

R-19

January 17, 2023

HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

Authorize the City Manager, or designee, to execute all documents necessary to amend the Southeast Resource Recovery Facility (SERRF) Operations and Maintenance Agreement No. 23336 (Agreement) with Covanta Long Beach Renewable Energy Corporation (Covanta), of Long Beach, CA, to adjust the commercial structure such that Covanta will take responsibility for all SERRF revenues and expenses for a contract period beginning February 1, 2023, until the end of the existing contract term of June 30, 2024. (Citywide)

DISCUSSION

City Council approval is requested to amend Agreement No. 23336 (Agreement) with Covanta to adjust the commercial structure to allow for the continued operation of SERRF through the existing contract term of June 30, 2024.

The passage of State Assembly Bill 1857 (AB 1857) in late August of 2022 removed the AB 939 waste diversion credit for jurisdictions that delivered municipal solid waste to existing Waste-To-Energy (WTE) facilities in California beginning January 1, 2023. Previously, a jurisdiction could deliver up to 10 percent of its annual municipal solid waste generation to a WTE facility and receive a 100 percent recycling credit for that waste. Approximately 148 different jurisdictions brought their municipal solid waste to SERRF for the diversion credit, which accounted for approximately 50 percent of the waste tonnage processed annually at SERRF and is a significant revenue source for its operations.

Beginning January 1, 2023, it is highly unlikely that those other jurisdictions will continue to bring their municipal solid waste to SERRF as they will no longer receive any diversion credits and landfill disposal costs are significantly less than the disposal costs they would pay to SERRF. The loss of nearly 50 percent of the waste tonnage processed at SERRF, along with the corresponding loss of revenue, introduces significant financial risks to the City of Long Beach (City) for SERRF's continued commercial operations, both in the immediate future as well as through the existing contract term of June 30, 2024.

On September 7, 2021, the City Council approved a professional engineering and recycle/solid waste management consulting services contract with HDR Engineering, Inc. (HDR). City staff have been engaged in a formal study with HDR to assess the future

opportunities for SERRF. A key deliverable in this study is to identify comprehensive environmental and economically viable options for the future of SERRF, including organic waste processing in compliance with AB 1383. The RFP for organic waste processing has been developed and is planned to be released in early 2023. Any future options contained in the RFP contemplate SERRF operating until at least the June 30, 2024 timeframe.

The proposed amendment provides several benefits:

- (1) It shifts the City's financial risks for the continued operation of SERRF to Covanta and secures the SERRF Fund balance through June 30, 2024, at which time they would become available for decommissioning operations should it become necessary.
- (2) It allows for the continued operation of SERRF beyond the first quarter of 2023 while its environmental and economically viable options are further evaluated under the soon to be issued RFP.
- (3) It ensures compliance with the City's municipal solid waste management program as well as ensuring compliance with its Climate Action Plan (CAP).
- (4) The regional waste market is facing upward pressure in landfill prices and uncertainty in long-term landfill availability. Orange County landfills are projected to be closed off to LA County trash at the beginning of 2025. Continuation of SERRF's operations into 2024 allows for a better assessment of this potential 2025 issue. If this does happen and SERRF's operations have ceased, the only options for disposal of the City's trash will be the El Sobrante landfill in Riverside County or more distant landfills in San Bernardino or Arizona. This would significantly increase the City's current disposal costs and place the City out of compliance with its own CAP.
- (5) The City and the State of California have significant organics diversion goals without the infrastructure to meet them. SERRF has the potential to provide an interim solution.

By amending the commercial structure under the Agreement, Covanta will now take responsibility for all SERRF revenues and expenses for a contract period beginning February 1, 2023 until the end of the contract term. The term of the Agreement will not change which is in effect through June 30, 2024. The proposed amendment will include the following material provisions:

- Covanta shall be responsible for all SERRF operating and maintenance expenses (except for California cap-and-trade program expenses applicable to City solid waste delivered to SERRF) and shall be entitled to all revenues generated by SERRF.

- City shall be obligated to sell electricity generated by SERRF and shall pass such sales revenues through to Covanta.
- City shall deliver solid waste to SERRF for processing, subject to certain annual, weekly, and daily maximums, and City shall pay Covanta a volumetric fee in connection with such solid waste.
- Either party shall have the right to terminate the Agreement upon ninety (90) days advance written notice.
- Covanta shall have the exclusive right to negotiate with City regarding future operations of SERRF beyond the expiration date of the current Agreement, without obligation on either party to execute any such extension or replacement agreement.
- If such negotiations fail to result in continued operation of SERRF, Covanta shall decommission SERRF in accordance with a City-approved decommissioning plan.

This matter was reviewed by Principal Deputy City Attorney Richard Anthony on December 29, 2022, Purchasing Agent Michelle Wilson on December 22, 2022, Director of Financial Management Kevin Riper and Revenue Management Officer Geraldine Alejo on December 30, 2022.

TIMING CONSIDERATIONS

City Council action to amend Agreement No. 23336 is requested on January 17, 2023, to ensure there is no interruption to services.

FISCAL IMPACT

Effective February 1, 2023, Covanta will be responsible for the SERRF facility's operating expenses and revenues until June 30, 2024. Since 2018, the SERRF Fund Group has been operating at an annual loss of approximately \$4 million, with the annual shortfall amount offset by funds available accumulated from prior years. With the passage of AB 1857, staff estimates an additional revenue loss of \$2 million per month, which will further increase the revenue shortfall and quickly deplete funds available resulting in the early closure of the facility at the end of February 2023. Additionally, should SERRF continue operations without the requested contract amendment, funds available is projected to be negative by May 2023. Due to ongoing agreements for special waste and refuse pricing flexibility, Covanta is better positioned to profitably continue facility operations until the end of the contract term. Along with maintaining SERRF facility operations, it is anticipated that the requested amendment will shift the City's financial risks to Covanta and insulate the City from further liabilities. Additionally, the amendment ensures that

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there will be no change to the rate structure charged to the City for its own use of the SERRF facility for refuse operations.

While Covanta will assume responsibility for most of the expenditures incurred by the SERRF Fund Group, the City will continue to be responsible for an estimated \$2.7 million in ongoing expenditures. Remaining annual expenditures include \$1.4 million for carbon allowance purchases under the AB 32 Cap and Trade program, as well as \$1.3 million for City staff and related costs necessary for contract oversight and efforts to evaluate future opportunities for the SERRF facility. With operating revenues transferred to Covanta, such as revenue generated from electricity sales and disposal charges, these expenditures must be funded by drawing down from existing funds available in the SERRF Fund Group. With the requested amendment, staff projects that the SERRF Fund Group will have approximately \$6 million in remaining funds available which will be available for decommissioning operations should it become necessary.

This recommendation has a minimal staffing impact beyond the normal budgeted scope of duties and is consistent with existing City Council priorities. City Council priorities include continued solid waste management and compliance with the City's Climate Action Plan. The amendment will provide continued support to our local economy by assisting in the preservation of employment for approximately 60 full-time employees, 14 of whom reside in Long Beach.

SUGGESTED ACTION:

Approve recommendation.

Respectfully submitted,



ROBERT M. DOWELL
DIRECTOR OF ENERGY RESOURCES

APPROVED:



THOMAS B. MODICA
CITY MANAGER