

WALK ON #3

Lee County Board Of County Commissioners
Agenda Item Summary

Blue Sheet No. 20050396

Action Requested/Purpose: Approve a Second Amendment to the Interim Development Agreement between Covanta, Inc. and Lee County for the construction of the Waste To energy Facility Expansion Project.

2. What Action Accomplishes: Revises the date for completing the Definitive Agreement between the Parties from March 22, 2005 to May 17, 2005

3. Departmental Category: 8 WO

4. Meeting Date:

03-22-2005

5. Agenda:

- Consent
- Administrative
- Appeals
- Public
- Walk-On

6. Requirement/Purpose (specify)

- Statute
- Ordinance
- Admin. Code
- Other Agrmt

7. Request Initiated:

Commissioner _____
Department Public Works
Division Solid Waste
By: Lindsey J. Sampson

Lindsey J. Sampson

8. Background:

Lee County and Covanta have entered into two agreements establishing conditions and responsibilities of the Parties for the WTE Expansion Project. These agreements include an Interim Development Agreement and a Memorandum of Understanding. Both of these agreements anticipated a 'Definitive Agreement' to be completed final draft form and ready for the Board's consideration by March 22, 2005. Inasmuch as this date was not achievable by the Parties for a variety of reasons, this Second Amendment to the Interim Development Agreement provides that the Parties agree to extend the completion date for the Definitive Agreement to May 17, 2005, a date that both the County and Covanta feel can be reached without further extensions.

Staff recommends Approval of this 2nd Amendment.

9. Review for Scheduling

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager / P.W. Director
					Analyst	Risk	Grants	Mgr.	
<i>Jamula</i> 3-21-05	<i>CL</i> <i>by H/S</i>	<i>N.A.</i>		<i>S. [Signature]</i> 3/21/05	<i>[Signature]</i> 3/21/05	<i>OR</i> 3/21/05	<i>[Signature]</i> 3/21	<i>[Signature]</i> 3/21	<i>Jamula</i> 3-21-05

10. Commission Action

Approved

Deferred

Denied

Other

RECEIVED BY	<i>[Signature]</i>
COUNTY ADMIN:	<i>[Signature]</i>
	<i>3-21-05 MP</i>
	<i>2:15</i>
COUNTY ADMIN FORWARDED TO:	<i>[Signature]</i>
	<i>3/21/05</i>
	<i>3:15 PM</i>



Lee County
SOUTHWEST FLORIDA

**INTEROFFICE MEMORANDUM
FROM
SOLID WASTE DIVISION
Phone: (239) 338-3302 Fax: (239) 338-3304**

Date: March 21, 2005

TO: Elizabeth Walker, Director, and,
Kathy Geren

From: Lindsey J. Sampson, P.E.
Director

SUBJECT: Walk-On Blue Sheet No. 20050396 for March 22, 2005 Regular BOCC Meeting

Bluesheet No. 20050396 needs to be scheduled on the March 22, 2005 Agenda as a walk-on item in order to expedite the County's execution of the proposed amendment.

The amendment is simply for an extension of time for a forthcoming "Definitive Agreement" detailing conditions and responsibilities for Covanta and the County regarding the Waste To Energy Expansion Project.

Thank You.

Enclosures

Cc: Don Stilwell
Jim Lavender
David Owen

SECOND AMENDMENT TO INTERIM DEVELOPMENT AGREEMENT

THIS AMENDMENT TO INTERIM DEVELOPMENT AGREEMENT (this "Amendment"), made and entered into as of March __, 2005, by and between LEE COUNTY, FLORIDA, a political subdivision of the State of Florida (the "County") acting by and through its Board of County Commissioners, and COVANTA LEE, INC., a Florida corporation formerly known as Ogden Martin Systems of Lee, Inc. ("Covanta"), recites and provides as follows:

WHEREAS, the County and Covanta have entered into an Interim Development Agreement, dated as of September 28, 2004 (the "Interim Development Agreement"), as amended on December 20, 2004 and as further amended pursuant to a Memorandum of Understanding between the County and Covanta dated as of January 18, 2005; and

WHEREAS, the County and Covanta desire to further amend the Interim Development Agreement in accordance with the terms set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants, agreements and promises hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

1. **Amendments.** The Interim Development Agreement is hereby further amended as follows:

(A) In Paragraph 5(B), first sentence, strike the date "March 22, 2005" and insert in lieu thereof "May 17, 2005".

(B) In Exhibit D; Paragraph 3;

in the first paragraph, third sentence,

strike the date "March 31, 2005" and insert in lieu thereof "May 31, 2005";

in the first paragraph, last sentence,

strike the entire last sentence (the sentence beginning with "In case that the" and ending with "without any credit.")

in the chart with the headings "Date of Cancellation Notice Issued to Martin" and "Termination Fee (Stated in EURO's)" add the following at the end of the chart:

"April 1, 2005 through May 31, 2005 €2,100,000.-"

2. **Effectiveness.** All terms and conditions of the Interim Development Agreement, except as expressly amended herein, shall remain in full force and effect.

→ 3. **Counterparts.** This Amendment may be executed in one or more counterparts, each of which will be deemed to be an original and all of which, when taken together, will be deemed to constitute one and the same Amendment.

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed by their duly authorized representatives as of the date first set forth above.

ATTEST:

LEE COUNTY, FLORIDA

By _____
Name: Douglas St. Cerny
Title: Chairman, Board of County Commissioners
Lee County

ATTEST

COVANTA LEE, INC., a Delaware
Corporation

By _____
Name: Scott W Whitney
Title: Senior Vice President

APPROVED AS TO LEGAL FORM
AND CONTENT

OFFICE OF THE LEE COUNTY
ATTORNEY