

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

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

4 **23336**

5 THIS THIRD AMENDMENT to the SERRF Operations and Maintenance
6 Agreement (the "Third Amendment") is made and entered, in duplicate, as of April 22,
7 2015 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 April 21, 2015, by and between the CITY
9 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"), formerly known as Veolia ES Long Beach Corporation.

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13 RECITALS

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15 WHEREAS, City and Operator entered into that certain Agreement dated
16 March 1, 1994, entitled "SERRF Operations and Maintenance Agreement," also identified
17 as Contract Number 23336, together with that First Amendment to Agreement dated July
18 31, 1996 (the "First Amendment"), providing for the day-to-day operation and long-term
19 maintenance of the City's Southeast Resource Recovery Facility ("SERRF"), a waste-to-
20 energy facility serving the City of Long Beach and adjacent communities (collectively, the
21 "Agreement"); and

22 WHEREAS, City and Operator now wish to amend the Agreement to:
23 extend the Term, provide for a discount to the Operating Fee, recognize a change in the
24 name of Operator and to make certain other changes to the Agreement, all as provided in
25 this Third Amendment;

26 NOW, THEREFORE, in consideration of the mutual terms and conditions in
27 the Agreement and in this Third Amendment, the parties agree as follows:

28 1. Operator. The definition of "Operator" in the Agreement is hereby

1 deleted in its entirety, and the following is substituted in lieu thereof:

2 “Operator” means Covanta Long Beach Renewable Energy Corp., a
3 Delaware corporation, formerly known as Veolia ES Long Beach
4 Corporation, or if this Agreement is assigned pursuant to Section 8.6, the
5 person, corporation, or other legal entity who is the assignee thereof.

6 2. Term. The definition of “Term” in the Agreement is hereby deleted in
7 its entirety, and the following is substituted in lieu thereof:

8 “Term” means the period commencing on the Effective Date and
9 ending on June 30, 2024 or such earlier date as this Agreement is
10 terminated pursuant to Section 6.2.

11 3. Discount to Operating Fee. Beginning on January 1, 2016 and
12 continuing for the remainder of the Term, Operator shall discount the Operating Fee in
13 each calendar month by subtracting \$41,666.67 from the Operating Fee otherwise
14 payable by the City for that calendar month, appropriately prorated for any partial
15 calendar month during the Term (the “OF Discount”).

16 4. Adjusted Base Operating Fee. Beginning on January 1, 2016 and
17 continuing for the remainder of the Term, Sections 5.1(a) and 5.1(c) are hereby deleted in
18 their entirety, and the following is substituted in lieu thereof:

19 (a) Operating Fee. The monthly Operating Fee (OF) shall be equal to
20 the Base Operating Fee so long as the cumulative Tons Processed to date in the
21 Operating Year is less than or equal to 455,000 Tons. The monthly OF, when the
22 cumulative Tons Processed to date in the Operating Year is in excess of 455,000 Tons,
23 shall be equal to the Base Operating Fee plus the Adjusted Base Operating Fee.

24 (c) Adjusted Base Operating Fee. The Adjusted Base Operating Fee
25 shall be equal to the Excess Operating Fee multiplied by the Tons Processed in the
26 Operating Year in excess of 455,000 Tons.

27 5. Termination for Convenience. A new Section 6.2(f) is hereby added
28 to the Agreement, reading as follows:

1 (f) Each of the City and Operator shall have the right to terminate this
2 Agreement for its own convenience, including without limitation in the event that the City
3 and the Sanitation Districts cannot reach agreement on operating the SERRF going
4 forward, effective on or after December 8, 2018, by providing at least 90 days written
5 notice thereof to the other party. If Operator exercises such right of convenience
6 termination, then the City shall be entitled to keep the benefit of the OF Discount for all
7 calendar months to which it is applicable, up to the date of termination. If the City
8 exercises such right of convenience termination, then the City shall refund to Operator on
9 or before the date of, and as a condition to, termination the product of (i) 1.5%, (ii) the
10 total OF Discount provided by Operator during the period beginning January 1, 2016 and
11 ending December 8, 2018, and (iii) the number of months that the date of termination is
12 before June 30, 2024. Upon the City's exercise of such right of convenience termination,
13 Operator shall have the right to discontinue future installments of the OF Discount, which
14 discontinued amounts shall be applied as a credit to the City's refund obligation
15 described in the immediately preceding sentence. Notwithstanding Section 6.3(b) or any
16 other provision of this Agreement to the contrary, if following either party's termination for
17 convenience the City requests that the Operator continue to operate SERRF pursuant to
18 Section 6.3(b), then the Operator shall be compensated for such services on a pass-
19 through of all costs plus 15% of such costs basis.

20 6. Letter of Credit. Effective December 8, 2018 or anytime thereafter,
21 Operator shall have the right to reduce the amount of the Letter of Credit to be
22 \$3,750,000. The amount of the Letter of Credit shall be adjusted annually in the manner
23 provided in Exhibit A.

24 7. Notices. Operator hereby substitutes the following as its notice
25 address under Section 8.10 of the Agreement:

26 Covanta Long Beach Renewable Energy Corp.
27 445 South Street
28 Morristown, NJ 07960

1 Attn: Sr. Vice President, Business Management

2 With copy to:

3 Covanta Long Beach Renewable Energy Corp.

4 118 Pier S Avenue

5 Long Beach, California 90802

6 Attn: Business Manager

7 8. Staff. The Sections of Exhibit E titled "Shift Crew" and "Day Crew"
8 under the heading "STAFF" are hereby deleted in their entirety, and the following is
9 substituted in lieu thereof:

10 "Shift Crew." Reports to the Shift Supervisor, and will include a minimum of
11 (4) four employees comprised of crane operators, equipment operators, and control room
12 operator.

13 "Day Crew." Reports to the Shift Supervisor, and will include a minimum of
14 (7) employees comprised of a crane operator, ash treatment operators, laborers, and
15 scale house person.

16 9. Exhibit H-1. Exhibit H-1 to the Agreement is hereby deleted in its
17 entirety, and Exhibit H-1 attached hereto is substituted in lieu thereof.

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

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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

April 24, 2015

By [Signature]
Name PAUL E. STAUBER
Title SVP

April 24, 2015

By [Signature]
Name Kirk J. Bly
Title Vice President + Deputy C.M.

"Operator"

CITY OF LONG BEACH, a municipal corporation

May 11, 2015

By [Signature] **Assistant City Manager**
City Manager

"City"

EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.

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

April 29, 2015.

CHARLES PARKIN, City Attorney

By [Signature]
Deputy

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EXHIBIT H-1

Mobile Equipment

Item Quantity

<u>966 Front End Loaders (comparable or larger)</u>	<u>4</u>
<u>Forklift</u>	<u>1</u>
<u>Pickup Truck</u>	<u>2</u>
<u>753 Bobcat (comparable or larger)</u>	<u>1</u>