

OFFICE OF THE CITY ATTORNEY
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FIFTH AMENDMENT TO
SERRF OPERATIONS AND MAINTENANCE AGREEMENT
AGREEMENT NO. 23336
23336

THIS FIFTH AMENDMENT to the SERRF Operations and Maintenance Agreement (this "Fifth Amendment") is made and entered, in duplicate, as of August 15, 2018 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 August 7, 2018, 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").

RECITALS

WHEREAS, 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 that First Amendment to Agreement dated July 31, 1996, the Second Amendment dated March 12, 2008, the Third Amendment dated April 22, 2015 (the "Third Amendment"), and the Fourth Amendment dated July 11, 2016, 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 this Fifth Amendment shall have the meanings provided in the Agreement; and

WHEREAS, Operator has notified the City, that for the SERRF to properly and effectively operate until 2024, a substantial capital investment will be required for the replacement of 30-year-old end of life equipment; and

WHEREAS, Operator will make a capital investment in the SERRF in the

1 amount of \$5,000,000, and the City will make a capital investment in the SERRF in an
2 amount not to exceed \$13,720,000; and

3 WHEREAS, the Agreement presently allows either party to terminate the
4 Agreement for its convenience, effective on or after December 8, 2018. This Fifth
5 Amendment suspends each party's right to exercise such convenience termination as
6 provided by, and subject to, the provisions hereof.

7 WHEREAS, the work performed under this Amendment will be known as
8 Remedial Work, which term is defined below; and

9 WHEREAS, in connection with performing the Remedial Work, the
10 operational guarantees in the Agreement are being adjusted as provided herein.

11 WHEREAS, no portion of Operator's \$5,000,000 capital commitment to the
12 SERRF described in paragraph 2 below will count toward Operator satisfying the Minimum
13 Level for Major Maintenance and Replacement Costs; and

14 WHEREAS, the City and Operator have agreed to commit resources and
15 work jointly together on an initiative to secure for processing at the SERRF higher value
16 waste to promote the future economic viability of the SERRF, subject to receiving approval
17 thereof by applicable regulatory authorities and by each party's governing body; and

18 WHEREAS, if with respect to such higher value waste initiative, the City and
19 Operator are successful in securing regulatory approval and negotiating an amendment
20 approved by the City's and Operator's governing bodies, which arranges for both
21 investment and operational conditions, then Operator will have the right to extend the
22 Agreement for 10 additional years (until June 30, 2034);

23 NOW THEREFORE, in consideration of the mutual terms and conditions in
24 the Agreement and in this Fifth Amendment, the parties agree as follows:

25 1. Definition Changes. The following defined terms in Section 1.2 of the
26 Agreement are hereby amended to read as set forth below:

27 "Guaranteed Annual Energy Generation" means for each Operating Year set
28 forth below, the value set forth opposite such Operating Year, which values shall be used

1 for purposes of the end of year calculations beginning with Operating Year 2017/2018:

2	Operating Year	Guarantee
3	2017/2018	164,000 mWh/yr
4	2018/2019	164,000 mWh/yr
5	2019/2020	175,000 mWh/yr
6	2020/2021	187,000 mWh/yr
7	2021/2022 and beyond	200,000 mWh/yr

8 "Guaranteed Annual Facility Throughput" means for each Operating Year set
9 forth below, the value set forth opposite such Operating Year, which values shall be used
10 for purposes of the end of year calculations beginning with Operating Year 2017/2018:

11	Operating Year	Guarantee
12	2017/2018	350,000 TPY
13	2018/2019	350,000 TPY
14	2019/2020	375,000 TPY
15	2020/2021	400,000 TPY
16	2021/2022 and beyond	428,000 TPY

17 "List 1 Remedial Work" means the Remedial Work to be performed with first
18 priority pursuant to Article III, as more particularly set forth on List 1 on Exhibit G.

19 "List 2 Remedial Work" means the Remedial Work to be performed with
20 second priority pursuant to Article III, as more particularly set forth on List 2 on Exhibit G.

21 "Remedial Work" means the List 1 Remedial Work and the List 2 Remedial
22 Work.

23 "Remedial Work Change Order" means a written order designated or
24 indicated to be an order executed by an authorized representative of City and an authorized
25 representative of Operator pursuant to Section 3.1 and 4.3(b).

26 "Remedial Work Period" means the period commencing January 1, 2018 and
27 ending June 30, 2021, unless extended as a result of City Fault or an Uncontrollable
28 Circumstance.

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"Remedial Work Interference Day" is eliminated.

The definition of "Repair Escrow Account" is hereby deleted in its entirety.

2. Article III of the Agreement (Remedial Work) is hereby amended as follows:

A. Section 3.1 of the Agreement is hereby amended to read as follows:

"Section 3.1 Capital Investment in SERRF. Operator shall invest a minimum of \$1,666,667 per year in each of calendar years 2018, 2019 and 2020, totaling \$5,000,000, to complete with a first priority, items on List 1 Remedial Work and with a second priority, items on List 2 Remedial Work, and the City shall invest all additional capital, up to a maximum of \$13,720,000, as necessary to complete the List 1 Remedial Work and the List 2 Remedial Work. If for reasons other than Operator Fault or Uncontrollable Circumstance the City fails to invest at least \$2,180,000 in any of calendar years 2018, 2019, 2020 or 2021, then the suspension of Operator's right to terminate for convenience, as provided in Section 6.2(f) of the Agreement, shall not apply for 60 days immediately following the end of each such calendar year. All Remedial Work and funding will be administered through a Remedial Work Change Order process, which will account for the Operator and City investments, as well as the Remedial Work to be completed."

B. Section 3.2(a) is modified to eliminate clause (iii).

C. Section 3.2(d) of the Agreement is hereby deleted in its entirety.

3. Adjusted Base Operating Fee. Beginning on July 1, 2018 and continuing for the remainder of the Term, Sections 5.1(a) and 5.1(c) are hereby deleted in their entirety, and the following is substituted in lieu thereof:

"(a) Operating Fee. The monthly Operating Fee (OF) shall be equal to the Base Operating Fee so long as the cumulative Tons Processed to date in the Operating Year is less than or equal to 442,000 Tons. The monthly OF, when the cumulative Tons Processed to date in the Operating Year is in excess of 442,000 Tons, shall be equal to the Base Operating Fee plus the Adjusted Base Operating Fee.

1 (c) Adjusted Base Operating Fee. The Adjusted Base Operating Fee shall
2 be equal to the Excess Operating Fee multiplied by the Tons Processed in the Operating
3 Year in excess of 442,000 Tons.”

4 4. Energy Revenue Credit. A new Section 5.1(e)(4) is hereby added to
5 the Agreement reading as follows:

6 “The Energy Revenue Credit for any given month shall not exceed the actual
7 energy revenue received by the City for that month.”

8 5. Termination for Convenience. Section 6.2(f) (added to the Agreement
9 by the Third Amendment) is hereby amended to read as follows:

10 “(f) Each of the City and Operator shall have the right to terminate this
11 Agreement for its own convenience, including without limitation in the event that the City
12 and the Sanitation Districts cannot reach agreement on operating the SERRF going
13 forward, effective on or after December 8, 2018, by providing at least 90 days written notice
14 thereof to the other party. However, during the Remedial Work Period, each party agrees
15 to suspend its respective right to terminate for convenience, except that Operator’s right
16 pursuant to Section 3.1 is not so suspended. If, for any reason, the Agreement is
17 terminated, the Operator will pay to the City, within 30 days from the date of termination,
18 the balance of capital investment funds committed by the Operator in this Amendment
19 (Initially \$5,000,000) for Remedial Work not yet invested in the SERRF by Operator.
20 Following the Remedial Work Period, if Operator exercises such a right of convenience
21 termination, then the City shall be entitled to keep the benefit of the OF Discount for all
22 calendar months to which it is applicable, up to the date of termination. If the City exercises
23 such right of convenience termination, then the City shall refund to Operator on or before
24 the date of, and as a condition to, termination the product of (i) 1.5%, (ii) the total OF
25 Discount provided by Operator during the period beginning January 1, 2016 and ending
26 December 8, 2018, and (iii) the number of months that the date of termination is before
27 June 30, 2024. Upon the City’s exercise of such right of convenience termination, Operator
28 shall have the right to discontinue future installments of the OF Discount, which

1 discontinued amounts shall be applied as a credit to the City's refund obligation described
2 in the immediately preceding sentence. Notwithstanding Section 6.3(b) or any other
3 provision of this Agreement to the contrary, if following either party's termination for
4 convenience the City requests that the Operator continue to operate SERRF pursuant to
5 Section 6.3(b), then the Operator shall be compensated for such services on a pass-
6 through of all costs plus 15% of such costs basis."

7 6. The first paragraph of Section 5.2(f) of the Agreement is hereby
8 amended to read as follows:

9 “(f) Energy Revenue Shortfall Adjustment. If for any reason, the Operator is
10 unable, in any Operating Year, to produce the Guaranteed Annual Energy Generation, the
11 Operator shall make an Energy Revenue Shortfall Adjustment (ERSA) payment to the City.
12 The ERSA payment is calculated as (i) the Energy Generation Shortfall multiplied by the
13 annual average actual price the City receives for power sold in kWh, plus (ii) any loss in
14 capacity payments pursuant to capacity sale arrangements in effect during the Operating
15 Year when the Energy Revenue Shortfall occurred. In determining the actual amount of
16 energy sold during any Operating Year for these purposes, the following adjustments shall
17 be made, if necessary:”

18 7. Letter of Credit. Subject to the next paragraph, effective December
19 10, 2018 or anytime thereafter, Operator shall have the right to reduce the amount of the
20 Letter of Credit to be \$3,750,000. The amount of the Letter of Credit shall be adjusted
21 annually in the manner provided in Exhibit A.

22 As of December 10, 2018, the amount of the Letter of Credit determined in
23 accordance with the preceding paragraph will be increased by the amount, if any, that the
24 Operator's total capital investment in the SERRF for Remedial Work has fallen short of the
25 Operator's \$5,000,000 capital investment commitment. The Letter of Credit will be
26 decreased by the amount of any capital subsequently invested by Operator in the SERRF
27 for Remedial Work (that previously was a shortfall the subject of the foregoing increase in
28 the Letter of Credit), as of October 1st of each subsequent calendar year and as of the

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1 date of any adjustment in the amount of the Letter of Credit otherwise provided for in the
2 Agreement.

3 8. Exhibit G to the Agreement is hereby replaced with Exhibit G attached
4 hereto.

5 9. General. Except as otherwise provided in this Fifth Amendment, the
6 Agreement remains in full force and effect, and each of Operator and City hereby ratify and
7 confirm the Agreement, as amended by this Fifth Amendment. If there is a conflict between
8 the Agreement and this Fifth Amendment, which cannot be resolved by a plain reading of
9 the language of both documents, then this Fifth Amendment shall control.

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1 IN WITNESS WHEREOF, the parties have caused this document to be duly
2 executed with all formalities required by law as of the date first stated above.

3 COVANTA LONG BEACH RENEWABLE
4 ENERGY CORP., a Delaware corporation

5 Sept 4, 2018

By [Signature]
6 Name Derik Veerhof
7 Title EVP

8 Sept 7, 2018

By [Signature]
9 Name Christopher J. Baker
10 Title Vice President

11 "Operator"

12 CITY OF LONG BEACH, a municipal
13 corporation

14 Sept 10 2018

By [Signature] Tom Modica
15 Assistant City Manager
16 City Manager

17 "City"

18 EXECUTED PURSUANT
19 TO SECTION 301 OF
20 THE CITY CHARTER

21 This Fifth Amendment to Agreement No. 23336 is approved as to form on

22 Sept. 7 2018.

23 CHARLES PARKIN, City Attorney

24 By [Signature]
25 Deputy

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EXHIBIT "G"

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List 1 Remedial Work

Circ Water/Cooling Tower
Circ Water Pump Overhaul
Circ Water Pump Screens

Boiler

Amstar Replacement 2500 sqft
Rear Wall Panel Replacements, All Units
Blowdown Tank
Feed Table Overhaul, Units 1 & 3
Grate Overhaul, Unit 2

Scrubber

Roof & Top 4' Cylinder Replacement
Cone Replacement, SS, Spray Insulation & Scaffold
Reattach Scrubber to Drags

Baghouse

Inlet Dampers
Hopper Replacement
Reverse Air Duct
Expansion Joint Replacements

Ram Replacement

3 New Dischargers/Rams
Installation of Dischargers/Ram
Platform Modifications after install \$

Bottom Ash Conveyor Upgrade

Slip Stick Conveyor
Demo & Installation
Ash House Grizzly & Vibrator Mods

Flash Conveying

Baghouse Screws & Troughs, Replacement
FA-2 Overhaul
FA-3 Overhaul
FA-4 Overhaul
FA-5 Overhaul
FA-6 Overhaul

Safety

Safety, Electrical, & Related Projects

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Profiled Waste Handling

Hopper Tipper. Short Term Solution
Hopper Tipper. Long Term Solution

List 2 Remedial Work

Boiler

Feed Chutes Refractory Lined
SPG, 4 per Boiler, Replacement
Rappers for the Economizer/Evaporator Sections
Ground Floor Grit Screen and Electrical

Baghouse

Baghouse Damper Repairs, Each Unit

Control Systems

Controls Upgrade