

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

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

4 **23336**

5 THIS SECOND AMENDMENT to the SERRF Operations and Maintenance
6 Agreement (the "Second Amendment") is made and entered, in duplicate, as of March
7 12, 2008 for reference purposes only, pursuant to a minute order adopted by the City
8 Council of the City of Long Beach at its meeting held on March 11, 2008, by and between
9 the CITY OF LONG BEACH, a municipal corporation of the State of California ("City"),
10 and VEOLIA ES LONG BEACH CORPORATION, a Delaware corporation, formerly
11 known as MONTENAY PACIFIC POWER CORPORATION ("Operator").

12
13 RECITALS

14
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, the Operator is experienced in the operation of waste-to-
23 energy facilities generally and the operation and maintenance of the SERRF facility in
24 particular, and has provided specialized professional, technical and scientific services to
25 the City; and

26 WHEREAS, in order to continue to provide high quality maintenance to the
27 facility, the Operator has offered to install and operate a detonation boiler cleaning
28 system at a cost of approximately \$2.4 million, resulting in improved facility safety and

1 more efficient functioning, in consideration of which, the Agreement term will be extended
2 approximately six years; and

3 WHEREAS, the City and Operator are desirous of amending the Agreement
4 as authorized by the action of the Long Beach City Council and Mayor on March 11,
5 2008, for the purpose of: (a) effecting the name change from Montenay Pacific Power
6 Corp. to Veolia ES Long Beach Corporation, (b) extending the term of the Agreement, (c)
7 providing for the installation of a detonation boiler cleaning system and (d) making other
8 changes as are required in connection with the foregoing, all as detailed elsewhere in this
9 Amendment.

10 NOW, THEREFORE, in consideration of the mutual terms and conditions in
11 the Agreement and in this Second Amendment, the parties agree as follows:

12 1. Except as expressly set forth herein, it is the intent of the parties that
13 all of the definitions, terms and conditions of the Agreement continue in full force and
14 effect. In the event of a conflict between the Agreement and this Amendment, which
15 cannot be resolved by a plain reading of the language of both documents this
16 Amendment shall control.

17 2. Section 1.2 of the Agreement, Definitions, is amended as follows:

18 A. The definition of "Operator" is deleted in its entirety and the
19 following is substituted therefore:

20 "Operator" means Veolia ES Long Beach Corporation,
21 formerly known as Montenay Pacific Power Corporation, a Delaware
22 Corporation, or if this Agreement is assigned pursuant to Section 8.6, the
23 person, corporation, or other legal entity who is the assignee of such person
24 or corporation or other legal entity of the assignee thereof.

25 B. The definition of "Remedial Work Period" is deleted in its
26 entirety and the following is substituted therefore:

27 "Remedial Work Period" means, with respect to the List 1
28 Remedial Work, the period commencing on the Effective Date for the

1 Remedial Work and ending on June 30, 1996 and, with respect to the List 2
2 Remedial Work (as modified by this Amendment), the period commencing
3 on the date this Amendment is entered into, and ending no later than
4 December 31, 2009.

5 C. The definition of "Term" is deleted in its entirety and the
6 following is substituted therefore:

7 "Term" means the period commencing on the Effective Date
8 and ending on December 7, 2018 or such earlier date as this Agreement is
9 terminated pursuant to Section 6.2.

10 3. Section 3.1 of the Agreement is deleted in its entirety and the
11 following is substituted therefor:

12 "Section 3.1 Repair Escrow Account. Operator shall place \$2,400,000 into
13 the Repair Escrow Account to be held by City within fifteen (15) days after the execution
14 of this Amendment. The principal amount in the Repair Escrow Account, plus interest
15 earnings thereon after the end of the Remedial Work Period, shall be the property of City.
16 All interest earnings on amounts in the Repair Escrow Account accruing during the
17 Remedial Work period shall be the property of Operator and shall be payable by City to
18 Operator on the first Business Day of each calendar quarter, and upon completion of the
19 Remedial Work. All amounts held by City in the Repair Escrow Account shall be deemed
20 to earn interest at the rate earned by City's pooled investment funds for the applicable
21 period. The escrow shall terminate upon the earlier of completion of the Remedial Work
22 or the termination of this Agreement and any funds remaining in the repair Escrow
23 Account shall be released to the Parties entitled thereto as provided in this Section 3.1."

24 4. Section 6.1 of the Agreement is deleted in its entirety and the
25 following is substituted therefor:

26 "Section 6.1 Term. The Term shall begin on the Effective Date and extend
27 until December 7, 2018, unless earlier terminated pursuant to Section 6.2."

28 5. Section 8.10, Notices, is amended to substitute the following

1 addresses :

2 If to City, addressed to:
3 City Manager
4 City of Long Beach
5 City Hall
6 333 West Ocean Blvd.
7 Long Beach, California 90802

8 With copies to:
9 Southeast Resource Recovery Facility Authority
10 2400 East Spring Street
11 Long Beach, California 90806
12 Attention: General Manager

13 City of Long Beach - SERRF
14 120 Pier S Avenue
15 Long Beach, California 90802
16 Attention: Electric Generation

17 If to Operator, addressed to:
18 Veolia ES Long Beach Corporation
19 One Pennsylvania Plaza Suite 4400
20 New York, New York 10119
21 Attention: President

22 With copies to:
23 Veolia ES Long Beach Corporation
24 118 Pier S Avenue
25 Long Beach, California 90802
26 Attention: Plant Manager

27 6. Exhibit "G" is replaced by Exhibit "G-1", and all references in
28 Agreement No. 23336 shall now mean and refer to Exhibit "G-1", attached to this Second
Amendment and incorporated by this reference.

7. Exhibit "H" is replaced by Exhibit "H-1", and all references in
Agreement No. 23336 shall now mean and refer to Exhibit "H-1", attached to this Second
Amendment and incorporated by this reference.

8. Except as expressly amended in this Second Amendment, all of the
terms and conditions of Agreement No. 23336 are ratified and confirmed and shall

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1 remain in full force and effect.

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

4
5
6 March 25, 2008

VEOLIA ES LONG BEACH CORPORATION, a Delaware corporation

By Steve Passage
Steve Passage
Type or Print Name
President
Title

7
8
9 March 25, 2008
10 SWORN TO BEFORE ME THIS 25th
11 DAY OF March 2008

12 May C. Ostermann
13 **MAY C. OSTERMANN**
14 NOTARY PUBLIC, State of New York
15 No. 31-4987102
16 Qualified in New York County
17 Commission Expires October 7, 2009

By Thomas M. Smith
Thomas M. Smith
Type or Print Name
SR Vice Pres / Asst Sec
Title

"Operator"
CITY OF LONG BEACH, a municipal corporation
By [Signature] **ASSISTANT**
City Manager

15 April 8, 2008

"City" EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.

18 This Second Amendment to Agreement No. 23336 is approved as to form
19 on 3-26, 2008.

20
21 ROBERT E. SHANNON, City Attorney
22 By [Signature]
23 Deputy

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EXHIBIT "G-1"

Phase 2 Remedial Work

List 1

Project Number	Description
1	Boiler Roof TV Camera Primary Air Metering / or Water Cooled Undergrate
2	Turbine Flow Upgrade
3	Secondary Air Nozzle Change
4	ID Fan Speed Controller
5	Safety Valve Upgrade
6	Boiler Pendant Addition
7	Cooling Tower Composite Shaft
8	Baghouse Hopper Outlet DCS System Additional CRT DCS System Communication
9	Repipe Water Supply to Atomizer
10	1 Niro Atomizer
11	1/2 Third Superheater Bank Replacement
12	Additional Instrument Air Compressor/Dryer
	Management Team MPPC Fee to Oversee Projects (5% Fee)

EXHIBIT "G-1"

List 2

Project Number	Description
13	Water Wall Overlay
14	Upgrade Maintenance Shop & Locker Rm.
15	Ammonia Injection on Roof
16	Air Heater Pump
17	Fly Ash Conveyor
18	Boiler Roof Insulation
19	Tire Cleaning Station
20	CEMs Software Upgrade
21	Burner Fan Secondary Air Fan Trim
22	O&M Manual update
23	1 Niro Atomizer
24	Dual Fly Ash Drag Conveyor
25	Ash Treatment & Belt Venting
26	South Wall Extension Lined w/RR Ties & Middle Pit Wall
27	Ammonia Slip Monitoring
28	Atomizer Test Stand
29	Install Stainless Steel Tile on Bottom Wear Tube
30	Trash Crane Control Improvement

Project Number	Description
31	½ Third Superheater Bank Replacement
32	New Grapple Purchase
33	Detonator Boiler Cleaning

EXHIBIT "H-1"

Mobile Equipment

Item	Quantity
CAT-966 Front-end Loaders (or comparable or larger)	4
Forklift Truck	1
Pickup Truck	1
Car	1
Vacuum Truck	1
Bobcat 753 Steer Loader (or Comparable or Larger)	1