

WALK ON #4

D 810

Lee County Board Of County Commissioners

Blue Sheet No. 20051805

Agenda Item Summary

1. ACTION REQUESTED/PURPOSE: Approve a Sixth 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 Amended and Restated Service Agreement between the Parties from November 22, 2005 to January 24, 2006.

3. MANAGEMENT RECOMMENDATION: Staff recommends approval of this Sixth Amendment.

4. Departmental Category: 8

WO #4

5. Meeting Date: 12-20-2005

6. Agenda: 7. Requirement/Purpose: (specify)

8. Request Initiated:

Consent	Statute	Commissioner
Administrative	Ordinance	Department
Appeals	Admin. Code	Division
Public	Other	By: Lindsey J. Sampson, P.E., Director
X Walk-On	Agmt.	<i>Lindsey J. Sampson</i>

9. Background:

Lee County and Covanta have entered into three prior Agreements establishing conditions and responsibilities of the Parties for the Waste-to-Energy Expansion Project. These Agreements include an Interim Development Agreement, a Memorandum of Understanding, and a Project Management, Engineering Oversight and Environmental Performance Amendment (Amendment No. 6) to the Service Agreement (the Construction Project Management).

The "Construction Project Management" Agreement sets forth the responsibilities and costs of the WTE construction Project. However, this Agreement will not become effective until mutual approval of the "Amended and Restated Service Agreement" (ARSA) for the operations and maintenance of the expanded facility. The Parties have agreed to the main deal points of the ARSA and are diligently working to finalize this Agreement. The Project Management Agreement and the ARSA together are the "Definitive Agreements".

Extension of the Interim Development Agreement allows both Parties to proceed and/or continue with their respective duties and provides service payments to Covanta during this interim period prior to finalization of the ARSA. This extension also directs Covanta to provide 'Builders Risk Insurance' for the WTE expansion construction as a pass-through cost of approximately \$700,000.00 to the County.

10. Review for Scheduling:

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services	County Manager/P.W. Director
<i>Jumbo</i> 12-19-05	N/A	N/A		<i>[Signature]</i> 2/19/05	<i>[Signature]</i> 12/19/05	<i>Jumbo</i> 12-19-05

11. Commission Action:

- Approved
- Deferred
- Denied
- Other

Rec. by CoAtty
Date: 12/19/05
Time: 2:10pm
Forwarded To: Budget
12/19/05 3:40pm

RECEIVED BY COUNTY ADMIN:
12-19-05
3:37
COUNTY ADMIN FORWARDED TO:
12/19/05
4:20pm

**MEMORANDUM
FROM THE
SOLID WASTE MANAGEMENT**

Date: December 19, 2005

To: Libby Walker, Director

From:

Lindsey J. Sampson

Public Resources

Lindsey J. Sampson, P.E., Director

**RE: WALK-ON BLUESHEET NO. 20051805 – December 20, 2005
SIXTH AMENDMENT TO INTERIM DEVELOPMENT WITH COVANTA
BOARD OF COUNTY COMMISSIONERS' REGULAR MEETING OF
27, 2005**

Libby;

Covanta, Inc., and Lee County have not yet completed negotiations for the Definitive Agreement. This amendment preserves the County's required conditions for the Martin Stoker System until the final portion of the Definitive Agreement (i.e. the Amended and Restated Service Agreement) is provided to the Board for its consideration.

Therefore, we respectfully request that this item appear as a "Walk-On" for the September 27, 2005 Board meeting.

Thank You.

LJS/dm
Attachment

xc: David M. Owen, County Attorney
James Lavender, Director, Public Works Administration

Owen, David M.

From: Sampson, Lindsey J.
Sent: Monday, December 19, 2005 1:27 PM
To: R. Stuart Broom; Owen, David M.; dcastro@hdrinc.com
Cc: Fiyalko, Wayne
Subject: FW: IDA Amendment No. 6
Attachments: IDA amendment#6 12-19-05 black-line.doc

Pls see attached.

Lindsey J. Sampson
Lee County Solid Waste Division
sampsolj@leegov.com
Ph 239-338-3302
Fax 239-461-5871

From: Peter Young [mailto:pyoung@CovantaEnergy.com]
Sent: Monday, December 19, 2005 1:13 PM
To: Sampson, Lindsey J.
Subject: IDA Amendment No. 6

Lindsey,

Based on your fax today and our follow-up discussion, I incorporated the changes as black-lined in the attachment.

I am having these changes reviewed internally now, and if OK'd, I will email you a pdf signed document by the end of today.

As we discussed, the wind and flood damage deductible in the Builder's Risk coverage shows a not-to-exceed 5%. If we can get a quote for a 2% deductible also, we will provide the comparative premiums for the County to select. Note that such selection will need to be made this week since we need to have the policy in-place within 5 days of execution of this amendment.

Peter

12/19/2005

SIXTH AMENDMENT TO INTERIM DEVELOPMENT AGREEMENT

THIS AMENDMENT TO INTERIM DEVELOPMENT AGREEMENT (this "Amendment"), is made and entered into as of December __, 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, as further amended pursuant to a Memorandum of Understanding between the County and Covanta dated as of January 18, 2005 (the "Executed MOU"), and as further amended by a Second Amendment To Interim Development Agreement dated as of March 22, 2005, a Third Amendment To Interim Development Agreement dated as of May 17, 2005, a Fourth Amendment To Interim Development Agreement dated as of August 9, 2005 and a Fifth Amendment To Interim Development Agreement dated as of September 27, 2005; and

WHEREAS, the County and Covanta anticipate entering into an amended and restated Service Agreement (the "Restated Service Agreement") no later than January 24, 2006; and

WHEREAS, the County and Covanta entered into a Project Management, Engineering Oversight and Environmental Performance Amendment (Amendment No. 6) to the Service Agreement, dated December 6, 2005, (the "Project Management Agreement"); provided that the Project Management Agreement is not effective until the execution of the Restated Service Agreement; and

Deleted:

WHEREAS, in anticipation of entering into the Restated Service Agreement, 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 1;

at the end of the paragraph add the following: "The Parties acknowledge that this Agreement and the Executed MOU do not obligate Covanta to provide Project Management Services after construction mobilization for the Project and they do not obligate the County to pay Covanta for such Project Management Services after construction mobilization. However, until the earlier of (a) the execution by the Parties of the Restated Service Agreement and (b) the termination of this Agreement, the Parties hereby agree that (1) within 5 days of the date of execution of this Amendment, Covanta

shall provide builder's risk insurance for the Project, at the County's cost, in accordance with Exhibit 1 to this Amendment, (2) Covanta shall continue to perform Project Management Services after construction mobilization, as such Project Management Services are described in the Executed MOU, and (3) the County shall pay for such Project Management Services in accordance with Exhibit 2 to this Amendment.

(B) In Paragraph 5(B);

in the first sentence, strike the date "November 22, 2005" and insert in lieu thereof "January 24, 2005".

after the first sentence, add the following new sentence: "The Parties acknowledge that prior to the execution of the Restated Service Agreement described in the prior sentence, Covanta shall not be obligated to provide any Martin equipment for the Project."

At the end of the paragraph, add the following new sentence: "In addition, upon any termination of this Agreement by County, pursuant to this clause (B), the County shall reimburse Covanta for Covanta's costs incurred due to such termination, including subcontractor termination fees and employee expenses directly related to such termination."

~~Deleted:~~ either Party

(C) In Exhibit D; Paragraph 3;

in the first paragraph, third sentence, strike the date "December 31, 2005" and insert in lieu thereof "January 31, 2006";

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:

"January 1, 2006 through January 31, 2006 €3,350,000.-"

at the end of the paragraph following the chart, add the following new sentence: "In addition to the termination fees set forth above, the County shall pay to Covanta actual costs incurred by Martin or Covanta relating to any pre-paid or pre-arranged shipping of Martin equipment and the cancellation of such arrangements, if there are any such costs."

~~Deleted:~~ an additional termination fee

~~Deleted:~~ equal to any

~~Deleted:~~ and

~~Deleted:~~ arrangements for

(D) In Exhibit D; Paragraph 4:

delete the paragraph and replace it with the following: "The time of delivery FOB German North Sea port of the Martin stoker may not be sooner than the later of (a) February 1, 2006 or (b) twenty-one (21) days after the execution of the Restated Service Agreement; provided that if delivery is later than February 15, 2006, as a result of the actual execution date of the Restated Service Agreement or other County delay, then the County shall pay any additional storage or shipping costs incurred due to such delay."

~~Deleted:~~ and

2. **Effectiveness.** All other 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:

Title: Chairwoman, Board of County Commissioners, Lee County

Deleted: man

ATTEST

COVANTA LEE, INC., a Florida Corporation

By _____

Name:

Title:

APPROVED AS TO LEGAL FORM
CONTENT

OFFICE OF THE LEE COUNTY
ATTORNEY

EXHIBIT 1
BUILDER'S RISK INSURANCE

Covanta shall secure and maintain builder's risk insurance for real and personal property, including all structures, machinery, fixtures, supplies, and other properties constituting part of the Project and Business Interruption/Extra Expense from the construction period commencement date through the acceptance date, including all periods of hot and cold testing and an automatic extension clause of ninety (90) Days at a pro rated policy rate. Coverage for real and personal property and Business Interruption/Extra Expense shall be on a builder's coverage form for the perils of "all risk" including the perils of fire, theft, vandalism, malicious mischief, collapse, subsidence, sinkhole, flood, windstorm, earthquake and boiler and machinery breakdown. Coverage shall also include resulting damages from faulty or defective workmanship, material or construction. Building ordinance coverage including demolition, increased cost of construction and contingent liability from operation of building laws shall be procured with a sublimit not greater than twenty-five million dollars (\$25,000,000.00) for demolition and increased cost of construction. A sublimit for contingent liability from operation of building laws or debris removal shall be not greater than twenty five million dollars (\$25,000,000).

The policy shall insure for full replacement cost of the proposed expansion, including no coinsurance provisions for any related coverages. Coverage shall be provided by a carrier with an A.M. Best rating of A- or better and a Financial Class Rating of IX or better and shall contain a forty-five (45) Day notice of cancellation, except ten (10) Days for non-payment of premium. The Business Interruption/Extra Expense coverage shall be written on an actual loss sustained basis with a 24 month time period limitation on indemnity. The minimum extra expense sublimit shall be not greater than ten million dollars (\$10,000,000.00) while the business interruption limit shall be calculated by gross revenues less discontinuing costs equivalent to the reconstruction period of replacing the expansion and be applicable to all coverages required herein. Coverage will also include four (4) weeks for ingress/egress and civil authorities for the peril insured.

Coverage shall also be provided for inland transit risks with a limit equivalent to the largest value of a single piece of equipment in transit plus one-year business interruption coverage for the perils required above including testing. A miscellaneous unnamed locations sublimit should also be provided to match the expected storage values of key equipment/materials off site including one-year business interruption values. Both transit and miscellaneous unnamed locations coverage and policy terms and conditions shall match those of the property coverages provided above. The minimum limit provided for transit coverage and miscellaneous unnamed locations shall be ten million dollars (\$10,000,000.00). Extra expense shall also be included for a minimum limit of ten million dollars (\$10,000,000.00).

The deductibles for property damage including miscellaneous unnamed locations from all perils shall be no greater than \$500,000 per occurrence except for wind and flood, which shall have a named windstorm deductible and flood deductible not exceeding 5% of insured values but not less than \$500,000. The transit deductible shall be no greater than \$250,000 for all perils inclusive. The time element deductible shall be a thirty (30) Day waiting period from date of loss for all perils inclusive. The time element deductible shall be a thirty (30) Day waiting period from the date of loss for all perils inclusive. The policy shall be issued with a deductible clause recognizing that if two or more deductibles are enacted due to a single occurrence, the single largest deductibles will apply for both property damage and separately for time element coverage.

The policy shall be endorsed to provide that underwriters and insurance companies of the County shall not have any right of subrogation or recourse against additional insureds.

The policy shall add the County as an additional Named Insured and its subcontractors related to this Project as an additional insured to the extent and in such amounts necessary to satisfy their interest with respect to the Project.

Before the commencement of any work related to the Project, Covanta shall provide the County a certificate of insurance or binder evidencing placement of the coverage.

The County shall pay all premiums with respect to builder's risk insurance and the County shall be responsible for all deductibles related to builder's risk insurance. To the extent that Covanta pays any such premiums or deductibles, the County shall reimburse Covanta for such payments within thirty (30) days of Covanta providing an invoice to the County.

EXHIBIT 2
COMPENSATION

County shall compensate Covanta for providing Project Management Services in accordance with Part One, paragraphs 1(b), (c), and (d) of the MOU, as follows:

The payment to Covanta for performing those applicable Project Management Services occurring during the construction period will be One Hundred Eighty Two Thousand Eight Hundred Seventy Three and 14/100 Dollars (\$182,873.14) each month. The first monthly invoice for payments pursuant to this Part 1 shall be issued during the first ten (10) days of January 2006 and payment shall be due thirty (30) days following County's receipt of such invoice. Subsequent invoices shall be issued monthly and paid by the County within thirty (30) days following receipt of each invoice.

The Parties acknowledge that upon the Project Management Agreement becoming effective, the payments to be made under the Project Management Agreement shall be adjusted to account for escalation and retainage with respect to amounts invoiced pursuant to this Amendment, to the extent applicable; provided that amounts invoiced pursuant to this Amendment shall be paid by the County despite the fact that the Project Management Agreement may become effective while the invoice is outstanding.

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ATTEST:

Charlie Green, Clerk of Courts

by: Michelle S. Cooper
Deputy Clerk

LEE COUNTY, FLORIDA

By [Signature]
Name: ~~Robert A. James~~
~~Vice-Chairman~~
Title: ~~Chairwoman~~, Board of County Commissioners, Lee County

ATTEST

Sheila Bilder

COVANTA LEE, INC., a Florida Corporation

By [Signature] STB
Name: SCOTT W WHITNEY
Title: SENIOR VICE PRESIDENT

APPROVED AS TO LEGAL FORM
CONTENT

[Signature]
OFFICE OF THE LEE COUNTY
ATTORNEY

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