Memorandum

MIAMI-DADE COUNTY

Date: January 28, 2010

Agenda Item No. 2(A)(2)

To: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

From: George M. Burgess,
County Manager

Subject: Assignment of the Montenay Agreement to Covanta Southeastern Florida Renewable Energy LLC.

RECOMMENDATION

It is recommended that the Board of County Commissioners (Board) approve the attached resolution authorizing the execution of the Consent Agreement to assign the Third Amended and Restated Operations and Management Agreement (as amended) between Miami-Dade County and Montenay-Dade, Ltd. in substantially the form attached, to Covanta Southeastern Florida Renewable Energy LLC. (Covanta). The County has just concluded several months of negotiations with the parties and has conducted its due diligence. Assignment of the agreement to Covanta is in the best interest of the County and includes an additional $7 million in benefits. If the assignment is executed before January 31, 2010, the County will receive an additional $1 million. This item is being presented to the Board in this manner to take advantage of the $1 million incentive.

SCOPE

The Miami-Dade County Resources Recovery Facility (RRF) is located in District 12; however, the impact of this item is countywide in nature as the RRF is a regional asset.

FISCAL IMPACT/FUNDING SOURCE

The County will receive approximately $7 million in financial benefits as consideration for the assignment of the Operations and Management Agreement. The financial benefits include $5.6 million in operational saving from eliminating the recyclable trash shortfalls for FY 2007-08 and FY 2008–09, and $1.4 million in company-funded environmental and aesthetic enhancements to the facility, and reimbursement to the County for costs associated with the assignment of the Agreement. In addition to these benefits the County will receive $1 million for having completed the due diligence and executing assignment of the Agreement prior to January 31, 2010.

TRACK RECORD/MONITOR

The term of the current Agreement expires on October 31, 2023, with four 5-year options to renew that could extend the Agreement through October 2043. Vicente Castro, Deputy Director Operations in the Department of Solid Waste Management (Department) will be responsible for monitoring the project.

BACKGROUND

Montenay Power Corp. (MPC), a Florida corporation, and Montenay International Corp. (MIC), a New York corporation, entered into an agreement with the County to operate and maintain the Resources Recovery Facility beginning June 20, 1985. Since then, there have been a series of agreements and amendments to the original agreements between the County and MIC/MPC. In the 1987 and 1990 amendments, MPC and MIC assigned all rights to Montenay Dade, LTD (MDL) but continued to serve as Guarantors of Montenay's obligations under the Agreement.

Currently, the plant is being operated under the Second Amendment to the Third Amended and Restated Operations and Management Agreement between the County and Montenay. On July 13,

2004, the Board approved Resolution R-899-04 extending the term of the agreement through October 31, 2023, with four 5-year options to renew. The plant is performing very well and continues to generate sufficient electricity to power the plant and to supply power to approximately 45,000 households. In FY 2008, the Facility processed over one million tons of waste and generated $13.2 million in revenues to the County from electricity sales, the largest in its 27 year history.

On July 6, 2009, the County received a letter from Veolia Environmental Services Waste-to-Energy, Inc. (Veolia ES), the parent company of MDL, informing the County of its decision to sell the majority of its North American energy-from-waste business (including Montenay-Dade Ltd. and Montenay Power Corp.) to Covanta Holding Corporation.

Since receiving Veolia's request to assign the Agreement to Covanta, the Department has been holding talks with both Veolia ES and Covanta regarding the future operation, maintenance and upkeep of the facility. The parties agreed to the following:

1. Expunge all penalties payable by the County for shortfalls in delivery of recyclable trash for the past two fiscal years in the amount of $5.6 million;
2. Reduce the put-or-pay for recyclable trash. This is the amount of trash that the County must deliver to the RRF, which if not delivered, requires the County to pay penalties for the shortfall. This change reduces the possible penalties the County would have faced in the future if the put-or-pay quantities remained at its previous levels;
3. Covanta will bear the costs, up to $750,000 to purchase and install four mercury analyzers should there be a change in law requiring these upgrades;
4. Covanta will contribute $323,000 of a total cost of $600,000 to install a natural gas pipeline to replace propane as the on-site fuel for the facility;
5. Covanta will pay the entire cost, up to $100,000 to install and maintain Carbon Dioxide analyzers;
6. Covanta will replace the "Dustmaster" system and the W conveyors, which are main components of the ash handling system; and
7. Covanta will pay, up to $250,000 for plant aesthetic enhancements.

Veolia ES offered an additional $1.0 million to the County as an incentive to complete execution of the assignment prior to January 31, 2010. Therefore, approval of this assignment could result in as much as $8 million in considerations in the County's favor. The following is a summary profile of Covanta Holdings.

COVANTA HOLDING CORPORATION

Covanta Holding Corporation (Covanta) located in Fairfield, New Jersey has separate subsidiaries offering energy-from-waste solutions (Covanta Energy Corporation) and a variety of insurance products. Covanta is an internationally recognized owner and operator of energy-from-waste and power generation projects. Their energy-from-waste facilities convert municipal solid waste into renewable energy for numerous communities, predominantly in the United States. In its 2008 Annual Report to Shareholders, Covanta reported revenues of $1.664 billion and in excess of $192 million in operating cash and cash equivalents.

Regarding its waste-to-energy operations, the corporation develops, owns and operates facilities to convert energy from municipal waste, as well as other waste disposal and renewable energy production businesses in the Americas, Europe and Asia. The Company conducts all of its operations through

subsidiaries, which are engaged in the businesses of waste and energy services. Covanta also engages in the independent power production business outside the Americas. The Company owns, has equity investments in, and/or operates 58 energy generation facilities, 50 of which are in the United States of America. Its energy generation facilities use a variety of fuels, including municipal solid waste, wood waste (biomass), landfill gas, water (hydroelectric), natural gas, coal and heavy fuel-oil. Covanta also owns or operates several other businesses associated with its renewable energy business including waste procurement, biomass procurement, several waste transfer stations and four landfills used primarily for ash disposal.

Covanta is considered a world leader in the development and operation of large-scale energy-from-waste power projects. The company owns/operates over 43 such energy-from-waste facilities in the United States that safely convert 19 million tons a year of municipal solid waste (more than 5% of the nation's municipal solid waste) into clean, renewable energy for communities throughout the Country. Covanta also owns and operates independent power production facilities that are powered by other renewable and efficient fossil fuel technologies. The Company's power-generation portfolio exceeds 2,000 MW of electricity worldwide.

The County has received letters from the Utility Workers Union of America (UWUA) Local 369 regarding Covanta operations. UWUA represents employees at Covanta's SEMASS Facility in West Wareham, Massachusetts. The correspondence cites unfair labor practices, environmental violations and safety violations at various Covanta operations nationwide. In response to questions from the County, Covanta has stated that it has been in contract negotiations with the Union since May 2008. These negotiations are continuing despite a demand by UWUA that it be the bargaining representative for all Covanta employees nationwide. UWUA filed several unfair labor practice charges against Covanta with the National Labor Relations Board. Covanta denies the unfair labor practices accusations and is confident that it will prevail at regulatory/court hearings.

With respect to the allegations of environmental violations, Covanta has cited its compliance with environmental standards showing a record of approximately 99.9% compliance company-wide. The Department's Bond Engineer, Malcolm Prinie, Inc., as part of its review of the assignment, has noted that Covanta's environmental compliance record is very good and further noted that "Each facility is different in design and operation with specific characteristics related to performance efficiency and environmental controls. Isolated violations of environmental regulations are not necessarily related to the quality of operation, but may be caused by any number of other factors" such as combustion upset caused by the quality or composition of the incoming waste used as fuel. Additionally, regarding the issue of the safety violations, Covanta denies the allegation of disregard for safety and notes that 28 of its 35 facilities have OSHA's Voluntary Protection Program STAR designation. The Miami-Dade County plant under Veolia's management holds such designation from OSHA as well. Aside from the SEMASS situation there is little to report in terms of labor issues or OSHA violations.

Malcolm Pirnie has conducted a due diligence review of the assignment and recommends the approval of the assignment. The attached Malcolm Pirnie report indicates that the Agreement is currently guaranteed by Montenay International Corporation which is substantially smaller than Covanta Holding Corporation. Since Covanta Holding Corporation will bear full responsibility for the performance under the Agreement, the Agreement will be guaranteed by a company of greater financial strength.

In the event this assignment is not approved by the Board, Veolia ES has indicated its commitment to meet its obligations under the terms of the Agreement. With the potential possibility of a loss of continuity of a well-performing plant operation, it would not be in the best interest of the County to continue working with an operator that desires to leave the contract. Other alternatives available to the County include termination of the contract with Veolia ES for convenience, or entry into a protracted

solicitation process for re-procurement of the management and operation of the plant. In either case the County will forego the $8 million in considerations and incentives negotiated with Veolia ES to Covanta.

It is recommended that the Board approve execution of the Consent Agreement to assign the Third Amended and Restated Operations and Management Agreement (as amended) between Miami-Dade County and Montenay-Dade, Ltd. in substantially the form attached, to Covanta Southeastern Florida Renewable Energy LLC.

Attachments

Assistant County Manager

MEMORANDUM
(Revised)

TO: Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners

DATE: January 28, 2010

FROM: R. A. Cuevas, Jr. County Attorney

SUBJECT: Agenda Item No. 2(A)(2)

Please note any items checked.

_____ **"3-Day Rule" for committees applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Ordinance creating a new board requires detailed County Manager's report for public hearing**

✓ **No committee review**

_____ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____) to approve**

_____ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

5

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 2(A)(2)
1-28-10

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE COUNTY MAYOR OR THE COUNTY MAYOR'S DESIGNEE TO EXECUTE THE CONSENT AGREEMENT TO ASSIGN THE THIRD AMENDED AND RESTATED OPERATIONS AND MANAGEMENT AGREEMENT (AS AMENDED) BETWEEN MIAMI-DADE COUNTY AND MONTENAY-DADE, LTD., TO COVANTA SOUTHEASTERN FLORIDA RENEWABLE ENERGY LLC.

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that the Consent Agreement to Assign the Third Amended and Restated Operations and Management Agreement (as amended) between Miami-Dade County and Montenay-Dade, Ltd., in substantially the form attached, is approved, and the Mayor or the Mayor's designee is authorized to execute all documents necessary to effectuate the Consent to Assignment documents. The Mayor or his designee is authorized to act upon any default or termination provisions contained in the Consent or the Assigned Third Amended and Restated Operations and Management Agreement (as amended) and to act upon any options, extensions or further assignments under these agreements.

The foregoing resolution was offered by Commissioner , who moved its adoption. The motion was seconded by Commissioner and upon being put to a vote, the vote was as follows:

Dennis C. Moss, Chairman
Jose "Pepe" Diaz, Vice-Chairman

Bruno A. Barreiro
Carlos A. Gimenez
Barbara J. Jordan
Dorrin D. Rolle
Katy Sorenson
Sen. Javier D. Souto
Audrey M. Edmonson
Sally A. Heyman
Joe A. Martinez
Natacha Seijas
Rebeca Sosa

The Chairperson thereupon declared the resolution duly passed and adopted this 28th day of January, 2010. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Thomas H. Robertson

VEOLIA
ENVIRONMENTAL
SERVICES

WASTE-TO-ENERGY

NORTH AMERICA

January 11, 2010

Ms. Kathleen Woods-Richardson, Director
Department of Solid Waste Management
Miami-Dade County
Dr. Martin Luther King, Jr. Office Plaza
2525 MW 62nd Street, Suite 5100
Miami, FL 33147

Dear Kathy,

The offer below replaces the offer contained in my letter to you dated December 17, 2009, which was automatically revoked in accordance with the terms of the December 17, 2009 letter given the failure of the Dade Closing (as defined in the Share Purchase Agreement, dated July 3, 2009, between Covanta Holding Corporation and Veolia Environmental Services North America Corp.) to occur before December 31, 2009.

Our new offer is that, on condition that the Dade Closing (as defined above) occurs prior to the close of business on January 31, 2010, Montenay International Corp. shall, up to a maximum aggregate of $1,000,000, provide funding to the County at your duly authorized request for 50% of the cost of a new administrative building on the Dade site or such other capital projects to improve the Dade Facility, as you may determine in your sole discretion.

It is our intention to use our best efforts to consummate the Dade Closing before the end of January, 2010. That result depends in part on the consent of Miami-Dade County to the transactions contemplated by the Share Purchase Agreement referred to above, but it also depends on factors beyond our control. Thus no assurance can be given that the result we desire- a Dade Closing before the end of January, 2010 that will permit us to make the foregoing payment obligation- will in fact be achieved.

Sincerely yours,

Steve Passage

Steve Passage, Vice President
Montenay International Corp.

Montenay International Corp.
1 Pennsylvania Plaza, Suite 4401
New York, New York 10119
Tel: (212) 695-8100 Fax: (212) 629-4013

Cc: Richard Burke, CEO & President, VESNA
Seth Myones, CEO & President, Covanta Americas

MALCOLM PIRNIE

INDEPENDENT ENVIRONMENTAL ENGINEERS, SCIENTISTS AND CONSULTANTS

Malcolm Pirnie, Inc.
5201 Blue Lagoon Dr., 9th Floor
Miami, FL 33126
T: 305.716.4155 F: 305.716.4154
www.pirnie.com

December 11, 2009

Kathleen Woods-Richardson, Director
Miami-Dade Department of Solid Waste Management
2525 NW 62nd Street, 5th Floor
Miami, Florida 33147

Re: **Recommendation – Assignment of the Operations and Management Agreement, and Loan Agreement from Montenay-Dade Ltd. to Covanta Southeastern Florida Renewable Energy LLC**

Dear Ms. Woods-Richardson:

As the Solid Waste Bond Engineer for Miami-Dade County (County), Malcolm Pirnie, Inc. (Pirnie), in association with Planning and Economics Group, has reviewed the proposal and supporting documentation for the assignment of the Third Amended and Restated Operations and Management Agreement, dated as of September 1, 1996 (Agreement) between Montenay-Dade Ltd. (Montenay) and Miami-Dade County, Florida and the Loan Agreement between Dade County, Florida and Montenay-Dade, Ltd, dated as of September 1, 1996 (Assignment). The proposed Assignment to Covanta Southeastern Florida Renewable Energy LLC (Covanta) is requested in accordance with Section 15.1 of the Agreement which states the following:

> *15.1 No Assignment. The Company [Montenay] may not assign any of its right, title or interest in this Agreement without the express permission of the County given in its sole discretion; provided that the Company may assign its rights and obligations under this Agreement to MPC [Montenay Power Corp]. The County may assign any of its rights or duties under this Agreement except to the extent such assignment is limited by the Bond Documents.*

Pirnie's review of the proposed Assignment, including the supporting documentation provided by the County, Montenay and Covanta, is intended to identify and evaluate any negative impact of the proposed Assignment. Pirnie reviewed the documentation as the County's Solid Waste Bond Engineer and provides this letter in that capacity. There are certain legal issues related to the structuring of debt instruments and multiple layers of business structures that Pirnie is not qualified to opine.

Documentation of Pirnie's review of the proposed Assignment and recommendation consists of the following:

- Background
- Operational Review

Solutions for Life™

- Financial Review
- Recommendation
- Attachments (list of documents for reference)

Background

Montenay is a limited liability company established for the purpose of operating and managing the Resources Recovery Facility in accordance with the terms and provisions of the Agreement. Montenay International Corporation, a New York corporation (MIC) and Montenay Power Corporation, a Florida corporation (MPC) have provided a guarantee of all of the obligations of Montenay to the County under the Agreement. This Guarantee was executed December 10, 1991.

The base term of the Agreement is until October 31, 2023 with up to four automatic five year renewals unless the renewals are declined by the County or Montenay one year before expiration of the Agreement. With the automatic extensions, the term of the Agreement could run until 2043.

As Bond Engineer, Pirnie assembled a Document and Information Request, dated November 3, 2009, requesting additional information from Covanta and Montenay regarding the Assignment. A submittal was received from Covanta with additional information provided by Covanta, Montenay and the County. A review of the submitted documents is provided in the following two sections.

Operational Review

The Resources Recovery Facility (RRF), which is owned by the County, is part of an integrated Solid Waste Management System through the large scale processing, recycling and disposal of solid waste in an environmentally acceptable manner. The RRF is the source of electrical power export providing a revenue stream to the County which is shared with Montenay under the terms of the Agreement. The RRF is the largest and most critical component of the Miami-Dade Solid Waste Management System.

The RRF accepts and processes Municipal Solid Waste and Trash, delivered to the RRF from the County's transfer stations and directly from municipalities and private haulers. This material is processed into Refuse Derived Fuel (RDF), combusts the RDF to generate electricity, and recovers saleable recyclables. The three major areas of the RRF include the Garbage Processing area, the Recyclable Trash Improvement area, and the Power House. The Garbage Processing lines receive, screen, and shred Garbage into RDF. The Recyclables Trash Improvement lines receive, shred and screen Trash into biomass fuel for use at Okeelanta, an off-site facility. The four Power House boilers burn the RDF in a controlled process to generate steam that powers two turbine generators.

Pirnie requested information from Covanta for meeting the performance guarantees referenced in the Agreement. In a letter dated November 16, 2009 from Covanta Energy Corporation to Malcolm Pirnie, Inc., Attachment A (Covanta Response), Covanta acknowledged the importance of monitoring critical operational parameters, including all performance guarantees referenced in the Agreement. The extensive monitoring and trending of information provides an evaluation of the performance of each major component of the facility so that corrective measures can be implemented when needed. Also, Covanta provides awards, bonus programs and advancement opportunities to assure optimum performance of all Covanta operations, including areas of health, employee safety, operations performance and environmental performance.

Covanta documented their 25-years of experience operating a broad range of Waste to Energy (WTE) Facilities and, in a letter from Covanta Energy Corporation to Miami-Dade County dated November 16, 2009 (Proposal Letter), "*Covanta commits to assume all of the terms, conditions, requirements and performance guarantees addressed within the O&M Agreement and Loan Agreement relative to the future operation of the County's energy from waste facility after the assignment*".

Pirnie requested that Covanta provide a list of any exceptions, concerns or potential modifications to the Agreement. The only concern expressed by Covanta was regarding various residual and reject guarantees that have been historically problematic and difficult to monitor. This issue has been discussed with Covanta, Montenay and the County, and has been determined to be tabled at this time and reconsidered at a later date.

Pirnie requested information regarding personnel/labor disputes in Covanta operated facilities. Covanta stated they have negotiated 50 collective bargaining agreements with unionized employees and that there has never been a judgment or finding of unfair labor practices in that time. Covanta further highlighted one union, the Utility Workers Union of America (UWUA), Local 369, with whom they have ongoing negotiations. Local 369 launched a global *Campaign for Justice for Covanta Workers* "to interfere with our existing and potentially new business to leverage its negotiations". Pirnie makes no comment or recommendation with regard to the validity of labor relations issues with UWUA Local 369.

Pirnie requested confirmation that Covanta has fully inspected the RRF and can completely assume ongoing operation and maintenance to the extent that it is equal to or better than that provided under Montenay. Covanta confirmed they had inspected the RRF but not each and every aspect of the facility. Covanta stated they "*reviewed sufficient operating data and made inspections of the Miami-Dade facility to confirm that we can completely assume operation and maintenance with the expectation that overall performance of the facility will improve.*" Covanta has assumed operation and maintenance responsibility for 19 other WTE facilities previously operated by other entities. In each case Covanta claims to have improved performance of the facilities and each is now part of Covanta's portfolio of operations.

Pirnie requested Covanta's plan for the identification of safety issues at the RRF and their plan for dealing with employee safety. Covanta stated they would need actual operating time at the RRF before being able to accurately respond to this request. However, Covanta went on to discuss their comprehensive health and safety philosophy as well as the OSHA Voluntary Protection Program (VPP) that has been completed at more than 30 Covanta facilities. It is Covanta's stated plan that all Covanta facilities will earn the prestigious STAR award for safety.

Pirnie requested information regarding Covanta's key staff for operating and maintaining the RRF. Covanta provided a comprehensive description of the corporate and regional support, and on-site facility staffing positions that will be provided for the RRF. These positions included general qualifications, duties and responsibilities. Covanta further described their commitment to a stable and capable workforce and their position on EEO and Diversity. Covanta provided an outline of their transition plan with regard to the existing facility staff and Covanta's planned operations.

Pirnie requested information regarding Covanta's maintenance program utilizing the existing CMMS. Covanta's response included a comprehensive description of the predictive and preventative program for both planned maintenance and emergency repairs to the facility. Covanta will use a preventive maintenance program called MAXIMO integrated maintenance software that tracks both preventative and corrective work orders on all equipment. MAXIMO is one of several standard integrated maintenance management software packages utilized in the industry. Covanta described the function of the maintenance management program utilizing the data from the existing maintenance software with modifications based on Covanta's experience.

Pirnie requested Covanta's comments regarding acceptance of the ongoing Capital Renewal and Replacement plan for the next 5-years. Covanta has agreed to provide this plan for information and discussion with the County within six months of the effective date of the Assignment.

Financial Review

Covanta Holding Corporation and Covanta Energy Corporation is joining with its indirect, wholly owned sole purpose subsidiary, Covanta Florida Renewable Energy LLC (Covanta) in agreeing to assume all of the terms, conditions, requirements and performance guarantees, addressed within the Agreement and the Loan Agreement relative to the operation of the RRS. Covanta Holding Corporation operates over 200 subsidiaries including numerous LLCs (limited liability company or corporation), each responsible for a single function, often the operation of a specific facility or operations in a geographical area.

The Agreement is currently guaranteed by Montenay International Corporation, a subsidiary of Veolia Environmental Services. Montenay International Corporation is substantially smaller than Covanta Holding Corporation. To the extent that Covanta Holding Corporation will bear full responsibility for the performance of the Agreement under the proposed Assignment, the Agreement will be guaranteed by a company of greater financial strength. As discussed below, it is important for the County to confirm that the proposed limited liability company will not limit the financial responsibility of Covanta Holding Corporation as the guarantor of contract performance.

Covanta Holding Corporation and Covanta Energy Corporation have proposed to join Covanta in the assumption of all of the terms, conditions, requirements and performance guarantees of the Agreement and the Loan Agreement. It is imperative that the relationship proposed by Covanta Holding Corporation, Covanta Energy Corporation and Covanta Florida Renewable Energy LLC (Covanta) be validated through the County Attorney's Office prior to the Assignment.

Covanta Holding Corporation reported operating revenue of $1.66 billion and net income of $139 million in 2008(10K filing). Montenay International Corporation reported operating revenue of $259 million and net income of $17.6 million for the same time period (Ernst & Young Consolidated Financial Statements). Covanta Holding Corporation is already a leading operator of waste-to-energy facilities, and states that its mission is to be the world's leading energy-from-waste Company (10K filing for 2008, page 4).

Waste-to-energy facilities are inherently maintenance intensive, often requiring major retrofits and large financial outlays for renewal and replacement to maintain operations. Older facilities are more susceptible to such needs, including the replacement of boiler, generator, and air quality control components. Covanta Holding Corporation and Covanta Energy Corporation, as guarantors of Covanta, are significantly stronger financially than Montenay International Corporation, the current guarantor for Montenay-Dade Ltd.

In 1996 Miami-Dade County issued various debt instruments on behalf of Montenay-Dade, Ltd. (the Operator) for approximately $190 million, the proceeds from which were used to fund improvements at the RRF. Concurrent with the issuance of the bonds, the Operator issued a promissory note in favor of the County for the original principal amount of the Series 1996 Bonds. The County assigned this note to the Trust Estate that was created pursuant to the Trust Indenture. The Indenture states that the Series 1996 Bonds are payable solely from and secured only by an irrevocable pledge of a lien on the Trust Estate, not County revenues or property. The County's obligation for the Series 1996 Bonds is limited to a guaranteed minimum amount of annual tipping fees paid to the Operator. Therefore, the 1996 Bonds are a debt obligation of the Operator, which is why the debt from these bonds is not reflected in the County's financial statements. As of September 30, 2008, the principal balance of the bonds was $54.1 million.

Concurrent with the issuance of the 1996 bonds, the County entered into an interest rate swap agreement that resulted in a lower effective interest rate on the debt. The liability associated with an increase in interest rates lies solely with the County, not with the Operator. The Operator is responsible only for the principal payment of the debt.

While the details of these transactions are described more fully in the County's 2008 Comprehensive Annual Financial Report, beginning on page 62, the essential factor is that with the assignment of the Agreement and the Loan Agreement, Covanta would assume the responsibility for the re-payment of approximately $54 million in outstanding bonds. The total amount would come due in the event of a termination of the Agreement.

Recommendation

After an evaluation of the documents provided in response to the Document and Information Request and other information provided by Covanta, Montenay and the County; Pirnie, as Bond Engineer, finds there is no discernable negative impact that should result from the proposed Assignment contingent upon agreement with the following conditions. Therefore, subject to Covanta's agreement with the following conditions, Pirnie recommends the County approve the assignment of the Agreement and all related debt and loan agreements from Montenay to Covanta subject to the conditions stated below:

1. Covanta, as the Assignee, will provide an Initial Annual Certificate demonstrating a net worth of at least $45 million by the Operator or the Guarantor in accordance with Section 3.12 of the Agreement. An Initial Certificate in the same form as the Annual Certificate must be provided prior to the effective date of the Assignment.
2. In accordance with Section 10.10, Covanta, as the Assignee, will provide an irrevocable, direct pay Letter of Credit in the amount of $16,530,000 naming the County as beneficiary prior to the effective date of the Assignment.
3. Mutual agreement, prior to the effective date of the Assignment, to resolve the County Issues dated October 14, 2009 and the Response to County Issues attached to the Proposal Letter.
4. Within six months of the effective date of the Assignment and each year thereafter, Covanta will provide a list of proposed equipment or facility component, renewal and replacement projects, including the estimated cost of each project planned for the following five years. Annual additions, deletions or changes to the list will be discussed with the County and justified by Covanta.

Thank you for the opportunity to review the proposed Assignment of the Agreement and the Loan Agreement from Montenay to Covanta. Subject to the conditions provided herein, Malcolm Pirnie is of the belief that the proposed Assignment will result in a stable financial position and improved operation of the RRF.

Please do not hesitate to contact me if you have any questions.

Very truly yours,

MALCOLM PIRNIE, INC.

Robert H. French, P.E. BCEE
Senior Associate

Cc: Billy Hardemon, DSWM
Vicente Castro, DSWM
Chris Rose, DSWM
Asok Ganguli, DSWM
Lee Casey, DSWM
Steve Schwarz, Malcolm Pirnie
Isabel Gonzalez-Jettinghoff, Planning and Economics Group

List of Attachments:

1. Montenay International Corporation guarantee of Montenay's obligations to the County dated December 10, 1991.
2. Covanta Letter to Kathleen Woods-Richardson dated November 16, 2009.
3. Malcolm Pirnie Letter to Covanta and Veolia [Montenay] dated November 3, 2009.
4. Covanta Letter to Mr. Robert French dated November 16, 2009 with attachments.
5. Third Amended and Restated Operations and Management Agreement Dated as of September 1, 1996 (by reference).
6. Loan Agreement Dated as of September 1, 1996, securing the Resource Recovery Facility Refunding Revenue Bonds, Series 1996 (by reference).
7. *Morningstar* Document Research, Covanta Holding Corp (CVA) Form 10-K filed March 02, 2009 (Period: December 31, 2008) (by reference).

6222027

January 15, 2010

VIA E-MAIL AND OVERNIGHT MAIL

Miami Dade County, Florida
Attn: Mayor Carlos Alvarez
Stephen P. Clark Center
111 N.W. 1st Street, 29th Floor
Miami, Florida 33128

RE: Consent agreement (the "Consent Agreement") with respect to (i) the Third Amended and Restated Operations and Management Agreement (the "O&M Agreement"), dated as of September 1, 1996, by and between Montenay-Dade, Ltd. ("Montenay") and Miami Dade County, Florida (the "County") and (ii) the Loan Agreement (the "Loan Agreement"), dated as of September 1, 1996, by and between the County and Montenay.

Dear Mayor Alvarez:

Veolia Environmental Services North America Corp. ("VESNA"), the indirect parent entity of Montenay, and Covanta Energy Corporation ("Covanta"), are party to a Share Purchase Agreement ("Agreement"), dated July 3, 2009, pursuant to which VESNA has agreed to sell to Covanta most of its North American Energy-from-Waste business.

Upon the consummation of the sale contemplated under the Agreement (the "Sale", and the date of such consummation, the "Effective Date"), VESNA directly or indirectly will cause the transfer of the assets and obligations of Montenay, including all of Montenay's rights and obligations under the O&M Agreement and the Loan Agreement (the "Asset Transfer"), to Covanta or an affiliate thereof. The Asset Transfer is being effectuated in accordance with the Loan Agreement, and Covanta and Montenay shall have complied with their obligations thereunder as of the Effective Date.

In exchange for the facility improvements, operating changes and other items offered by Covanta and agreed to by the County all of which are part of the consideration for this consent (the "Business Terms"), as set forth below, the County hereby consents to the assignment by Montenay of the O&M Agreement and the Loan Agreement to Covanta, effective on the Effective Date, and agrees that the consummation of the Sale shall not trigger any default or event of default under or in respect of the O&M Agreement or the Loan Agreement with respect to Montenay or Covanta. The County further agrees that the taking of any action, or omission to take any action, by Montenay under or in respect of the O&M Agreement, the Loan Agreement or otherwise on or prior to the Effective Date, will not give rise to any claim against Covanta following the Effective Date.

Please evidence your agreement with the foregoing by signing below and returning two (2) fully executed originals to Melissa Baumgartner, Esq., Latham & Watkins, LLP, 885 Third

Avenue, New York, NY 10022 and via facsimile at (212) 751-4864. Please retain one additional fully executed original for your records.

The Business Terms are as follows (all capitalized terms used in this paragraph but not defined herein shall have the meanings given to them in the O&M Agreement):

1. **Covanta will work with the County to incorporate the following three pre-existing letter agreements into a third amendment (the "Third Amendment") to the O&M Agreement within six months of the Effective Date:**

   a) Agreement dated August 18, 2005 – Clarification of Section 6.14(c) of the O&M Agreement; the penalty calculations for the Company's failure to accept 936,000 tons annually after requesting such delivery;

   b) Agreement dated September 27, 2007 - Recyclable trash rejects overs and rejects guarantee, which is subject to review as the result of the conclusions of the Waste Composition Study; and

   c) Agreement dated January 29, 2009 - Bond fund interest / T Bill amendment to Appendix K of the O&M Agreement.

2. **Covanta and the County will work to establish a new combined residue guarantee, which will also take into account information from results of a Waste Composition Study.**

3. **Montenay and Covanta will expunge the County's Recyclable Trash shortfalls for FY2007-08 and FY2008-09; and the County will expunge any and all Montenay and Covanta potential penalties for FY2007-08 and FY2008-09.**

4. **Covanta and the County will modify the O&M Agreement's Hard Put or Pay provision with respect to Waste Deliveries by the County after the Effective Date.** The County and Covanta agree to modify the Annual Recyclable Trash Guaranteed Tonnage and Annual On-Site Waste Guaranteed Tonnage and associated provisions of the O&M Agreement as stated below. Such revised Annual Recyclable Trash Guarantee and Annual On-Site Waste Guarantee provisions agreed upon herein shall be applied retroactively from the beginning of the 2009-2010 County Fiscal Year, October 1, 2009, assuming consummation of the Sale. Subsequently, all of these agreed upon provisions herein will be incorporated into the Third Amendment.

   a. The 27/40 and 13/40 method of distinguishing between On-Site Waste and Recyclable Trash for Trash shall be eliminated.

   b. The Annual Recyclable Trash Guaranteed Tonnage shall be decreased from 270,000 Tons per year (TPY) to 240,000 TPY.

c. The Annual On-Site Waste Guaranteed Tonnage shall be increased from 702,000 TPY to 732,000 TPY. This On-Site Waste Guaranteed Tonnage is to be fulfilled with Garbage. For the avoidance of doubt, it is also the intent of the County and Covanta that the sum of the Annual On-Site Waste Guaranteed Tonnage and the Annual Recyclable Trash Guaranteed Tonnage shall not be less than 972,000 Tons per Annual Period, except as provided for in Section 6.4.4 of the O&M Agreement. The parties acknowledge that the intent of the County is to use its reasonable efforts to maximize the amount of On-Site Waste contracted for and available to process at the Facility for the term of the O&M Agreement including all renewal terms as set forth herein. Covanta and the County agree that it is in both parties interest for Covanta to seek to contract with third parties in the event of a shortfall on terms mutually agreeable to the parties.

d. The Waste Tipping Fees (all in October 1, 2009 dollars and subject to adjustment thereafter as provided in the O&M Agreement) for FY 2009-2010 shall be as follows:
   i. 0 to 732,000 TPY - $45.00 per Ton;
   ii. 732,000 TPY to 966,000 TPY - $38.13 per Ton; and
   iii. above 966,000 TPY - $31.12 per Ton for each Ton of Recyclable Trash up to a maximum of 76,000 TPY delivered after receipt of 966,000 TPY and $27.83 per Ton for all other waste.

e. The County shall pay Covanta the Tipping Fees stated in Section 4d. above for all On-Site Waste or Recyclable Trash Accepted for Processing by the Facility.

f. The County commits to Deliver the 240,000 TPY of Recyclable Trash described above for Processing in accordance with the weekly schedule set forth in the O&M Agreement for Delivery. The County shall pay to the Company $31.12 for each Ton of Recyclable Trash which the County fails to Deliver below the put-or-pay of 240,000 Tons of Recyclable Trash per year.

g. The put or pay obligation of the County remains at 972,000 TPY (as mentioned in Section 4c. above), and the Covanta Annual On-Site Waste Processing Guarantee shall be at 936,000 TPY including 160,000 TPY of On-Site Trash. This guarantee will be reduced on a ton per ton basis for every ton of Trash not delivered by the County up to a maximum reduction of 160,000 tons of On-Site Trash. Each Ton of Trash that is delivered after the put-or-pay of 240,000 TPY of Recyclable Trash is delivered shall be considered On-Site Trash.

h. There may be other provisions of the O&M agreement that require modification to appropriately effectuate the intent of the parties when incorporating these changes. The parties shall work in good faith to resolve all such items.

5. **Covanta will complete the following enhancements to the Facility in a timely fashion:**

   a. In case of a Change in Law regarding the mercury analyzer, Covanta will contribute up to $750,000 towards the initial purchase and installation of four mercury analyzers. Four mercury analyzers are estimated to cost approximately $750,000;

   b. Covanta will also contribute $323,000, out of a total cost of $600,000, to install a natural gas pipeline to replace propane as the onsite fuel feed. The County will contribute $277,000. In the event that the total cost of this capital project is less than $600,000, the County and Covanta will each receive pro rata reductions to their respective contributions;

   c. Covanta will replace the dustmaster system and the W conveyors; and

   d. Covanta will pay the entire cost, up to $100,000, to install and maintain CO2 analyzers as currently required. The County will pay $12,000 per year to Covanta to operate and report the CO2 data to EPA.

6. **Covanta has agreed to implement and pay for the following aesthetic enhancements to the Facility within one (1) year of the Effective Date. The County shall be responsible for the cost of any changes in scope of the projects, requested by the County, but only if the total costs of all projects exceed $250,000:**

   a. Install Aluminum Ornamental Fencing from just west of the administration entrance along NW 66 St. and NW 97 Ave. to just North of the Main truck entrance;

   b. Paint the east side of the plant along NW 97 Ave;

   c. Refurbish exterior of all 3 guardhouses;

   d. Install decorative wing walls at the entrances from NW 97 Ave;

   e. Replace curbing in front of the main truck entrance on NW 97 Ave; and

   f. Replace 10 dead trees along NW 97 Ave.

7. Covanta shall pay the County to reimburse its costs up to a maximum of $75,000 for additional work performed by Bond Engineer relating to the County's consent to the assignment of the O&M Agreement.

8. Covanta shall complete all open items on the following County inspection lists in a timely fashion: (1) County Inspection Lists PH-1, PH-2, PH-3, GP-1, GP-2, GP-3, SS-3, RTI-1, RTI-2, and RTI-3, (2) County Maintenance Capital Projects list and (3) List from Malcolm Pirnie FY 2007/08 Annual Report. Covanta will continue to maintain the following systems until appropriate alternative systems have been approved and implemented or until approval to remove these systems has been obtained:

a. Destoners: Covanta will maintain the Destoners equipment

b. NOxOut System: Covanta will seek regulatory approval to remove this system. Until then, Covanta will maintain it in a workable condition.

c. The Ash Building tire wash system: Covanta does not believe that the tire wash system will be a part of the solution; however Covanta will improve the overall ash handling system to control ash from tracking over the site.

9. A waiver of subrogation will be included in the County's insurance policy for the Facility, and a waiver of subrogation will be included in Covanta's insurance policy for its owned equipment and personal property located at the Facility.

[*Signature Page Follows*]

Sincerely,

MONTENAY-DADE, LTD.

By: _____
Name:
Title:

Agreed and Accepted this
15th day of January, 2010

MIAMI DADE COUNTY, FLORIDA

By _____
Name:
Title:

Agreed and Accepted this
15th day of January, 2010

COVANTA ENERGY CORPORATION

By Matthew R. Mulcahy
Name: Matthew R. Mulcahy
Title: Senior Vice President

Sincerely,

MONTENAY-DADE, LTD.

By: Steve Passage
Name: Steve Passage
Title: President
Montenay Power Corp., general partner of, and on behalf of, Montenay-Dade, Ltd.

Agreed and Accepted this
15th day of January, 2010

MIAMI DADE COUNTY, FLORIDA

By _____
Name:
Title:

Agreed and Accepted this
15th day of January, 2010

COVANTA ENERGY CORPORATION

By _____
Name:
Title: