

OFFICE OF THE CITY ATTORNEY  
CHARLES PARKIN, City Attorney  
411 West Ocean Boulevard, 9th Floor  
Lana Beach, CA 90802-4664

1 SIXTH AMENDMENT TO  
2 SERRF OPERATIONS AND MAINTENANCE AGREEMENT  
3 AGREEMENT NO. 23336

4 23336

5 THIS SIXTH AMENDMENT to the SERRF Operations and Maintenance  
6 Agreement (this "Sixth Amendment") is made and entered, in duplicate, as of September  
7 7, 2021 for reference purposes only, pursuant to a minute order adopted by the City Council  
8 of the City of Long Beach at its meeting held on September 7, 2021, by and between the  
9 CITY OF LONG BEACH, a municipal corporation of the State of California (the "City") and  
10 COVANTA LONG BEACH RENEWABLE ENERGY CORP., a Delaware corporation  
11 ("Operator").

12 RECITALS

13 WHEREAS, City and Operator entered into that certain Agreement dated  
14 March 1, 1994, entitled "SERRF Operations and Maintenance Agreement," also identified  
15 as Contract Number 23336, together with that First Amendment to Agreement dated July  
16 31, 1996, the Second Amendment dated March 12, 2008, the Third Amendment dated  
17 April 22, 2015, the Fourth Amendment dated July 11, 2016 and the Fifth Amendment dated  
18 January 1, 2018 providing for the day-to-day operation and long term maintenance of the  
19 City's Southeast Resource Recovery Facility (the "SERRF"), a waste-to-energy facility  
20 serving the City of Long Beach and adjacent communities (collectively, the "Agreement");  
21 capitalized terms used but not defined in the Sixth Amendment shall have the meanings  
22 provided in the Agreement; and

23 WHEREAS, Operator has notified the City, that for Covanta to properly and  
24 effectively operate until 2024, the "Guaranteed Annual Energy Generation" and the  
25 "Guaranteed Annual Facility Throughput" would need to be adjusted to reflect SERRF's  
26 actual operational capability; and

27 WHEREAS, the Agreement presently allows either party to terminate the  
28 Agreement for its convenience, effective on or after June 30, 2021. This Sixth Amendment

1 suspends each party's right to exercise such convenience termination as provided by, and  
2 subject to, the provisions hereof; and

3 WHEREAS, City and Operator now wish to amend the Agreement as  
4 provided in this Sixth Amendment;

5 NOW, THEREFORE, in consideration of the mutual terms, covenants, and  
6 conditions herein contained, the Parties agree as follows:

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

9 "Guaranteed Annual Energy Generation" means 187,000,000 kWh for each  
10 Operating Year, other than an Operating Year in which a turbine outage occurs, and  
11 180,000,000 kWh for each Operating Year in which a turbine outage occurs.

12 "Guaranteed Annual Facility Throughput" means 400,000 Tons Processed  
13 for each Operating year, other than an Operating Year in which a turbine outage occurs,  
14 and 385,000 Tons Processed for each Operating Year in which a turbine outage occurs."

15 2. Termination for Convenience. Section 6.2(f) (added to the Agreement  
16 by the Third Amendment and amended by the Fifth Amendment) is hereby amended to  
17 read as follows:

18 "(f) Each of the City and Operator shall have the right to terminate this  
19 Agreement for its own convenience, effective on or after December 31, 2021, by providing  
20 at least ninety (90) days written notice thereof to the other party. Notwithstanding Section  
21 6.3(b) or any other provision of this Agreement to the contrary, if following either party's  
22 termination for convenience the City requests that the Operator continue to operate SERRF  
23 pursuant to Section 6.3(b), then the Operator shall be compensated for such services on  
24 a pass-through of all costs plus fifteen percent (15%) of such costs basis."

25 3. Letter of Credit. Effective upon establishment of the Escrow Account  
26 described in Section 4, below, or anytime thereafter, Operator shall have the right to  
27 permanently cancel the Letter of Credit.

28 4. Escrow Account. The Operator and the City shall enter into on or

1 about the date of this Sixth Amendment an escrow agreement with [J.P. Morgan Chase  
2 (the "Escrow Agent")] in the form attached hereto as Exhibit "A" (the "Escrow Agreement").  
3 The escrow account created pursuant to the Escrow Agreement (the "Escrow Account")  
4 shall be security for the City for the Operator's performance of its obligations under the  
5 Agreement. The Escrow Account shall be funded, and subject to disbursements and other  
6 provisions, as follows:

7           A.     On the first business day of each month following the full execution  
8           and delivery of this Sixth Amendment, the City shall deposit to the Escrow Account  
9           \$1.25 Million of the Operating Fee portion of the Service Fee, until aggregate  
10          deposits totaling \$3.75 million have been deposited to the Escrow Account. Once  
11          the aggregate deposits to the Escrow Account total \$3.75 million, and  
12          notwithstanding the actual balance of funds in the Escrow Account at any particular  
13          time, no further deposits shall be made to the Escrow Account, and the entire  
14          Service Fee shall be paid to the Operator in accordance with the Agreement. Until  
15          the aggregate deposits to the Escrow Account total \$3.75 million, the remaining  
16          portion of the Service Fee owed to the Operator each month in excess of the \$1.25  
17          million deposited to the Escrow Account shall be paid to the Operator in accordance  
18          with the Agreement.

19          B.     Upon expiration or termination of the Agreement, the balance of funds  
20          then held in the Escrow Account shall be subject to resolution of any final claims of  
21          the City under the Agreement that are asserted by the City against the Operator in  
22          writing within 90 days of such expiration or termination. Upon such resolution or  
23          upon expiration of such 90-day period without the City so asserting claims, any and  
24          all remaining funds held in the Escrow Account shall be disbursed to the Operator,  
25          and the City shall join in executing written direction to the Escrow Agent to such  
26          effect. Upon disbursement of any and all remaining funds in the Escrow Account,  
27          the parties shall reasonably cooperate to close the Escrow Account.

28          C.     The Operator shall pay the fees and expenses of the Escrow Agent.

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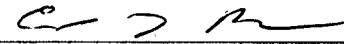
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5. General. Except as otherwise provided in this Sixth Amendment, the Agreement remains in full force and effect and each of Operator and City hereby ratify and confirm the Agreement as amended by this Sixth Amendment. If there is a conflict between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

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

COVANTA LONG BEACH RENEWABLE ENERGY CORP., a Delaware corporation

September 17, 2021

By   
Name Christopher J. Baker  
Title Vice President

\_\_\_\_\_, 2021

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

"Contractor"

CITY OF LONG BEACH, a municipal corporation


October 13, 2021

By   
City Manager

"City"

This Sixth Amendment to Contract No. 23336 is approved as to form on October 11, 2021.

CHARLES PARKIN, City Attorney

By   
Deputy  
for Amy Webber

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Lana Beach, CA 90802-4664

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EXHIBIT "A"  
ESCROW AGREEMENT

## ESCROW AGREEMENT (Basic Three Party Escrow)

THIS ESCROW AGREEMENT (this "Agreement") is entered into as of September \_\_\_\_\_, 2021, by and among the City of Long Beach, California, a municipal corporation of the state of California ("Party A"), Covanta Long Beach Renewable Energy Corporation, a Delaware corporation ("Party B", and together with Party A, sometimes referred to individually as "Party" and collectively as the "Parties"), and JPMorgan Chase Bank, N.A. ("Escrow Agent").

**WHEREAS**, the Parties have agreed to deposit in escrow certain funds and wish such deposit to be subject to the terms and conditions set forth herein.

1. **Appointment.** The Parties hereby appoint Escrow Agent as their escrow agent for the purposes set forth herein, and Escrow Agent hereby accepts such appointment under the terms and conditions set forth herein.

2. **Fund; Investment.** (a) Party A and Party B have agreed that Party A will deposit the initial sum of \$1,250,000 (the "Initial Deposit"), together with additional sums deposited from time to time as additional amounts become due in the future (each an "Additional Deposit" and together with Initial Deposit, for a total of \$3.75 million with Escrow Agent (collectively referred to as the "Escrow Deposit"). Escrow Agent shall hold the Escrow Deposit in one or more demand deposit accounts and shall invest and reinvest the Escrow Deposit and the proceeds thereof (the "Fund") in an interest bearing demand deposit account at JPMorgan Chase Bank, N.A., or a comparable successor investment offered by Escrow Agent<sup>1</sup>. Interest bearing demand deposit accounts have rates of compensation that may vary from time to time as determined by Escrow Agent. No other investment of the Escrow Deposit will be permitted during the term of this Agreement. Party A shall provide prior written notice via email to the Escrow Agent of any such Additional Deposit.

(b) Escrow Agent will not provide supervision, recommendations or advice relating to either the investment of moneys held in the Fund or the purchase, sale, retention or other disposition of any investment described herein, and each Party acknowledges that it was not offered any investment, tax or accounting advice or recommendation by Escrow Agent with regard to any investment and has made an independent assessment of the suitability and appropriateness of any investment selected hereunder for purposes of this Agreement. Escrow Agent shall not have any liability for any loss sustained as a result of any investment made pursuant to the terms of this Agreement or as a result of any liquidation of any investment prior to its maturity or for the failure of an Authorized Representative of the Parties to give Escrow Agent instructions to invest or reinvest the Fund. Escrow Agent shall have the right to liquidate any investments held in order to provide funds necessary to make required payments under this Agreement.

(c) All interest or other income earned under this Agreement shall be allocated to Party B and reported, by Escrow Agent to the IRS, or any other taxing authority, on IRS Form 1099 or 1042S (or other appropriate form) as income earned from the Escrow Deposit by Party B whether or not said income has been distributed during such year. Escrow Agent shall withhold any taxes it deems appropriate in the absence of proper tax documentation or as required by law, and shall remit such taxes to the appropriate authorities. The Parties hereby represent to Escrow Agent that no other tax withholding or information reporting of any kind is required by Escrow Agent.

3. **Disposition and Termination.** (a) Escrow Agent shall release the Fund only in accordance with joint written instructions from each of Party A and Party B in the form of Exhibit A annexed hereto or as otherwise expressly permitted by this Agreement.

Notwithstanding anything to the contrary, any instructions in any way related to the transfer or distribution of the Fund must, in order to be deemed delivered and effective, be in writing and executed by the Parties<sup>2</sup> as evidenced by the signatures of the person or persons signing this Agreement or one of the designated persons as set forth on the Designation of Authorized Representatives attached hereto as Schedule 1-A and 1-B (each an "Authorized Representative"), and delivered to Escrow Agent only by facsimile (as evidenced by a confirmed transmittal to the applicable Party's or Parties' transmitting fax number) or as a Portable Document Format ("PDF") attached to an email only at the fax number or email address set forth in Section 8 below. Escrow Agent shall not be liable to any Party or other person for refraining from acting upon any instruction for or related to the transfer or distribution of the Fund that does not satisfy the requirements herein. Escrow Agent may rely and act upon the confirmation of anyone

<sup>1</sup> Standard JPM language and required in the event JPMC as an institution (or just escrow services) decides to stop offering the investment chosen.

<sup>2</sup> To clarify, both Parties will need to execute any instruction to disburse the Fund.

purporting to be an Authorized Representative in connection with any of Escrow Agent's verifying call-backs or email confirmations. Notwithstanding anything to the contrary, the Parties acknowledge and agree that Escrow Agent (i) shall have no obligation to take any action in connection with this Agreement on a non-Business Day and any action Escrow Agent may otherwise be required to perform on a non-Business Day may be performed by Escrow Agent on the following Business Day and (ii) may not transfer or distribute the Fund until Escrow Agent has completed its security procedures.

(b) If any funds transfer instructions are set forth in a permitted instruction from the Parties in accordance with this Agreement, Escrow Agent may confirm such funds transfer instructions by a telephone call-back or email confirmation to an Authorized Representative of such Parties. To the extent a call-back or email confirmation is undertaken, no funds will be disbursed until such confirmation occurs.

(c) The persons designated as Authorized Representatives and telephone numbers and email addresses for same may be changed only in a writing executed by an Authorized Representative or other duly authorized person of the applicable Party setting forth such changes and actually received by Escrow Agent via facsimile or as a PDF attached to an email. Escrow Agent may confirm any such change in Authorized Representatives by a telephone call-back or email confirmation according to its security procedures.

(d) Escrow Agent and other financial institutions, including any intermediary bank and the beneficiary's bank, may rely upon the identifying number of the beneficiary, the beneficiary's bank or any intermediary bank included in a funds transfer instruction, even if it identifies a person different from the beneficiary, the beneficiary's bank or intermediary bank identified by name.

(e) As used in this Section 3, "Business Day" shall mean any day other than a Saturday, Sunday or any other day on which Escrow Agent located at the notice address set forth below is authorized or required by law or executive order to remain closed. The Parties acknowledge that the security procedures set forth in this Section 3 are commercially reasonable. Upon delivery of the Fund in full by Escrow Agent, this Agreement shall terminate, and all the related account(s) shall be closed, subject to the provisions of Sections 6 and 7.

(f) Notwithstanding anything to the contrary contained in this Agreement, in the event that an electronic signature is affixed to an instruction issued hereunder to disburse or transfer funds, such instruction may be confirmed by a verifying call-back (or email confirmation) to an Authorized Representative.

4. **Escrow Agent.** Escrow Agent shall have only those duties as are specifically and expressly provided herein, which shall be deemed purely ministerial in nature, and no other duties, including but not limited to any fiduciary duty, shall be implied. Notwithstanding anything to the contrary, Escrow Agent has no knowledge of, nor any obligation to comply with, the terms and conditions of any other agreement, Escrow Agent shall not be responsible for determining the meaning of any capitalized term not entirely defined herein, nor shall Escrow Agent be required to determine if any Party has complied with any other agreement. Notwithstanding the terms of any other agreement, the terms and conditions of this Agreement shall control the actions of Escrow Agent. Escrow Agent may conclusively rely upon any written notice, document, instruction or request delivered by the Parties believed by it to be genuine and to have been signed by an Authorized Representative(s), as applicable, without inquiry and without requiring substantiating evidence of any kind and Escrow Agent shall be under no duty to inquire into or investigate the validity, accuracy or content of any such document, notice, instruction or request. Any notice, document, instruction or request delivered by a Party but not required under this Agreement may be disregarded by Escrow Agent. **ESCROW AGENT SHALL NOT BE LIABLE FOR ANY ACTION TAKEN, SUFFERED OR OMITTED TO BE TAKEN BY IT IN GOOD FAITH EXCEPT TO THE EXTENT THAT ESCROW AGENT'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT WAS THE CAUSE OF ANY DIRECT LOSS TO EITHER PARTY.** Escrow Agent may execute any of its powers and perform any of its duties hereunder directly or through affiliates or agents. In the event Escrow Agent shall be uncertain, or believes there is some ambiguity, as to its duties or rights hereunder or receives instructions, claims or demands from any Party hereto which in Escrow Agent's judgment conflict with the provisions of this Agreement, or if Escrow Agent receives conflicting instructions from the Parties, Escrow Agent shall be entitled either to: (a) refrain from taking any action until it shall be given (i) a joint written direction executed by Authorized Representatives of the Parties which eliminates such ambiguity or conflict or (ii) a court order issued by a court of competent jurisdiction (it being understood that Escrow Agent shall be entitled conclusively to rely and act upon any such court order and shall have no obligation to determine whether any such court order is final); or (b) file an action in interpleader. Escrow Agent shall have no duty to solicit any payments which may be due it or the Fund, including, without limitation, the Escrow Deposit nor shall Escrow Agent have any duty or obligation to confirm or verify the accuracy or correctness of any amounts deposited with it hereunder. The Parties grant to Escrow Agent a lien and security interest in the Fund in order to secure any indemnification obligations of the Parties or obligation for

fees or expenses owed to Escrow Agent hereunder. ANYTHING IN THIS AGREEMENT TO THE CONTRARY NOTWITHSTANDING, IN NO EVENT SHALL ESCROW AGENT BE LIABLE FOR SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND WHATSOEVER (INCLUDING BUT NOT LIMITED TO LOST PROFITS), EVEN IF ESCROW AGENT HAS BEEN ADVISED OF THE LIKELIHOOD OF SUCH LOSS OR DAMAGE AND REGARDLESS OF THE FORM OF ACTION.

5. **Succession.** Escrow Agent may resign and be discharged from its duties or obligations hereunder by giving no less than thirty (30) days advance notice in writing of such resignation to the Parties or may be removed, with or without cause, by the Parties at any time after giving not less than thirty (30) days advance joint written notice to Escrow Agent. Escrow Agent's sole responsibility after such thirty (30) day notice period expires shall be to hold the Fund (without any obligation to reinvest the same) and to deliver the same to a designated substitute escrow agent, if any, appointed by the Parties, or such other person designated by the Parties, or in accordance with the directions of a final court order, at which time of delivery, Escrow Agent's obligations hereunder shall cease and terminate. If prior to the effective resignation or removal date, the Parties have failed to appoint a successor escrow agent, or to instruct Escrow Agent to deliver the Fund to another person as provided above, or if such delivery is contrary to applicable law, at any time on or after the effective resignation date, Escrow Agent may either (a) interplead the Fund with a court located in the State of California and the costs, expenses and reasonable attorney's fees which are incurred in connection with such proceeding may be charged against and withdrawn from the Fund; or (b) appoint a successor escrow agent of its own choice. Any appointment of a successor escrow agent shall be binding upon the Parties and no appointed successor escrow agent shall be deemed to be an agent of Escrow Agent. Escrow Agent shall deliver the Fund to any appointed successor escrow agent, at which time Escrow Agent's obligations under this Agreement shall cease and terminate. Any entity into which Escrow Agent may be merged or converted or with which it may be consolidated, or any entity to which all or substantially all the escrow business may be transferred, shall be Escrow Agent under this Agreement without further act.

6. **Compensation; Acknowledgment.** Party B agrees to pay Escrow Agent upon execution of this Agreement and from time to time thereafter reasonable compensation for the services to be rendered hereunder, which unless otherwise agreed in writing, shall be as described in Schedule 2. The Parties agree that, notwithstanding anything to the contrary, to the extent any Party deposits such compensation into an account governed by this Agreement, Escrow Agent shall have the right to withdraw such compensation from such account. Each of the Parties further agrees to the disclosures and agreements set forth in Schedule 2.

7. **Indemnification and Reimbursement.** The Parties agree jointly and severally to indemnify, defend, hold harmless, pay or reimburse Escrow Agent and its affiliates and their respective successors, assigns, directors, agents and employees (the "Indemnitees") from and against any and all losses, damages, claims, liabilities, taxes (other than taxes on income earned by an Indemnitee in connection herewith), costs or expenses (including attorney's fees) (collectively "Losses"), resulting directly or indirectly from (a) Escrow Agent's performance of this Agreement, except to the extent that such Losses are determined by a court of competent jurisdiction to have been caused by the gross negligence, willful misconduct, or bad faith of such Indemnitee; and (b) Escrow Agent's following, accepting or acting upon any instructions or directions, whether joint or singular,<sup>3</sup> from the Parties received in accordance with this Agreement. The Parties hereby grant Escrow Agent a right of set-off against the Fund for the payment of any claim for indemnification, fees, expenses and amounts due to Escrow Agent or an Indemnitee. The obligations set forth in this Section 7 shall survive the resignation, replacement or removal of Escrow Agent or the termination of this Agreement.

8. **Notices.** Except as otherwise provided in Section 3, all communications hereunder shall be in writing or set forth in a PDF attached to an email, and shall be delivered by facsimile, email or overnight courier only to the appropriate fax number, email address, or notice address set forth for each party as follows:

If to Party A: Long Beach Energy Resources  
Attention: Bob Dowell  
2400 E Spring Street  
Long Beach, CA 90806  
Email Address: bob.dowell@longbeach.gov

With copies to: Electric Generation Bureau  
120 Pier S Avenue  
Long Beach CA 90802  
Attention: SERRF Manager

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<sup>3</sup> In the event there is a change required by one of the Parties, i.e., Section 8, Schedule 1, etc..



Tel No.:562-570-7840  
Email Address: alan.foley@longbeach.gov

Account statements  
and billing:

Long Beach Energy Resources  
2400 East Spring Street  
Long Beach, CA 90806  
Attn: Accounting  
Email Address: GO-AcctsPay@longbeach.gov

With copies to:

Electric Generation Bureau  
120 Pier S Avenue  
Long Beach CA 90802  
Attention: SERRF Manager  
Tel No.:562-570-7840  
Email Address: alan.foley@longbeach.gov

If to Party B:

445 South Street  
Morristown, NJ 07960  
Attention: James Reilly  
Tel No.: 862-345-5452  
Fax No.: 862-345-5160  
Email Address: jreilly@covanta.com

Account statements  
and billing:

[Insert address if different from above]

With copies to:

(street address)  
(City, state [*country*], zip [*postal code*])  
Attention:  
Tel No.:  
Fax No.:  
Email Address:

If to Escrow Agent:

JPMorgan Chase Bank, N.A.  
Escrow Services  
575 Washington Blvd., Floor 18  
Jersey City, New Jersey 07310  
Attention: Tameka Wilks/Angelo Timpone  
Fax No.: 212.552.2812  
Email Address:  
[ec.escrow@jpmorgan.com](mailto:ec.escrow@jpmorgan.com)

9. **Compliance with Directives.** In the event that a legal garnishment, attachment, levy, restraining notice, court order or other governmental order (a "Directive") is served with respect to any of the Fund, or the delivery thereof shall be stayed or enjoined by a Directive, Escrow Agent is hereby expressly authorized, in its sole discretion, to obey and comply with all such Directives so entered or issued, and in the event that Escrow Agent obeys or complies with any such Directive it shall not be liable to any of the Parties hereto or to any other person by reason of such compliance notwithstanding such Directive be subsequently reversed, modified, annulled, set aside or vacated.

10. **Miscellaneous.** (a) The provisions of this Agreement may be waived, altered, amended or supplemented only by a writing signed by Escrow Agent and the Parties. Neither this Agreement nor any right or interest hereunder may be assigned by any Party without the prior consent of Escrow Agent and the other Party and any assignment in violation of this Agreement shall be ineffective and void. This Agreement shall be governed by and construed under the laws of the State of New York. Each Party and Escrow Agent irrevocably waives any objection on the grounds of venue, forum non-conveniens or any similar grounds and irrevocably consents to service of process by mail or in any other manner permitted by applicable law and consents to the jurisdiction of the courts located in the State of New York. To the extent that in any jurisdiction either Party may now or hereafter be entitled to claim for itself or its assets,

immunity from suit, execution, attachment (before or after judgment) or other legal process or immunity from liability, such Party shall not claim, and hereby irrevocably waives, such immunity. Escrow Agent and the Parties further hereby knowingly, voluntarily and intentionally irrevocably waive, to the fullest extent permitted by applicable law, any right to a trial by jury with respect to any lawsuit or judicial proceeding arising or relating to this Agreement.

(b) No party to this Agreement is liable to any other party for losses due to, or if it is unable to perform its obligations under the terms of this Agreement because of, acts of God, fire, war, terrorism, floods, strikes, public health emergencies, electrical outages, equipment or transmission failure, or other causes reasonably beyond its control. This Agreement and any joint instructions from the Parties may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument or instruction, as applicable. This Agreement may be executed and transmitted by facsimile or as a PDF attached to an email and each such execution shall be of the same legal effect, validity and enforceability as a manually executed original, wet-inked signature. All signatures of the parties to this Agreement may be transmitted by facsimile or as a PDF attached to an email, and such facsimile or PDF will, for all purposes, be deemed to be the original signature of such party whose signature it reproduces, and will be binding upon such party. If any provision of this Agreement is determined to be prohibited or unenforceable by reason of any applicable law of a jurisdiction, then such provision shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions thereof, and any such prohibition or unenforceability in such jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction. The Parties each represent, warrant and covenant that (i) each document, notice, instruction or request provided by such Party to Escrow Agent shall comply with applicable laws and regulations; (ii) such Party has full power and authority to enter into this Agreement and to perform all of the duties and obligations to be performed by it hereunder; and (iii) the person(s) executing this Agreement on such Party's behalf and certifying Authorized Representatives in the applicable Schedule 1 has been duly and properly authorized to do so, and each Authorized Representative of such Party has been duly and properly authorized to take actions specified for such person in the applicable Schedule 1. Except as expressly provided in Section 7 above, nothing in this Agreement, whether express or implied, shall be construed to give to any person or entity other than Escrow Agent and the Parties any legal or equitable right, remedy, interest or claim under or in respect of the Fund or this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

**PARTY A**  
City of Long Beach, California

**ESCROW AGENT**  
JPMORGAN CHASE BANK, N.A.

By: Linda J. Tatum  
Name: LINDA F. TATUM  
Title: ASST CITY MANAGER  
EXERCISED PURSUANT  
TO SECTION 311 OF  
THE CITY CHARTER.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**PARTY B**  
Covanta Long Beach Renewable Energy Corporation

By: [Signature]  
Name: James E. Reilly  
Title: VP + Treasurer

APPROVED AS TO FORM  
October 11, 2021  
CHARLES PARKIN, City Attorney

By: [Signature]  
ERIN WEESNER-MCKINLEY  
DEPUTY CITY ATTORNEY  
for Army Webber

EXHIBIT A-1

FORM OF ESCROW RELEASE NOTICE - JOINT INSTRUCTIONS

JPMorgan Chase Bank, N.A.  
Escrow Services  
575 Washington Blvd., Floor 18  
Fax No.: 212.552.2812  
Email Address: ec.escrow@jpmorgan.com  
Attention: Tameka Wilks/Angelo Timpone

[Date]

Re: City of Long Beach, California and Covanta Long Beach Renewable Energy Corporation – Escrow Agreement dated [ ]  
Escrow Account no. [ ]

Dear Sir/Madam:

We refer to an escrow agreement dated [ ] by and among City of Long Beach, California, a municipal corporation of the state of California (“Party A”), Covanta Long Beach Renewable Energy Corporation, a Delaware corporation (“Party B”) and JPMorgan Chase Bank, N.A., as Escrow Agent (the “Escrow Agreement”).

Capitalized terms in this letter that are not otherwise defined shall have the same meaning given to them in the Escrow Agreement.

Pursuant to Section [ ] of the Escrow Agreement, the Parties instruct Escrow Agent to release the Fund, or the portion specified below, to the specified party as instructed below.

Amount:  
(In writing)  
Beneficiary:  
City:  
Country:

**US Instructions:**

Bank Name:  
Bank Address:  
ABA Number:  
Credit A/C Name:  
Credit A/C #:  
Credit A/C Address:  
If Applicable:  
    FFC A/C Name:  
    FFC A/C #:  
    FFC A/C Address:

**International Instructions:**

Bank Name:  
Bank Address:  
SWIFT Code:  
US Pay Through ABA:  
Credit A/C Name:  
Credit A/C # (IBAN #):  
Credit A/C Address:  
If Applicable:  
    FFC A/C Name:  
    FFC A/C # (IBAN #):  
    FFC A/C Address:

**PARTY A:**  
City of Long Beach, California

By: \_\_\_\_\_  
Name:  
Title:  
Date:

**PARTY B:**  
Covanta Long Beach Renewable Energy Corporation

By: \_\_\_\_\_  
Name:  
Title:  
Date:

Schedule I-A

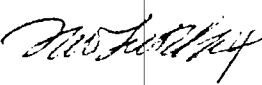
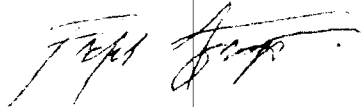
City of Long Beach, California

DESIGNATION OF AUTHORIZED REPRESENTATIVES

The undersigned, Dinda J. Johnson, being the duly elected, qualified and acting ASST CITY MANAGER of City of Long Beach, California a municipal corporation of the state of California ("Party A") does hereby certify:

1. That each of the following representatives is at the date hereof an Authorized Representative, as such term is defined in the Escrow Agreement, dated \_\_\_\_\_, 2021, by and among Party A, Party B and Escrow Agent (the "Escrow Agreement"), that the signature appearing opposite each Authorized Representative's name is the true and genuine signature of such Authorized Representative, and that each Authorized Representative's contact information is current and up-to-date at the date hereof. Each of the Authorized Representatives is authorized to issue instructions, confirm funds transfer instructions by callback or email confirmation and effect changes in Authorized Representatives, all in accordance with the terms of the Escrow Agreement. Callbacks or emails confirming an instruction shall be made to an Authorized Representative other than the Authorized Representative who issued the instruction unless (a) only a single Authorized Representative is designated below, (b) the information set forth below changes and is not updated by Party A such that only the Authorized Representative who issued the instruction is available to receive a callback or email confirmation, or (c) Party A is an individual. Party A acknowledges that pursuant to this Schedule, Escrow Agent is offering an option for callback or email confirmation to a different Authorized Representative, and if Party A nevertheless names only a single Authorized Representative or fails to update Authorized Representative information, Party A agrees to be bound by any instruction, whether or not authorized, confirmed by callback or email confirmation to the issuer of the instruction.

[Insert names and contact information of individuals who can be readily available to provide instructions and/or confirm disbursements on the telephone, as needed.]

NAME <sup>1</sup>	SIGNATURE	TELEPHONE, CELL NUMBER and EMAIL ADDRESS
Cassandra Tan		(ph) <u>(562) 570-6169</u> (cell) _____ (email) _____ Cassandra.Tan@longbeach.gov
Fidel Aguayo		(ph) <u>(562) 570-5023</u> (cell) _____ (email) _____ Fidel.Aguayo@longbeach.gov

2. Email confirmation is only permitted to a corporate email address for purposes of this Schedule. Any personal email addresses provided will not be used for email confirmation.
3. This Schedule may be signed in counterparts and the undersigned certifies that any signature set forth on an attachment to this Schedule is the true and genuine signature of an Authorized Representative and that each such Authorized Representative's contact information is current and up-to-date at the date hereof.

We suggest including more than 1 Authorized Representative in the event someone is unavailable.

4. That pursuant to Party A's governing documents, as amended, the undersigned has the power and authority to execute this Designation on behalf of Party A, and that the undersigned has so executed this Designation this \_\_\_\_ day of \_\_\_\_\_, 2021.
5. Notwithstanding the above, if Party A is an individual, no signature will be required below.

Signature: Linda J. Tatum  
Name: LINDA E. TATUM  
Title: ASST CITY MANAGER

EXECUTED PURSUANT  
TO SECTION 8.1 OF  
THE CITY CHARTER.

**FOR YOUR SECURITY, PLEASE CROSS OUT ALL UNUSED SIGNATURE LINES ON THIS  
SCHEDULE 1-A**

All instructions, including but not limited to funds transfer instructions, whether transmitted by facsimile or set forth in a PDF attached to an email, must include the signature (or electronic signature subject to the conditions set forth in the Escrow Agreement) of the Authorized Representative authorizing said funds transfer on behalf of such Party.

Schedule I-B

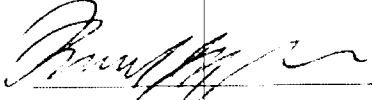
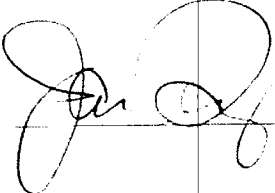
Covanta Long Beach Renewable Energy Corporation

DESIGNATION OF AUTHORIZED REPRESENTATIVES

The undersigned, Kirk J. Bily, being the duly elected, qualified and acting Assistant Secretary of Covanta Long Beach Renewable Energy Corporation, a Delaware corporation ("Party B"), does hereby certify:

1. That each of the following representatives is at the date hereof an Authorized Representative, as such term is defined in the Escrow Agreement, dated \_\_\_\_\_, 2021, by and among Party A, Party B and Escrow Agent (the "Escrow Agreement"), that the signature appearing opposite each Authorized Representative's name is the true and genuine signature of such Authorized Representative, and that each Authorized Representative's contact information is current and up-to-date at the date hereof. Each of the Authorized Representatives is authorized to issue instructions, confirm funds transfer instructions by callback or email confirmation and effect changes in Authorized Representatives, all in accordance with the terms of the Escrow Agreement. Callbacks or emails confirming an instruction shall be made to an Authorized Representative other than the Authorized Representative who issued the instruction unless (a) only a single Authorized Representative is designated below, (b) the information set forth below changes and is not updated by Party B such that only the Authorized Representative who issued the instruction is available to receive a callback or email confirmation, or (c) Party B is an individual. Party B acknowledges that pursuant to this Schedule, Escrow Agent is offering an option for callback or email confirmation to a different Authorized Representative, and if Party B nevertheless names only a single Authorized Representative or fails to update Authorized Representative information, Party B agrees to be bound by any instruction, whether or not authorized, confirmed by callback or email confirmation to the issuer of the instruction.

[Insert names and contact information of individuals who can be readily available to provide instructions and/or confirm disbursements on the telephone, as needed.]

NAME	SIGNATURE	TELEPHONE, CELL NUMBER and EMAIL ADDRESS
<u>Bradford J. Helgeson</u>		(ph) <u>862-345-5401</u> (cell) _____ (email) <u>bhelgeson@covanta.com</u>
<u>James E. Reilly</u>		(ph) <u>862-345-5452</u> (cell) _____ (email) <u>jreilly@covanta.com</u>

- Email confirmation is only permitted to a corporate email address for purposes of this Schedule. Any personal email addresses provided will not be used for email confirmation.
- This Schedule may be signed in counterparts and the undersigned certifies that any signature set forth on an attachment to this Schedule is the true and genuine signature of an Authorized Representative and that each such Authorized Representative's contact information is current and up-to-date at the date hereof.
- That pursuant to Party B's governing documents, as amended, the undersigned has the power and authority to execute this Designation on behalf of Party B, and that the undersigned has so executed this Designation this \_\_\_\_ day of September, 2021.
- Notwithstanding the above, if Party B is an individual, no signature will be required below.

Signature: Kirk J. Bily  
Name: Kirk J. Bily  
Title: Asst. Secretary



**FOR YOUR SECURITY, PLEASE CROSS OUT ALL UNUSED SIGNATURE LINES ON THIS  
SCHEDULE 1-B**

All instructions, including but not limited to funds transfer instructions, whether transmitted by facsimile or set forth in a PDF attached to an email, must include the signature (or electronic signature subject to the conditions set forth in the Escrow Agreement) of the Authorized Representative authorizing said funds transfer on behalf of such Party.

SCHEDULE 2

J.P.Morgan

Schedule of Fees and Disclosures for Escrow Agent Services

Account Acceptance Fee .....Swaived

Encompassing review, negotiation and execution of governing documentation, opening of the account, and completion of all due diligence documentation. Payable upon closing.

Annual Administration Fee ..... \$2,500

The Administration Fee covers our usual and customary ministerial duties, including record keeping, distributions, document compliance and such other duties and responsibilities expressly set forth in the governing documents for each transaction. Payable upon closing and annually in advance thereafter, without pro-ration for partial years.

Extraordinary Services and Out-of-Pocket Expenses: Escrow Agent or any of its affiliates may receive compensation with respect to any investment directed hereunder including without limitation charging any applicable agency fee or trade execution fee in connection with each transaction. Any additional services beyond our standard services as specified above, and all reasonable out-of-pocket expenses including attorney's or accountant's fees and expenses will be considered extraordinary services for which related costs, transaction charges, and additional fees will be billed at Escrow Agent's then standard rate. Escrow Agent may impose, charge, debit, pass-through and modify fees and/or charges for any account established and services provided by Escrow Agent, including but not limited to, transaction, maintenance, balance-deficiency, and service fees, agency or trade execution fees, and other charges, including those levied by any governmental authority.

Fee Disclosure & Assumptions: Please note that the fees quoted are based on a review of the transaction documents provided and an internal due diligence review, and assumes the escrow deposit will be continuously invested in an interest bearing demand deposit account at JPMorgan Chase Bank, N.A. Escrow Agent reserves the right to revise, modify, change and supplement the fees quoted herein if the assumptions underlying the activity in the account, level of balances, market volatility or other factors change from those used to set the fees described herein.

Payment of the invoice is due upon receipt.

Disclosures and Agreements:

Taxes. The Parties shall duly complete such tax documentation or other procedural formalities necessary for Escrow Agent to complete required tax reporting and for the relevant Party to receive interest or other income without withholding or deduction of tax in any jurisdiction. Should any information supplied in such tax documentation change, the Parties shall promptly notify Escrow Agent. Escrow Agent shall withhold any taxes it deems appropriate in the absence of proper tax documentation or as required by law, including without limitation, the Foreign Account Tax Compliance Act ("FATCA"), and shall remit such taxes to the appropriate authorities.

Know Your Customer. To assist in the prevention of the funding of terrorism and money laundering activities, applicable law may require financial institutions to obtain, verify, and record information that identifies each person who opens an account. What this means for the Parties: when the Parties open an account, Escrow Agent may ask for each Party's name, address, date of birth (for natural persons), and/or other information and documents that will allow Escrow Agent to identify such Party. Escrow Agent may also request and obtain certain information from third party vendors regarding any Party. To fulfill Escrow Agent's "know your customer" responsibilities and in connection with its performance of this Agreement, Escrow Agent may request information and/or documentation from each Party from time to time, including, without limitation, regarding such Party's organization, business and, to the extent applicable, beneficial owner(s) of such Party, including relevant natural or legal persons, and such Party shall procure and furnish the same to Escrow Agent in a timely manner. Any information and/or documentation furnished by any Party is the sole responsibility of such Party and Escrow Agent is entitled to rely on the information and/or documentation without making any verification whatsoever (except for the authentication under the security procedures, as applicable). Each Party represents and warrants that all such information and/or documentation is true, correct and not misleading and shall advise Escrow Agent promptly of any changes and, except as prohibited by applicable law, such Party agrees to provide complete responses to Escrow Agent's requests within the timeframes specified. If any Party fails to provide or consent to the provision of any information required by this paragraph, Escrow Agent may suspend or discontinue providing any service hereunder and resign pursuant to this Agreement.

OFAC Disclosure. Escrow Agent is required to act in accordance with the laws and regulations of various jurisdictions relating to the prevention of money laundering and the implementation of sanctions, including but not limited to regulations issued by the U.S. Office of Foreign Assets Control. Escrow Agent is not obligated to execute payment orders or effect any other transaction where the beneficiary or other payee is a person or entity with whom Escrow Agent is prohibited from doing business by any law or regulation applicable to Escrow Agent, or in any case where compliance would, in Escrow Agent's opinion, conflict with applicable law or banking practice or its own policies and procedures. Where Escrow Agent does not execute a payment order or effect a transaction for such reasons, Escrow Agent may take any action required by any law or regulation applicable to Escrow Agent including, without limitation, freezing or blocking funds. Transaction screening may result in delays in the posting of transactions.

**Abandoned Property.** Escrow Agent is required to act in accordance with the laws and regulations of various states relating to abandoned property, escheatment or similar law and, accordingly, shall be entitled to remit dormant funds to any state as abandoned property in accordance with such laws and regulations. Without limitation of the foregoing, notwithstanding any instruction to the contrary, Escrow Agent shall not be liable to any Party for any amount disbursed from an account maintained under this Agreement to a governmental entity or public official in compliance with any applicable abandoned property, escheatment or similar law.

**Information.** The Parties authorize Escrow Agent to disclose information with respect to this Agreement and the account(s) established hereunder, the Parties, or any transaction hereunder if such disclosure is: (i) necessary in Escrow Agent's opinion, for the purpose of allowing Escrow Agent to perform its duties and to exercise its powers and rights hereunder or for operational or risk management purposes or compliance with legal, tax and regulatory requirements, including, without limitation, FATCA; (ii) to a proposed assignee of the rights of Escrow Agent; (iii) to a branch, affiliate, subsidiary, employee or agent of Escrow Agent or to their auditors, regulators or legal advisers or to any competent court; (iv) to the auditors of any of the Parties; or (v) required by applicable law, regardless of whether the disclosure is made in the country in which each Party resides, in which the Escrow Account is maintained, or in which the transaction is conducted. The Parties agree that such disclosures by Escrow Agent and its affiliates may be transmitted across national boundaries and through networks, including those owned by third parties.

**Acknowledgment of Compensation and Multiple Roles.** Escrow Agent is authorized to act under this Agreement notwithstanding that Escrow Agent or any of its subsidiaries or affiliates (such subsidiaries and affiliates hereafter individually called an "Affiliate" and collectively called "Affiliates") may (A) receive fees or derive earnings (float) as a result of providing an investment product or account on the books of Escrow Agent pursuant to this Agreement or for providing services or referrals with respect to investment products, or (B) (i) act in the same transaction in multiple capacities, (ii) engage in other transactions or relationships with the same entities to which Escrow Agent may be providing escrow or other services under this Agreement, (iii) refer clients to an Affiliate for services or (iv) enter into agreements under which referrals of escrow or related transactions are provided to Escrow Agent. JPMorgan Chase Bank, N.A. may earn compensation from any of these activities in addition to the fees charged for services under this Agreement.

**FDIC Disclosure.** In the event Escrow Agent becomes insolvent or enters into receivership, Escrow Agent may provide to the Federal Deposit Insurance Corporation ("FDIC") account balance information for any account governed by this Agreement, as reflected on Escrow Agent's end-of-day ledger balance, and the customer name and tax identification number associated with such accounts for the purposes of determining the appropriate deposit insurance coverage. Funds held in such accounts will be insured by the FDIC under its applicable rules and limits.

**THE FOLLOWING DISCLOSURES ARE REQUIRED TO BE PROVIDED UNDER APPLICABLE U.S. REGULATIONS, INCLUDING, BUT NOT LIMITED TO, FEDERAL RESERVE REGULATION D. WHERE SPECIFIC INVESTMENTS ARE NOTED BELOW, THE DISCLOSURES APPLY ONLY TO THOSE INVESTMENTS AND NOT TO ANY OTHER INVESTMENT.**

**Demand Deposit Account Disclosure.** Escrow Agent is authorized, for regulatory reporting and internal accounting purposes, to divide an escrow demand deposit account maintained in the U.S. in which the Fund is held into a non-interest bearing demand deposit internal account and a non-interest bearing savings internal account, and to transfer funds on a daily basis between these internal accounts on Escrow Agent's general ledger in accordance with U.S. law at no cost to the Parties. Escrow Agent will record the internal accounts and any transfers between them on Escrow Agent's books and records only. The internal accounts and any transfers between them will not affect the Fund, any investment or disposition of the Fund, use of the escrow demand deposit account or any other activities under this Agreement, except as described herein. Escrow Agent will establish a target balance for the demand deposit internal account, which may change at any time. To the extent funds in the demand deposit internal account exceed the target balance, the excess will be transferred to the savings internal account, unless the maximum number of transfers from the savings internal account for that calendar month or statement cycle has already occurred. If withdrawals from the demand deposit internal account exceeds the available balance in the demand deposit internal account, funds from the savings internal account will be transferred to the demand deposit internal account up to the entire balance of available funds in the savings internal account to cover the shortfall and to replenish any target balance that Escrow Agent has established for the demand deposit internal account. If a sixth transfer is needed during a calendar month or statement cycle, it will be for the entire balance in the savings internal account, and such funds will remain in the demand deposit internal account for the remainder of the calendar month or statement cycle.

**MMDA Disclosure and Agreement.** If MMDA is the investment for the escrow deposit as set forth above or anytime in the future, the Parties acknowledge and agree that U.S. law limits the number of pre-authorized or automatic transfers or withdrawals or telephonic/electronic instructions that can be made from an MMDA to a total of six (6) per calendar month or statement cycle or similar period. Escrow Agent is required by U.S. law to reserve the right to require at least seven (7) days' notice prior to a withdrawal from a money market deposit account.

**Unlawful Internet Gambling.** The use of any account to conduct transactions (including, without limitation, the acceptance or receipt of funds through an electronic funds transfer, or by check, draft or similar instrument, or the proceeds of any of the foregoing) that are related, directly or indirectly, to unlawful Internet gambling is strictly prohibited.

**Recordings.** Each Party and Escrow Agent consent to the other party or parties making and retaining recordings of telephone conversations between any Party or Parties on one hand and Escrow Agent on the other hand in connection with Escrow Agent's security procedures.

**Use of Electronic Records and Signatures.** As used in this Agreement, the terms "writing" and "written" include electronic records, and the terms "execute", "signed" and "signature" include the use of electronic signatures. Notwithstanding any other provision of this Agreement or the attached Exhibits and Schedules, any electronic signature that is presented as the signature of the purported signer, regardless of the appearance or form of such electronic signature, may be deemed genuine by Escrow Agent in Escrow Agent's sole discretion, and such electronic signature shall be of the same legal effect, validity and enforceability as a manually executed, original, wet-inked signature. Any

electronically signed agreement shall be an “electronic record” established in the ordinary course of business and any copy shall constitute an original for all purposes. The terms “electronic signature” and “electronic record” shall have the meanings ascribed to them in 15 USC § 7006. This Agreement and any instruction or other document furnished hereunder may be transmitted by facsimile or as a PDF file attached to an email.