the Parties.”

## **6. AMENDMENTS TO ARTICLE VI TERM**

### **6.1 Amendment of Section 6.2**

Section 6.2 (f) of the Agreement is amended and restated in its entirety to read as follows:

“(f) Each of City and Operator shall have the right to terminate this Agreement for its own convenience, by providing at least ninety (90) days written notice thereof to the other Party. Upon either Party’s exercising the foregoing right to terminate for convenience, either Party may request by notice in writing to the other Party that the effective date of termination (and hence the end of the Term and the commencement of the implementation of the Decommissioning Plan) be less than ninety (90) days from the date of the termination notice for the reasons set forth in the request notice (an “Early Termination Request”), and the other Party shall not unreasonably withhold its consent to such Early Termination Request. In the event that a Party reasonably withholds its consent to such Early Termination Request that Party will notify the other Party issuing the Early Termination Request in writing of its withholding of consent to the Early Termination Request and the reasons therefor, and the Parties will then negotiate in good faith to reach an agreement as to a mutually acceptable effective date of the termination of this Agreement, which in any event shall not occur later than the original ninety (90) day notice period.”

### **6.2 Amendment of Section 6.3.**

Section 6.3 (a) of the Agreement is amended and restated in its entirety to read as follows:

“(a) Decommissioning Plan. Prior to June 30, 2023, the Parties shall use commercially reasonable efforts to mutually agree in writing upon a detailed decommissioning plan based upon an initial decommissioning plan to be submitted by Operator to City (“Decommissioning Plan”). In the event that the Parties have agreed upon the Decommissioning Plan but have not entered into a new agreement for the operation and maintenance of SERRF pursuant to Section 7.5, and City so instructs Operator in writing within sixty (60) days prior to the end of the Term, the Operator shall perform all services and provide all materials and equipment to implement and complete the Decommissioning Plan substantially in accordance with the terms and conditions thereof (“Decommissioning Services”) at the end of the Term. As consideration for Operator’s performance of the Decommissioning Services,



City shall pay Operator for any and all costs and expenses incurred by Operator in the performance of the Decommissioning Services (“Decommissioning Costs”) on a pass-through basis, subject to Cost Substantiation, plus 15% of the Decommissioning Costs (“Decommissioning Service Fees”). Operator shall send to City not later than thirty (30) days after the end of each calendar month an invoice showing the Decommissioning Service Fees incurred by and due to Operator hereunder during such calendar month along with a calculation thereof and supporting documentation evidencing the Decommissioning Costs incurred during that calendar month, along with Cost Substantiation thereof. Each invoice for the monthly Decommissioning Service Fees shall be paid by City within thirty (30) days after receipt (except for any portions that may be disputed). Disputed payments shall be resolved in accordance with the dispute resolution provisions set forth in section 8.1. Payment of invoiced amounts by City to Operator will not affect City’s right to independently pursue any claim it might have against Operator for non-performance of its obligations hereunder.

Section 6.3 (b) of the Agreement is amended and restated in its entirety to read as follows:

“(b) SERRF Condition at the End of the Term; Release after Completion of Decommissioning Plan. As SERRF will be decommissioned and demolished at the end of the Term in the absence of the Parties entering into a new agreement for the operation and maintenance of SERRF pursuant to Section 7.5, the Parties understand and agree that SERRF and the SERRF Site will be in an “as is where is” condition at the end of the Term. Operator makes no representations or warranties as to the condition of SERRF and/or the SERRF Site at the end of the Term, and Operator shall have no obligations or liabilities whatsoever or howsoever arising with regard to the condition of SERRF and/or the SERRF Site at the end of the Term, other than the obligation to implement and complete the Decommissioning Plan. Upon the completion of the Decommissioning Plan, City hereby unconditionally waives, releases and renounces and full discharges Operator and its affiliates and their directors, officers, agents, attorneys, employees and representatives from any and all claims, actions, suites, causes of action, arbitration proceedings, verdicts, judgments, debts, liabilities, obligations, dues, demands, losses, damages, deficiencies, assessments, costs and/or expenses whatsoever or howsoever arising from or in connection with the condition of SERRF and/or the SERRF Site at the end of the Term or otherwise under this Agreement.

A new Section 6.3 (c) is added to the Agreement as follows:

“(c) Title and Ownership. At the end of the Term: (i) all information, data and books and records with respect to the operation and maintenance of SERRF shall be delivered by Operator to City as the property of City, provided that Operator shall be entitled to retain copies of the same; (ii) title to SERRF and its inventory, including all spare parts, special tools, furnishings and consumables, and Mobile Equipment, shall remain with City; and (iii) title to all Operator’s personal effects and Operator’s computers and information technology system and equipment shall remain with Operator, with Operator being entitled to remove the same from SERRF and the SERRF Site.”

A new Section 6.3 (d) is added to the Agreement as follows:

“(d) Survival. Any term, condition, covenant or obligation which requires performance of a Party subsequent to termination or expiration of this Agreement shall survive and remain enforceable against such Party subsequent to such termination or expiration, including without limitation, Sections 4.5, 4.6, 4.7 (as amended to replace the Letter of Credit with the Escrow Account) and 6.3 and Articles VII and VIII.”

## 7. AMENDMENTS TO ARTICLE VII TERM

### 7.1 Amendment of Section 7.3 (c).

Section 7.3 (c) of the Agreement is deleted in its entirety.

### 7.2 Amendment of Section 7.4 (b).

Section 7.4 (b) of the Agreement is amended and restated in its entirety to read as follows:

(b) Termination Upon Continued Uncontrollable Circumstances. In the event that Uncontrollable Circumstances render either Party unable to perform its obligations under this Agreement for a continuous period of thirty (30) days or more, either Party may terminate this Agreement with immediate effect upon written notice to the other Party.

### 7.3 New Section 7.5.

A new Section 7.5 is added to Article VII as follows:

**Section 7.5 Right of First Negotiation for New Agreement.** During the six (6) month period from September 1, 2023 until February 28, 2024 (“Exclusivity Period”), City hereby grants Operator the exclusive right of first negotiation to negotiate a new agreement for the operation and maintenance of SERRF after the expiration of the Term. Operator may exercise its right of first negotiation by giving written notice to City on or before August 31, 2023. In the event that Operator so exercises its right of first negotiation, the Parties agree to negotiate in good faith the provisions of a new agreement for the operation and maintenance of SERRF. During the Exclusivity Period, City shall not, directly or indirectly, through representatives, affiliates or otherwise, initiate, solicit, encourage or negotiate with third parties concerning the operation and maintenance of SERRF. The foregoing does not constitute an obligation or agreement of either Party to enter into any agreement regarding the operation and maintenance of SERRF, whether during or following the Exclusivity Period. Each Party will bear its own costs incurred in connection with the negotiation of a new agreement for the operation and maintenance of SERRF, including attorneys’ fees and other professional fees. Notwithstanding the foregoing, the Parties acknowledge and agree that City reserves the right to issue a request for proposals for an organics recycling facility and to negotiate the development of such facility with third parties other than Operator and its affiliates.

## 8. AMENDMENTS TO EXHIBITS

Exhibit A to the Agreement is deleted in its entirety.

Paragraphs 1, 2, 3, 4 and 5 of Exhibit B to the Agreement are deleted in their entirety.

Exhibit F to the Agreement is deleted in its entirety.

## 9. NO FURTHER AMENDMENTS

Except as otherwise amended pursuant to this Seventh Amendment, all other terms and conditions of the Agreement will remain unchanged and be ratified and confirmed.

IN WITNESS WHEREOF, this Seventh Amendment has been executed for and on behalf of the Parties by their duly authorized representatives as of the day and year first above written.

CITY OF LONG BEACH

By: Linda F. Tatum  
Name: LINDA F. TATUM  
Title: ASST CITY MANAGER

EXECUTED PURSUANT  
TO SECTION 301 OF  
THE CITY CHARTER.

APPROVED AS TO FORM  
1-26-2023  
DAWN MCINTOSH, City Attorney  
By: [Signature]  
RICHARD ANTHONY  
PRINCIPAL DEPUTY CITY ATTORNEY

COVANTA LONG BEACH NEWABLE ENERGY CORP.

By: [Signature] 1/24/2023  
Name: christopher J. Baker  
Title: Vice President