

CARRYOVER #2

LEE COUNTY BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

BLUE SHEET NO: 20040814

REQUESTED MOTION:

ACTION REQUESTED: Waive formal procurement procedures and approve and authorize the Chairman to sign a Memorandum of Understanding ("MOU") between Lee County and Covanta Energy, Inc. the current operator of the County Waste to Energy facility, that outlines services, costs, and responsibilities of the Parties for Engineering Oversight, Construction Management and Start-Up of the Waste to Energy Third Unit Expansion Project.

WHY ACTION IS NECESSARY: Purchases /contracts greater than \$50,000 require Board approval.

WHAT ACTION ACCOMPLISHES: Establishes an interim written understanding of the roles, costs, and responsibilities for the County and Covanta Energy, Inc. for the design and construction and of the Waste to Energy Expansion Project (third unit). This MOU will be replaced with a definitive agreement within the next year.

2. DEPARTMENTAL CATEGORY: SOLID WASTE
COMMISSION DISTRICT #: CW

3. MEETING DATE:

09-28-2004

4. AGENDA:

- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC
- WALK ON
- TIME REQUIRED:

5. REQUIREMENT/PURPOSE:

- (Specify)
- STATUTE
 - ORDINANCE
 - ADMIN. CODE AC4-4
 - OTHER

6. REQUESTOR OF INFORMATION:

- A. COMMISSIONER:
- B. DEPARTMENT: Lee County-Public Works
- C. DIVISION/SECTION: Solid Waste Division
- BY: Lindsev Sampson, Solid Waste Director
- DATE:

7. BACKGROUND: Lee County and Covanta Energy, Inc. are Parties to a long-term Service Agreement whereby Lee pays Covanta to operate and maintain the County's waste to energy facility (WTE). The term of the Agreement is twenty years and runs through November of 2014. Covanta was the original contractor of the present Waste to Energy facility as "Ogden Martin". Lee County has decided to expand the WTE by adding a third municipal waste combustion unit and a second turbine-generator. It is prudent and appropriate to have Covanta participate in the construction of the third unit and operate the entire expanded facility for an agreed upon extended number of years in the definitive agreement to follow. For the operation of the third combustion unit, the County will require certain operating and maintenance standards and guarantees similar to the conditions established for the original facility.

Pursuant to the Boards direction of 11-25-03 (Blue Sheet attached), the Public Works Department and the County Attorney's Office have negotiated a Memorandum of Understanding that establishes certain responsibilities and costs for the County and Covanta for permit assistance, design, construction and start-up of the WTE Expansion Project. This Agreement has Covanta participating in the design and construction in such a manner that Covanta can provide the desired levels of operating guarantees the County will require upon completion of the construction project.

- continued on page 2 -

8. MANAGEMENT RECOMMENDATIONS:

9. RECOMMENDED APPROVAL

| A DEPARTMENT DIRECTOR | B PURCH. OR CONTRACTS | C HUMAN RESOURCES | D OTHER | E COUNTY ATTORNEY | F BUDGET SERVICES | | | | G COUNTY MANAGER |
|-------------------------------|-------------------------------|-------------------------|------------|-------------------------------|-------------------------------|-------------------------------|-------------------------------|-------------------------------|-------------------------------|
| | | | | | OA | OM | Risk | GC | |
| <i>[Signature]</i> 6-16-04 | <i>Cindy Rogan</i> 6/16/04 | N/A | N/A | <i>[Signature]</i> 6/16/04 | <i>[Signature]</i> 6/17/04 | <i>[Signature]</i> 6/17/04 | <i>[Signature]</i> 6/17/04 | <i>[Signature]</i> 6/17/04 | <i>[Signature]</i> 6-16-04 |

10. COMMISSION ACTION:

- APPROVED
 - DENIED
 - DEFERRED *to 08-03-04 / ON 08-03-04*
 - OTHER
- ON 06-29-04*
- Referred to 08-24-04*
- on 08-24-04*
- Referred to 09-21-04*

RECEIVED BY
 COUNTY ADMIN: *[Signature]*
 6/16/04
 4:35 pm
 COUNTY ADMIN
 FORWARDED TO: *[Signature]*
 6-17-04
 2 pm

Background continued:

The MOU will be replaced with a definitive agreement within the next year to provide a final contract for all construction and operations matters.

For additional information, please refer to the attached memo dated 6/15/04.

Funds are available in: 20092340102.506510

CO #2

From: Lindsey Sampson
To: Geren, Patricia
Date: 9/15/04 7:33PM
Subject: BOCC Mrg 9/21/04, Pls Defer Admin Agenda Items A.8.a and A.8.b till 9/28/04

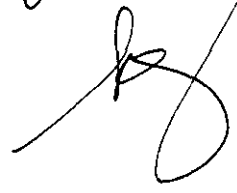
Kathy,

The County Att'y's office and the Solid Waste Division requests that the subject Admin Agenda items scheduled for 9/21/04 be deferred for one week.

We would like to have all 5 Board members in attendance at the meeting, if possible, and we have developed one final "bridging" document that we are expecting Covanta (contractor) to execute within the next several days.

Thank You
Lindsey

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

*OK recap
09-16-04*


CC: Kantor, Brigette; Lavender, James; Owen, David

From: Lindsey Sampson
To: Dist5, Albion
Date: 8/23/04 10:51PM
Subject: Defer Item A.8(a) for MTG.OF 8/24/04-PLS.EMAIL DIST.5 & CC ME. THX

Commissioner,

This Memorandum of Understanding provides for regular updates and routines to the County from and by Covanta.

However, because of delays caused by Hurricane Charley as well as certain final details related to financial assurances by the Contractor (Covanta), we are requesting an additional deferral of this agenda item until September 21, 2004.

Lindsey

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

*on recap
08-24-04
kg*

>>> Pete Winton 08/23/04 02:11PM >>>
ADMINISTRATIVE AGENDA 8(A)

Is there expected routine updates and reports to Lindsey Sampson and to the County Manager for reasonable oversight of this contract?

Pete Winton
Assistant to the County Manager
Lee County Administration
wintonpx@leegov.com
Phone: (239) 335-2777
FAX: (239) 335-2262

CC: Geren, Patricia; Lavender, James; Owen, David; Winton, Pete

From: Lindsey Sampson
To: Geren, Patricia
Date: 7/23/04 8:53AM
Subject: Blue Sheet 2004 0814, MOU with Covanta

Kathy,

Please defer the subject agenda item to August 24, 2004 to provide additional time for the County and Contractor to finalize contract negotiations.

A8A

Lindsey

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

CC: Kantor, Brigitte; Lavender, James; Owen, David

*Recap for
08-03-04 BOCC Mtg.*

*on recap
07-29-04
[Signature]*

From: Lindsey Sampson
To: Geren, Patricia
Date: 6/23/04 6:15PM
Subject: Defer Agenda Item A.8.a, BOCC 6/29/04

Kathy,

Please defer the subject agenda item "Covanta/Lee MOU" to the August 3, 2004 BOCC meeting.

Lindsey

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

CC: Lavender, James; Owen, David; Treshler, Joseph

*on recap
06-24-04*



Lee County
SOUTHWEST FLORIDA

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

Date: June 15, 2004

TO: Board of County Commissioners

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

**SUBJECT: Waste to Energy Expansion Project,
Covanta's Responsibilities and Compensation for Project Development &
Permit Assistance, Engineering Oversight, Construction Management And
Facility Start-Up**

The Solid Waste Division has been working with Covanta to establish appropriate and reasonable fees for Covanta to perform the subject work. Covanta's role and responsibilities have been divided into four phases summarized as follows:

1) Project Development and Permit Assistance. Covanta was a key participant with the County during the two-year permitting process. Covanta's technical personnel supplied a large amount of emissions data from various sources that the County and its consultants used in the permit application. Covanta attended most of the meetings held in Tallahassee with the DEP and furnished the County/DEP with relevant cost data for various pollution control equipment scenarios. Covanta researched industry information in order to provide DEP with a "real world" perspective on waste to energy advancements, practicalities, and practices.

Covanta has canvassed prospective equipment vendors and installation contractors in preparing a preliminary detailed cost estimate for the Lee Project. Covanta has solicited and continues to solicit vendor/contractor interest in this project in order to ensure that the County receives qualified competitive bids for construction.

Covanta has developed, for the County's approval, a preliminary and final basis of design for the project. This extensive engineering document will provide the Design Engineer with the technical requirements and basis to prepare the plans and specifications.

Covanta participated in the County's Competitive Negotiation Process for the selection of, and contract negotiation for the Design Engineer. Covanta has provided appropriate and valuable information resulting in the detailed scope of services for the Design Engineering work. Covanta has continued to support the County in order to finalize a contract for this important service.

2) Engineering Oversight. Covanta will assist the County by reviewing and commenting on all work performed by the Design Engineer. Covanta will make suggestions for the County/Engineer's consideration related to plant operating requirements and performance

guarantees. Covanta will review the Engineer's plans and specifications to ensure economical construction and operations and ensure the proper integration of new systems to existing plant operations and facilities. Covanta will participate during this phase such that Covanta will be able to provide the County with operating and environmental guarantees that are at least as stringent as the current production guarantees and more stringent environmentally. Covanta will oversee the Engineer's procurement documents for all plant equipment and assist in facilitating County direct purchases.

3) Construction Management. Covanta will perform construction management services for the County including the assembly of contract documents for competitive vendor and contractor procurement by the County. Covanta will schedule and manage all contractors and vendors during construction. Covanta will review and make recommendations regarding any change order requests. Covanta will oversee all construction activities and certify the progress, completeness, and correctness of the work. Covanta will review and certify construction requests for payments. Covanta will perform construction management services in order to complete the expansion project economically and expeditiously.

4) Facility Start-Up. Covanta will supply all start-up labor, management, materials and equipment specific to start-up activities, test, and place into service all equipment of the expansion project (excluding vendor/contractor start-up personnel). Covanta will conduct performance testing and coordinate and oversee environmental testing. The cost of environmental testing, utilities, and reagents for the new unit will be handled as County pass-through costs. Covanta will report on any problems or defects with the equipment and manage any corrections required of the Contractor. Covanta will demonstrate the performance of the expansion facility prior to the County's acceptance.

The services and responsibilities summarized herein are more fully described in detail in the Draft Memorandum of Understanding provided by the County Public Works Department and the County Attorney's Office. The Solid Waste Division recommends payment for these services and responsibilities (shown below) as a maximum amount. Some additional refinement / reduction of these costs may take place prior to the Board's meeting of 6/29/04 but the total amount will not exceed the amounts as follows:

| | | |
|---|---------------|--------------|
| 1) Project Development and Permit Assistance: | | |
| | Not to Exceed | \$ 903,695 |
| 2) Engineering Oversight: | | |
| | Not to Exceed | \$ 1,858,482 |
| 3) Construction Management: | | |
| | Not to Exceed | \$ 376,635 |
| | Plus Lump Sum | \$ 3,218,000 |
| 4) Start-Up and Testing: | | |
| | Not to Exceed | \$ 333,623 |

| | | |
|--|----------------------------|-------------------------------|
| | Plus Lump Sum | \$ 579,198 |
| 5) Travel and Expenses for all performed services: | | |
| | Not to Exceed | \$ 149,183 |
| 6) Authorized Outside Consultants: | | |
| | Not to Exceed | \$ 350,000 |
| | Total Not to Exceed | \$ 3,971,618 |
| | Total Lump Sum | \$ 3,797,198 |
| | Total Not to Exceed | <u>\$ 7,768,816</u> |
| | | (Including Lump Sum Payments) |

All of the pricing listed above as "Not to Exceed" (NET) are contracted professional services for project management, technical support, and project oversight. Services performed will be invoiced to Lee County on an hourly fee basis with supporting documents and substantiated. Scope items be changed and fees may be reallocated among the specific NTE work phases upon authorization/approval by the Division, but the total NTE amount will remain \$3,971,618. All of the pricing included shall be firm for the length of the project and will not escalate providing contractor mobilization commences on or before July 1, 2005.

Included in the services for the Project Development phase is a sum of \$671,569 that compensates Covanta for permitting assistance services project development, and work directed toward selection of the Design Engineer through February 29, 2004. This amount reflects unescalated 2002 and 2003 dollars and can be invoiced by Covanta upon approval of the Memorandum of Understanding.

The Lump Sum pricing for construction management shall be invoiced to the County over a period of 22 months (equally) beginning with constructor mobilization on the project. The Lump Sum pricing for start-up services will be invoiced to Lee County over a period of 3 months (equally) beginning with the initial "firing" of the furnace.

The Solid Waste Division believes that the financial arrangement summarized herein represents appropriate and equitable compensation for the management and oversight services and responsibilities for the expansion project. I will be glad to provide more details or respond to any questions.

Cc: Jim Lavender, Public Works Director
Don Stilwell, County Manager
David Owen, Chief Assistant County Attorney

REC'D NOV 25 2003

LEE COUNTY BOARD OF COUNTY COMMISSIONERS
 AGENDA ITEM SUMMARY BLUE SHEET NO: 20031341

1. REQUESTED MOTION:

ACTION REQUESTED: Authorize the Solid Waste Division, Division of Budget Services, and the County Attorney's Office to proceed with all necessary administrative activities related to requesting proposals for design services, negotiating management services with Covanta, and finalizing a recommended financing plan(s) for the design and construction of the Waste To Energy Expansion Project, third combustion unit, in accordance with the attached memo.

WHY ACTION IS NECESSARY: Board's review and authorization requested by staff.

WHAT ACTION ACCOMPLISHES: Allows staff to negotiate and draft various professional service agreements, planning documents and financing plans for the Board's future consideration. All documents and staff recommendations will be presented to the BOCC on separate "Blue Sheets".

2. DEPARTMENTAL CATEGORY: SOLID WASTE
 COMMISSION DISTRICT #: CW

A8A

3. MEETING DATE: 11-25-2003

4. AGENDA:

- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC
- WALK ON
- TIME REQUIRED:

5. REQUIREMENT/PURPOSE:

- (Specify)
- STATUTE
 - ORDINANCE
 - ADMIN. CODE
 - OTHER

6. REQUESTOR OF INFORMATION:

- A. COMMISSIONER:
- B. DEPARTMENT: Lee County Public Works
- C. DIVISION/SECTION: Solid Waste Division
- BY: Lindsey Sampson, Solid Waste Director

DATE: Lindsey J. Sampson 11/17/03

7. BACKGROUND:

On September 30, 2003, the Governor and Cabinet, sitting as the Power Plant Siting Board approved the Final Order of Certification for Lee County's planned third combustion unit expansion project at the WTE facility. On October 13, 2003, the Florida DEP issued Lee County a PSD permit allowing the construction and operation of the third combustion unit. Since that time, County staff has reviewed several alternate design/construction scenarios that may be used by the County for a project of this magnitude, complexity, and uniqueness.

The attached memo provides an outline of staff's proposed design, procurement, construction, and management plan for the construction, acceptance testing and final acceptance of the third combustion unit at the WTE facility.

8. MANAGEMENT RECOMMENDATIONS:

9. RECOMMENDED APPROVAL

| A DEPARTMENT DIRECTOR | B PURCH. OR CONTRACTS | C HUMAN RESOURCES | D OTHER | E COUNTY ATTORNEY | F BUDGET SERVICES | | | | G COUNTY MANAGER |
|--------------------------------|-----------------------------|-------------------------|------------|--------------------------------|-------------------------|----------|----------|----------|--------------------------------|
| | | | | | QA | QM | Risk | CC | |
| 11/10/03 <i>[Signature]</i> | N.A. | N.A. | | <i>[Signature]</i> 11/12/03 | P.M. 11/12/03 | 11/13/03 | 11/13/03 | 11-12-03 | 11/20/03 <i>[Signature]</i> |

10. COMMISSION ACTION:

- APPROVED
- DENIED
- DEFERRED
- OTHER

Rec. by CoAtty
 Date: 11/10/03
 Time: 8:00 AM
 Forwarded To: Budget
 11/13/03 P.D.A.

RECEIVED BY
 COUNTY ADMIN: PM
 11/12/03
 12:55 PM 54
 COUNTY ADMIN
 FORWARDED TO:
 11/13/03



Lee County
SOUTHWEST FLORIDA

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

Date: November 6, 2003

TO: Mr. Jim Lavender, Director
Public Works Department

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

**SUBJECT: WTE Expansion
Design, Procurement, and Construction Management**

During several meetings, individually and collectively, with David Owen, Stuart Broom, and Covanta Lee, Inc., we have discussed several alternate scenarios that may be feasible for the County to follow for managing the design/construction of the WTE expansion project. Because of Covanta's present and potentially future financial situation, it has been determined that the responsibility and full risk allocation included in the construction agreement for the original facility would not be possible for the expansion project. Additionally, we determined that there are financial advantages for the County to have a larger participatory role in the design/construction of the expansion taking into consideration the County's experience with the WTE facility and several other large, complex construction projects during the past 10 years.

The following narrative provides additional details and suggestions based on our previous discussions, for managing this project. This scenario includes significant roles for both Lee County and Covanta for the procurement, oversight, and management of the design and construction activities.

Summary and Advantages

The suggested design/procurement/construction system envisions the County performing most or all major procurement functions with substantial technical assistance provided to the County by Covanta Lee, Inc. as the Construction Manager (CM). Covanta will be the primary project coordinator responsible for design oversight, construction management and construction oversight. This arrangement will require all construction contractors and equipment suppliers to provide payment/performance bonds in favor of the County for the full value of the services, equipment and materials provided. This avoids the occurrence of double performance bond costs that commonly occurs on CM projects and provides the bonding directly to the County.

There are several benefits of this method of design and construction.

- Covanta has personnel with knowledge and expertise in the design, construction, and operation of WTE facilities.
- The County will obtain financial assurance from the contractors and suppliers and will

Mr. Jim Lavender
November 6, 2003
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not have to rely on Covanta to provide all financial security for the project.

- The project will benefit from certain 'design standards' already established and proven by Covanta and the schedule can be fast-tracked by utilizing such standards.
- Covanta's participating role will negate any concerns by Covanta (or the County) regarding Covanta's ability to financially guarantee production and environmental performance of the third combustion unit project.
- There will be minimal duplication of efforts. The responsibilities held and activities performed by Covanta would normally be provided either by contractors or consultants.
- Acceptance testing and operation transition will be more easily accomplished given Covanta's substantial role during design and construction.

Roles and Responsibilities

Covanta will participate in the project by providing to the County (and design engineer) technical information regarding equipment and material specifications, preferred equipment layout, instrumentation and piping requirements, etc., that is, "design oversight". Covanta will also provide services by supplying and/or reviewing bid packages, scopes of services, etc. for the procurement of equipment and construction services. It is anticipated that the design engineer will release drawings and specifications in such a sequence that the construction will be phased in through the use of 5 (+/-) construction packages, i.e., portions of the work will be bid out before completing all of the engineering detailed design. Covanta will review each phase/bid package to ensure its completeness and constructability, and that there are no conflicts or duplications with other portions of the work. Covanta will also provide value engineering of the engineering design.

The County and Covanta will conduct its standard (two-step) CN process for the selection of a design engineering company that will be responsible for all 'expansion project' engineering. This service will include detailed drawings and specifications for the project. The engineer will receive input from Covanta regarding equipment, equipment layout, material specifications and value engineering items and incorporate such reasonable items into the detailed design.

The design engineer, Covanta, and the County will cooperate and coordinate efforts to issue bid packages structured such that construction activities can commence and continue without interruption, based upon the phased design services. The County will advertise the construction bid packages in its normal fashion. Covanta will provide substantial assistance in securing interest and participation in the bid process from qualified contractors. The construction bidding process will include certain pre-qualification requirements prior to, or simultaneously with, the bid submittals. Covanta will assist the County in the establishment

Mr. Jim Lavender
November 6, 2003
Page 3 of 3

and review of all such pre-qualification activities.

Covanta will be the County's Construction Manager to ensure complete construction/contractor scheduling and coordination. Covanta will review and approve contractors' submittals, shop drawings, invoices, work product, and all other construction related activities prior to the County's acceptance of these items. Covanta, in conjunction with the County, will review and evaluate change orders, design changes, and additional work items, etc., during the construction process. Covanta will hold regular construction coordination and status meetings with the contractors, subcontractors, County staff and consultants. The Solid Waste Division will also provide additional personnel to perform construction oversight and be cognizant of all design and construction activities and issues.

It is anticipated that the purchase of certain major equipment will be made directly by the County. This will reduce the cost of the project by eliminating the payment of the corresponding state sales taxes for such equipment. It may be preferable to have the respective contractors include the cost of the equipment as part of their initial bids, including sales tax. Then, after the equipment has been submitted and approved by the County, as part of each contractor's submittal process, the specific equipment purchase orders may be assigned to the County for direct purchase and a corresponding (deductive) change order issued by the Contractor to the County. This procedure, if utilized, will be incorporated into the original contract documents.

Project Funding

The County has requested PFM and Malcolm Pirnie to review the assets and liabilities of the Solid Waste Enterprise Fund. This study will project the capital requirements for the expansion project and for other future solid waste projects required for continued operations. Projections will be made for at least the next ten years. The study will establish a recommended level of debt service for the expansion project based on maintaining the Division's service level, financial stability, service fees, operating and planning reserve funds, and anticipated future capital needs.

Cc: Don Stilwell
Jim Yeager
David Owen
Tony Majul
Jim Lewin

DRAFT.

MEMORANDUM OF UNDERSTANDING

DRAFT.

THIS MEMORANDUM OF UNDERSTANDING (this “MOU”), made and entered into as of the ___ day of April, 2004, 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:

RECITALS

1. The County owns and contracts with Covanta for the operation and maintenance of a municipal, mass burn, waste-to-energy facility located at Buckingham Road in the County (the “Existing Facility”).
2. Covanta constructed, and continues to operate and maintain, the Existing Facility for the benefit of the County pursuant to (a) that certain Construction Agreement, dated August 29, 1990 (as amended, the “Existing Construction Agreement”), between the County and Covanta and (b) that certain Service Agreement, dated August 29, 1990 (as amended, the “Existing Service Agreement”), between the County and Covanta. The Existing Construction Agreement and the Existing Service Agreement are sometimes hereafter referred to as the “Existing Agreements.”
3. The County desires to expand the Existing Facility by the construction (and integration with the Existing Facility) of a third boiler unit and related machinery and equipment and of enhancements to the Existing Facility (collectively, the “Project”) on the Facility site. The elements of the Project are described in more detail as an attachment to the Definitive Agreement. The Preliminary Basis of

Design of the Project is attached hereto as Exhibit A. The construction, as well as the design and equipment acquisition for the Project, may be subdivided into portions (each a "Construction Portion") and may be performed by a general contractor, the Design Engineer and major equipment vendors (each a "Contractor") pursuant to applicable design, construction and/or equipment supply contracts with the County (each a "Construction Contract."), as the County determines.

4. This MOU confirms that the County desires to secure the services of Covanta (a) to oversee the design of the Project, including the work performed by the County's selected Design Engineer and any related subcontractors that contribute to the design of the Project (the "Design Management Services"); (b) to manage the construction and equipment supply for the Project (collectively, the "Construction Management Services", the Design Management Services and the Construction Management Services are jointly referred to herein as the "Project Management Services"); (c) upon completion of the design and construction, to start-up and test the Project and to operate and maintain the Project in conjunction with the operation and maintenance of the Existing Facility, including, without limitation, providing for the benefit of the County the corresponding guarantees (together, the "Operating Services"); and (d) to perform the Operating Services for a period of years, as determined by the County (with the concurrence of Covanta) beyond the current term of the Existing Service Agreement. With respect to "(c)" above, any repairs or replacements to the Project required during or as a consequence of the acceptance testing of the Project by Covanta shall be performed by the Contractor

(unless caused by Covanta error or commission) pursuant to its required scope of services, its warranties or a change order with the County.

5. Finally, this MOU confirms that Covanta desires to provide the Project Management Services and the Operating Services, together, the “Services”, all on terms that are mutually agreeable to the Parties as outlined in this MOU. The County and Covanta are sometimes hereafter called singularly a “Party” and collectively the “Parties.”

UNDERSTANDING

The Parties wish to commence negotiating one or more definitive written agreements providing for the Services (collectively, the “Definitive Agreement,” which term shall include, without limitation, any amendments to the Existing Agreements.) To facilitate the negotiation of the Definitive Agreement, the Parties request that the County’s counsel prepare an initial draft of the same.

Based upon the information currently known to County, it is proposed that the Definitive Agreement include the following terms:

PART ONE

1. Covanta’s Services.

Relative to the Services to be provided by Covanta, Covanta shall provide appropriate personnel skilled in all aspects of the particular service to be provided. Further, Covanta understands that the County has retained and contemplates that it will continue to retain throughout the term of this MOU, the services of a consulting engineer (the “Consulting Engineer”) relative to the Project.

Covanta agrees that all submissions, filings, comments and documents filed with the County pursuant to this MOU shall, at the County's direction, be filed directly by Covanta, or, in the County's sole discretion, by Covanta, indirectly through the County, with the Consulting Engineer.

- (a) Prior to selection of the Design Engineer, Covanta will:
 - (i) Cooperate with the County to establish the criteria for the selection of the Design Engineer and for Covanta's review and submission of written comments regarding any aspects of the Project that are not consistent with the "Basis of Design" (as hereafter defined).
 - (ii) Review procurement and contract documents and provide comments thereon to the County relative to the procurement of the Design Engineer.
 - (iii) In conjunction with the County and its consultants, review and evaluate statements of qualifications, prepare an evaluation report and file the same with the County – all with respect to the procurement of the Design Engineer.
 - (iv) Prepare, in conjunction with the County, a basis of design for the Project (the "Basis of Design"), including, without limitation, consideration of buildability and technical design. The Basis of Design will include the design concept, the general design criteria, updated drawings, plans and specifications for the Existing Facility, conceptual drawings and/or descriptions for the Project, a list of enhancements for the Existing Facility and anticipated interface points between the Existing Facility and the Project.

- (b) During and after the selection of the Design Engineer, but prior to the selection of the Contractor(s), Covanta will:
- (i) Assist the County in preparing and negotiating a contract, scope of work and fee (including the structure of the fee) with the selected Design Engineer and any substitute Design Engineer if a contract is not concluded with the selected Design Engineer, along with similar work with any additional County contractors (or subcontractors) that contribute to the design of the Project, if so elected by the County.
 - (ii) Cooperate with the County to establish the criteria for the selection of each Contractor and for Covanta's review and submission of written comments regarding any aspects of the Project that are not consistent with the "Basis of Design" (as heretofore defined).
 - (iii) Review contract documents and provide comments to the County relative to the procurement of each Contractor.
 - (iv) Prepare budget costs and present feasibility analyses for certain components of the Project, including, without limitation, the Martin stoker grates.
 - (v) Review and provide critical comments on the Project cost estimate prepared by the Consulting Engineer and/or the County.
 - (vi) Evaluate the Facility site to identify construction constraints and opportunities for either or both of cost savings and installation efficiencies.
 - (vii) Make recommendations to the County regarding previous soil investigations, and physical, structural and other surveys.

- (viii) Discuss with the Design Engineer, the County and/or the Consulting Engineer, the use of construction technologies and approaches that might be incorporated into the Project to provide for installation efficiencies and cost savings.
- (ix) Unless already fully prepared pursuant to paragraph 1.(a)(iv) above, prepare, in conjunction with the County, a basis of design for the Project (the “Basis of Design”), including, without limitation, consideration of buildability and technical design. The Basis of Design will include the design concept, the general design criteria, updated drawings, plans and specifications for the Existing Facility, conceptual drawings and/or descriptions for the Project, a list of enhancements for the Existing Facility and anticipated interface points between the Existing Facility and the Project.
- (x) Assist in the preparation and development of procurement documents, including bid packages, RFQs, RFPs, and contracts in conjunction with the County for Contractor(s) and other vendors and provide timely comments thereon – all as requested by the County.
- (xi) In cooperation with the County and the Consulting Engineer, review all responses to the procurement documents, including bid packages, RFQs and RFPs, and contracts pursuant to paragraph 1.(b)(ix) above.
- (xii) Based on its experience with similar construction project estimates, prepare preliminary cost estimates and provide cost evaluations of alternative materials and systems.

- (xiii) In a timely manner, provide to the County (A) Covanta's customary equipment specification bid packages and subcontractor scope of work bid packages and (B) a list of qualified firms in each major equipment category and subcontractor specialty categories relative to the development of the Project. If requested by the County, Covanta shall provide the County with the qualifications of each such qualified firm. The County may add firms that the County determines qualified to such list of qualified firms. The County shall, with Covanta's, the Design Engineer's and County's consultant's assistance, develop all the appropriate bid packages and solicit bids from the qualified firms. The Design Engineer shall perform an evaluation of the bids received, and provide its evaluation, review, selection and purchase recommendations to Covanta. Covanta shall oversee, evaluate and provide comments to the Design Engineer's work product in order to provide the County with a complete evaluation of bids, including a selection report and recommendation with respect to the same. The County, the Design Engineer and Covanta shall then meet to review each completed bid evaluation and recommendation, including each bidder's qualifications, each bidder's ability to meet the requirements of the requested equipment specification or scope of work package and the reasonableness of each bidder's pricing. The County shall thereafter approve and/or select the appropriate qualified firms.
- (xiv) Covanta shall identify and provide to the County Covanta's customary work packages that are not normally competitively bid.

- (xv) Review design documents during development and advise on proposed site use and improvements, selection of materials, building systems and equipment, and methods of Project delivery.
- (xvi) Provide recommendations on the relative feasibility of construction methods, availability of labor and materials, necessary lead time for procurement, installation and construction, and other construction cost issues, including, without limitation, costs of alternative designs or materials, preliminary budgets, and possible installation efficiencies.
- (xvii) Prepare the Project schedule for the County's review and acceptance, which shall coordinate and integrate Covanta's services, the Design Engineer's services and the County's responsibilities with the anticipated construction schedules and highlight critical and long lead time items.
- (xviii) Advise the County and the Design Engineer if it appears that the construction cost and/or schedule might exceed the Project budget and/or established or anticipated schedule and make recommendations for corrective actions.
- (xix) Consult with the County and the Design Engineer regarding the Construction Contracts and related documents, identify instances where design details adversely affect constructability, cost or schedules, and make recommendations for corrective actions.
- (xx) Provide recommendations and information to the County regarding the allocation of responsibility for temporary Project facilities and equipment,

materials and services to be used in common by the Contractors and regarding the allocation of responsibility for safety programs.

- (xxi) Suggest the form and content of the Construction Contracts and related documents and make recommendations to (A) promote the coordination of the work of the Contractors, (B) ensure that all Project requirements have been assigned to the appropriate Construction Contract, (C) minimize the possibility of jurisdictional disputes, and (D) promote proper coordination for phased and simultaneous construction.
- (xxii) In conjunction with the Design Engineer, prepare a Project construction schedule that includes, *inter alia*, the phasing of construction, the commencement and completion times for each Contractor, the ordering and delivery of items requiring a long lead time, and the requirements of the County.
- (xxiii) At the County's request, coordinate with the Design Engineer or any other applicable Contractor and expedite the ordering and delivery of any item requiring a long lead time.
- (xxiv) Assist the County and/or the Design Engineer in selecting, hiring and coordinating the services of surveyors, special consultants and testing laboratories.
- (xxv) At the County's direction, provide, relative to the construction of the Project, an analysis of the types and amounts of labor required and an evaluation of whether the construction work is being manned properly.

- (xxvi) Upon approval by the County of the Construction Contracts and related documents, and in conjunction with the Design Engineer, update and revise, as appropriate, the latest cost estimate and the Project construction schedule for the County's review and approval.
 - (xxvii) Submit lists of prospective bidders for the County's review and approval.
 - (xxviii) Develop bidders' interest in the Project, establish bidding schedules, if requested by the County and participate in pre-bid conferences.
 - (xxix) In conjunction with the County, prepare analyses of the bids and make recommendations for the award of Construction Contracts or the rejection of bids.
 - (xxx) Assist the County in preparing and finalizing the Construction Contracts and advise the County as to the acceptability of subcontractors and material suppliers.
 - (xxxi) Assist the County in obtaining all permits, if any additional permits need to be obtained, for which the County is responsible.
 - (xxxii) Notwithstanding any contrary provisions herein, Covanta will not be responsible for the Design Engineer's work product developed pursuant to its design contract with the County.
- (c) After selection of the Contractors and generally before commencement of construction, Covanta shall:
- (i) Coordinate with the County to refine each Contractor's proposed submittal in the response to the RFP.
 - (ii) Prepare and discuss work packages with the Contractors and subcontractors.

- (iii) Review and comment on each Contractor's proposed construction methods, including on and off-site distribution systems for materials and components, and together with the Design Engineer and the County, review and comment on each Contractor's Project control plan and design, manufacture and construction program.
 - (iv) Together with the Design Engineer and the County, review each Contractor's design criteria report and provide comments to the County.
 - (v) Review the overall Project organization structure and descriptions of all required roles and responsibilities of each Contractor's and vendor's procurement approach for major Project components.
- (d) During construction, Covanta shall:
- (i) Take all steps necessary for Covanta to certify that the Project is complete and to undertake and assume the operation and maintenance guarantees contained in the Definitive Agreement, including promptly advising the County of any facts that could affect such certification.
 - (ii) Review all of the items delivered by each Contractor and vendor, including, without limitation, the drawing and specification list, and the spare parts list.
 - (iii) Participate in monthly Project status meetings and raise written objections if Covanta concludes that any Contractor or vendor is not performing its duties in accordance with the applicable Construction Contract.
 - (iv) Keep records of meetings and all other Project-related activities and provide meeting notes and field notes as required by the County.

- (v) Discuss health and safety requirements on-site and monitor recommended policies.
- (vi) As requested by the County, make or perform certain enhancements to improve the Existing Facility in accordance with the Existing Service Agreement.
- (vii) Approve preferred components with the corresponding Contractors and vendors, the Consulting Engineer, and the County.
- (viii) Review the list of each Contractor's qualified vendors, identifying resources and labor.
- (ix) Review each Contractor's tender documents.
- (x) Review tenders and, in conjunction with the Design Engineer, request clarifications as required.
- (xi) Provide tender award recommendations to the Project team.
- (xii) Participate in the coordination of the production and assembly tasks with the Contractors, particularly as they relate to any impact on the operations of the Existing Facility.
- (xiii) Review and comment on variation orders and instructions in conjunction with the Design Engineer and the County.
- (xiv) As requested by the County, review for accuracy each Contractors' invoices for payment.
- (xv) Review maintenance manuals and as-built (record) drawings.
- (xvi) Monitor each Contractor and vendor in the performance of its duties and provide written certifications regarding the achievement of, or deficiencies

related to substantial completion, final completion and, as applicable, acceptance testing of the respective portions of the work under each of the Construction Contracts and vendor purchase orders and that the project is acceptable for Covanta to provide long term operation and maintenance services and the guarantees and warranties with respect thereto.

- (xvii) In conjunction with the Design Engineer and County, provide comments to each Contractor when its work does not comply with the corresponding Construction Contract.
- (xviii) Maintain a field report for site visits to record the progress of each Contractor's design and construction, delay, weather conditions, site visitors and other significant facts when performing duties on-site.
- (xix) Manage each Contractor's obligations to take all necessary steps to protect the work in accordance with its Construction Contract and make prompt recommendations to the County regarding the same.
- (xx) Provide acceptance testing monitoring and oversight assistance.
- (xxi) Coordinate scheduled activities and responsibilities of the Contractors with each other and with those of Covanta, the County and the Design Engineer to manage the Project in accordance with the latest cost estimate, the Project schedule and the Construction Contracts.
- (xxii) Update the Project construction schedule, incorporating Contractor and vendor activities, including sequences and durations, the allocation of labor and materials, and the delivery of products requiring a long lead time for procurement.

- (xxiii) Exercise all reasonable efforts to obtain satisfactory performance from each of the Contractors, and recommend a course of action to the County when Construction Contract obligations are not performed satisfactorily.
- (xxiv) Monitor the approved cost estimate, showing actual costs for activities in progress and estimates for uncompleted tasks.
- (xxv) Advise the County and the Consulting Engineer as to variances between actual and budgeted costs.
- (xxvi) Maintain accounting records as to work performed under unit costs, additional work performed on an actual cost basis, and other work requiring accounting.
- (xxvii) Develop and implement procedures for reviewing and processing of payment applications.
- (xxviii) Review and certify to the County the amounts due to each Contractor. Such certification shall constitute a representation that, to the best of Covanta's knowledge, the work has progressed to the point indicated and the quality of the work is consistent with the requirements of the Contract Documents, subject to specific qualifications expressed by Covanta in writing. The issuance of a certificate for payment shall also constitute a representation that, to the best of Covanta's knowledge, the Contractor is entitled to payment in the amount certified.
- (xxix) Review and coordinate among the safety programs developed by each of the Contractors.

- (xxx) Determine that the work of each Contractor is being performed in accordance with the requirements of the corresponding Construction Contracts, and use all practicable means to protect the County against deficiencies in the Work. Upon written authorization from the County, Covanta shall have the authority to require additional inspection and testing of the work consistent with the provisions of the Construction Contracts. In consultation with the County, Covanta can reject work that does not conform to the requirements of the applicable Construction Contract.
- (xxxii) Schedule and coordinate the sequence of construction consistent with the Construction Contracts and the Project construction schedule.
- (xxxiii) Review change requests, assist in negotiating Contractor proposals, submit recommendations to County, and, if accepted, prepare corresponding change orders.
- (xxxiv) Maintain at the site one copy of all Construction Contracts, drawings, specifications, addenda, and change orders, marked up to date to reflect changes and selections made during construction, and approved shop drawings, product data, and similar required submittals.
- (xxxv) Monitor the delivery, storage of materials, systems and equipment purchased by the County until they are incorporated into the Project.
- (xxxvi) With representatives of the County in attendance, Covanta shall conduct start-up and all testing of the Project, to include utilities, operational systems, equipment and environmental testing. Costs for equipment vendors start-up support, utilities, reagents and environmental testing (and

other items noted as pass-through costs in the Existing Service Agreement)

shall be a pass-through ~~cost~~costs to the County.

- (xxxvi) In considering the work of each Contractor, prepare a list of incomplete or unsatisfactory items and a schedule for their completion.
- (xxxvii) Coordinate and take all necessary and appropriate actions to cause the Contractors to complete the work correctly and according to specifications.
- (xxxviii) Notwithstanding any contrary provisions hereof, Covanta shall not have control over or responsibility for construction means, methods, techniques, sequences or procedures, or for any Contractor's failure to perform the work in accordance with the corresponding Construction Contract.
- (xxxix) Consult with the County concerning the replacement of work damaged by fire or other casualty during construction, and furnish management services required in connection with the replacement of such work.
- (xl) Provide necessary management services in connection with a termination or default of the Design Engineer or a Contractor, or deficiencies in the work.
- (e) Upon completion of acceptance testing, Covanta shall certify to the County, to the best of its knowledge after exercising all due diligence, if construction of the Project has been substantially completed and all acceptance tests have been substantially performed and met the applicable performance guarantees and standards of the applicable Construction Contracts. Upon such certification, the County shall determine whether it agrees that substantial completion of construction and successful completion and satisfaction of acceptance tests has occurred, and if so,

Covanta shall undertake and assume responsibility for the operation and maintenance of the Project in conjunction with the operation and maintenance of the Existing Facility pursuant to the standards established in the Existing Service Agreement, as modified pursuant to the provisions of the Definitive Agreement, including, without limitation, providing environmental guarantees ~~consistent with applicable permits~~ for and subject to how such guarantees apply to the permits for the existing units. The foregoing shall not be read to relieve ~~Covanta and other~~ the relevant parties (pursuant to their respective Construction Contracts) from their obligations to secure the completion of all punch list items relative to such construction in a timely manner.

2. County Responsibilities.

- (a) The County shall provide Covanta with the requirements for the Project, including a program setting forth the County's objectives, schedule, constraints and criteria, including, without limitation, space requirements, site requirements and flexibility.
- (b) In consultation with Covanta and the Consulting Engineer, the County shall establish an overall budget for the Project, including reasonable contingencies.
- (c) The County shall designate an authorized representative to act on behalf of the County as to the Project. To avoid unreasonable delay, the County shall render timely decisions on matters submitted by Covanta.
- (d) The County shall furnish structural, mechanical, environmental, and other tests, inspections and reports as are required by applicable law or the Construction Contracts.

- (e) The County shall furnish all necessary legal (including document drafting functions), accounting and insurance counseling services for the Project.
- (f) The County shall give prompt written notice to Covanta and the Consulting Engineer if the County becomes aware of any fault or defect in the Project or any nonconformance with the Construction Contracts. The County shall cause the Consulting Engineer to do the same.

3. Compensation of Covanta and Further Agreements.

For the pre-construction services described in paragraphs 1.(a), (b) and (c) of this MOU and occurring prior to the date of Contractor mobilization on-site ("Contractor Mobilization"), Covanta shall be paid on an hourly basis for the categories of work supplied as set forth on Exhibit B, plus reimbursement of Project specific out of pocket expenses such as travel and approved subcontractors as set forth in Exhibit B. The cost, in aggregate, for the services to be provided by Covanta up to Contractor Mobilization under paragraph 1(a), (b) and (c) of this MOU shall not exceed (for hourly fees and expenses) \$3,166,386.00; provided that such amount may be exceeded in the event that Contractor Mobilization does not occur by July 1, 2005.

Covanta will be entitled to submit to the County an initial invoice of \$671, 569.35 for services already provided through February 29, 2004, in support of the County's Project permitting and development efforts, including Design Engineer procurement. This \$671,569.35 is part of the not to exceed fee of \$3,166,386.00 identified above for services to be provided by Covanta up to Contractor Mobilization under paragraph 1(a), (b) and (c) of this MOU. The County will pay Covanta this initial payment within 30 days of signature of this MOU. The cost, in aggregate, for the services to be provided by Covanta after Contractor Mobilization under paragraph 1(a), (b) and

(c) of this MOU shall not exceed (for hourly fees and expenses) \$805,232.00 (and adjusted if the amount paid to Covanta above pre-Contractor Mobilization is less than \$3,166,386.00 due to a shift in Project timing or a County-directed change in Covanta scope); provided that such amount may also be exceeded in the event that Contractor Mobilization does not occur by July 1, 2005. For services rendered ~~hereunder~~ on and after Contractor Mobilization, including ~~continued services under paragraph 1(a), (b) and (c) and~~ construction management, start up and acceptance-related work described in paragraph 1(d), Covanta shall be entitled to a percent of the hard costs for the construction of the Project (which shall not for this purpose include the fees and expenses of the Design Engineer) as further set forth on Exhibit C, to be agreed upon in the Definitive Agreement (and adjusted if the amount paid to Covanta above pre-Contractor Mobilization is less than \$ _____ due to a shift in Project timing or a County-directed change in Covanta scope) and to be paid ratably in installments commencing at Contractor Mobilization and ending _____ months thereafter. ~~Such installment fees as further set forth in Exhibit C. Such~~ payments shall be pursuant to such Exhibit C and not tied to construction drawdown payments or percentages under the applicable Construction Contract. For its post-construction operation and maintenance Services, i.e., services described in paragraph 1.(e), Covanta shall be entitled to a "Service Fee" calculated as provided in the Existing Service Agreement, as amended by the Definitive Agreement. In this regard, it is the intent of the Parties that the Definitive Agreement shall incorporate an extension of the initial term of the Existing Service Agreement for a period of years to be specified in the Definitive Agreement. In addition, the Definitive Agreement shall incorporate, without limitation, (a) an amended calculation of the "Service Fee" covering operation, maintenance and potential integration issues and services throughout such extended period, (b) operating guarantees, to be negotiated in good faith once the Basis of Design is established for the

Project, but in no event less stringent than the operation and maintenance guarantees in the Existing Service Agreement applicable for and subject to how such guarantees apply to the permits for the existing units and (c) revisions to the maintenance standards and other contractual refinement issues to better secure the long-term preservation of the Project. The Parties shall exercise all reasonable efforts to minimize any disruptions, reductions in operations or shutdowns of the Existing Facility during the construction of the Project and its integration with the Existing Facility. To the extent that the Existing Facility experiences disruptions, reductions or scheduled or unscheduled downtimes during the construction of the Project or its integration with the Existing Facility, Covanta shall, to the extent necessary and appropriate, be excused from performance under the Existing Service Agreement, provided, however, during such downtimes, Covanta shall exercise all reasonable efforts to perform repairs and replacements to the Existing Units.

4. Conflict Resolution.

Any claim, dispute or controversy between the Parties shall be settled in accordance with the applicable requirements of the Existing Service Agreement, as amended by the Definitive Agreement. Pending resolution of any claim, dispute or controversy, Covanta shall continue to perform its obligations, and the County shall continue to make payments, under the Definitive Agreement.

5. Insurance.

Insurance required during the Operations Services period shall be specified in the Definitive Agreement. Covanta will purchase and maintain, during the Construction Management Services period, (a) insurance to protect it from claims under Workers' Compensation laws, including

claims for occupational illness, disease or death of its employees, disability benefit laws or other similar employee benefit laws and (b) Comprehensive General Liability insurance, insuring claims for damages resulting from bodily injury or property damage, including personal injury liability and contractual liability which may arise out of or result from Covanta's Construction Management Services and are covered under a standard Comprehensive General Liability policy. Prior to the execution of the Definitive Agreement, Covanta shall procure and maintain through the term of the Definitive Agreement insurance of the types and with the limits specified below or required by law, whichever is greater. An Insurance Certificate shall be required from Covanta. Such form must be properly executed and submitted by an authorized representative of the insurance company and Covanta. Such certificate of insurance must have a thirty (30) days notice of cancellation, termination or expiration, state that the coverage is primary, and shall be in the types and amounts stated below.

The Lee County Board of County Commissioners, its officers and employees, shall be specifically included as an Additional Insured on Covanta's Commercial General Liability coverage listed below for liability arising out of Covanta's operations. Covanta shall ensure that all contractors and subcontractors carry General Liability Insurance, Automobile Liability Insurance, and Workers' Compensation Insurance in compliance with the requirements of this section.

The Definitive Agreement will require that Builder's Risk Insurance, including delay in start-up, be purchased for the Project naming Lee County Board of Commissioners, Covanta and Contractors as the insured. The policy may contain a Waiver of Subrogation for the insured.

The Certificate of Insurance must reflect the following limits:

- (a) Worker's Compensation: Coverage to apply for all employees for Statutory Limits in compliance with applicable state and federal laws. The policy must include

Employers' Liability with a minimum limit of \$1,000,000 for each accident. The certificate shall include a waiver of subrogation.

- (b) Commercial General Liability: Shall have minimum limits of at least \$1,000,000 per occurrence, or an amount sufficient to purchase primary and excess insurance in the total amount of \$3,000,000, with a Combined Single Limit for Bodily Injury Liability and Property Damage Liability. This shall include Premises and/or Operations, Independent Contractors and Products and/or Completed Operations, Broad Form Property Damage, and a Contractual Liability Endorsement or the equivalent. Such coverage must be on an occurrence basis.
- (c) Business Automobile Policy: Shall have minimum limits of \$1,000,000 per occurrence. Combined Single Limit for Bodily Injury Liability and Property Damage Liability. This shall include Owned Vehicles, Hired and Non-Owned Vehicles, and Employees Non-Ownership and be on an occurrence basis.
- (d) Excess Liability Insurance: Shall have minimum limits of \$2,000,000 or an amount sufficient to equal \$3,000,000 when combined with the primary insurance required in (a), (b) and (c) above.

Such insurance is not intended to and shall not, in any manner, limit or reduce the liabilities and obligations of Covanta, its agents, employees, subcontractors, licensees and invitees.

6. Force Majeure.

Delays in any performance by either Party under the Definitive Agreement due to causes beyond the reasonable control of the affected Party and that, with due diligence, could not have been reasonably anticipated and without the fault or negligence of the affected Party, including but not

limited to fire, flood, earthquake or hurricane, acts of God, war, declaration of hostilities, revolt, civil strife, strike, labor dispute, or epidemic, or any law, order, proclamation, regulation or ordinance of any government or any subdivision thereof, or for any other similar cause to those enumerated, shall be deemed to be events of Force Majeure and any such delays shall be excused. If such Party is delayed in the performance of any work or obligation under the Definitive Agreement due to any events of Force Majeure, the date for such performance shall be extended by the number of days that such Party is actually delayed. The definition of Force Majeure and its substantive impact on the Parties obligations under the Definitive Agreement shall be addressed and established in such Definitive Agreement.

7. Indemnification.

The indemnification obligations of the Parties, as set forth in Article XI of the Existing Service Agreement, shall be incorporated in the Definitive Agreement.

8. Termination.

In the event the County determines not to pursue the development or implementation of the Project, for any reason, the County reserves the sole and exclusive right to terminate the portions of the Definitive Agreement(s) relating to the Project Management Services as provided herein. If the County exercises such right of termination, the County shall provide written notice of termination to Covanta, and such termination shall become effective upon delivery of such written notice. As a condition to the exercise of such termination right, Covanta shall be released and discharged from all obligations thereafter accruing under such portions of the Definitive Agreement(s). Upon any such termination, the County shall pay Covanta the additional compensation described below:

- (a) If the final cost estimates make the Project no longer feasible, in the County's sole determination and judgment, the County shall provide written notice of termination to Covanta prior to the commencement of construction. The County shall pay Covanta all compensation earned or accrued by Covanta up to and including the date of termination.
- (b) If, after the commencement of construction, the County terminates the Project (which for purposes of this paragraph shall mean the cessation of all construction and other activities relating to the Project, excluding those necessary to wind down or otherwise terminate all outstanding obligations with respect to the Project, with no recommencement within twelve (12) months after the date of termination), the County shall have the right to terminate the applicable portions of the Definitive Agreement(s) and pay Covanta its compensation earned or accrued to date. For services performed pursuant to paragraph 1(d) and any other activities necessitated by the County's termination of the Project, Covanta's compensation shall be equal to Covanta's Direct Costs (as defined in the Existing Service Agreement) construction management fees and start-up fees through the date of termination, plus expenses, and any hourly fees and expenses related to such termination, including demobilization.
- (c) Notwithstanding anything contained herein to the contrary, the County, without cause and at its election, may terminate the Project and the applicable portions of the Definitive Agreement(s) at any time upon delivery of written notice to Covanta. If the County delivers such notice to Covanta, Covanta agrees to withdraw its employees involved in Project Management Services and its related equipment, if

any, from the work site on the effective date of the termination as specified in such notice (which effective date shall not be less than two (2) working days after the date of delivery of the notice), regardless of any claim that Covanta may or may not have against the County. Upon such a termination, Covanta shall be entitled to any unpaid compensation earned or accrued through the date of termination.

- (d) If Covanta fails to timely perform any of its obligations under the Definitive Agreement (and does not cure such failure with any applicable cure period), is adjudged bankrupt, or makes a general assignment for the benefit of its creditors or if a receiver is appointed on account of its insolvency, then the County, without prejudice to any other right or remedy that it may have, can terminate the Definitive Agreement and Covanta's rights thereunder upon written notice to Covanta, and to pursue the County's rights at law and in equity with respect thereto.
- (e) The failure of the County to promptly insist upon strict performance of any terms, covenant, condition or provision of the Definitive Agreement shall not be deemed a waiver of any right or remedy that the County might have, and shall not be deemed a waiver of any subsequent default or nonperformance of such term, covenant, condition or provision.

PART TWO

For and in consideration of their mutual agreements hereafter set forth, the County and Covanta agree as follows, and the following paragraphs of this MOU (the "Binding Provisions") shall constitute the legally binding and enforceable agreements of the County and Covanta.

9. Confidentiality.

To the extent provided by Florida law, Covanta will not disclose, and will direct its representatives not to disclose, any "Confidential Information" (as defined below) with respect to the County or the Project furnished, or to be furnished, by either the County or the Consulting Engineer or their respective representatives to Covanta or its representatives at any time or in any manner other than in connection with Covanta's evaluation of the Project as contemplated under this MOU. For purposes of this Paragraph, "Confidential Information" means any information about the County or the Project stamped "confidential" or identified in writing as such to Covanta by the County promptly following its disclosure, unless (a) such information is already known to Covanta or its representatives or to others not bound by a duty of confidentiality at the time of its disclosure or such information becomes publicly available through no fault of Covanta or its representatives; (b) the use of such information is necessary or appropriate in making any filing or obtaining any consent or approval required for the consummation of the Project; or (c) the furnishing or use of such information is required in response to subpoena or similar legal proceedings. The County shall continue to be obligated to maintain confidentiality in accordance with Article XIV of the Existing Service Agreement.

10. Disclosure.

To the extent provided by Florida law and without the prior written consent of the County, Covanta will not, and will ensure that its representatives do not, make directly or indirectly, any public comment, statement or communication with respect to, or otherwise disclose or permit the disclosure of the existence of discussions regarding the transactions contemplated under this MOU.

If Covanta is required by law to make any such disclosure, it must first provide to the County with the content of the proposed disclosure, the reason that such disclosure is required by law, and the time and place that the disclosure will be made.

11. Costs.

(a) Except as otherwise set forth in clause (b) below, until the execution of the Definitive Agreement, Covanta and the County will be responsible for, and will bear, all of their respective costs and expenses (including the expenses of its representatives) incurred at any time in connection with pursuing or consummating the Project.

(b) Prior to the execution of the Definitive Agreement and in furtherance of Article VIII of the Existing Service Agreement, Covanta is hereby authorized to commence work in accordance with Paragraphs 1(a) and (b); provided that the specific elements of the work must be authorized by the County in writing and, in such event, the County shall pay Covanta for such services in accordance with Paragraph 3 herein. Covanta may rely on e-mail correspondence from the County as constituting written authorization to perform services.

12. Entire Agreement.

The Binding Provisions constitute the entire agreement between the Parties and supersede all prior oral or written agreements, understandings, negotiations, representations and warranties and courses of conduct and dealing between the Parties as to the subject matter thereof. Except as otherwise provided herein, the Binding Provisions may be amended or modified only by a writing executed by both of the Parties.

13. Governing Law.

This MOU will be governed by and construed under the laws of the State of Florida without regard to conflicts of laws principles.

14. Jurisdiction; Service of Process.

Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, the Binding Provisions may be brought against either of the Parties in the courts of Lee County, Florida, or, if it has or can acquire jurisdiction, in the United States District Court for the Middle District of Florida. Each of the Parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein. Process in any action or proceeding referred to in the preceding sentence may be served on either Party anywhere in the world.

15. Binding Provisions.

The Binding Provisions will automatically terminate upon execution of the Definitive Agreement by the Parties, or such provisions may be terminated earlier upon written notice by either Party to the other Party unilaterally, with or without cause, at any time, provided, however, that the termination of the Binding Provisions will not affect the liability of a Party for breach of any of the Binding Provisions occurring prior to such termination. Upon termination of the Binding Provisions, the parties will have no further obligations hereunder, except as stated in Paragraphs 9, 10, 11, 12, 13 and 14, which will survive any such termination.

16. Counterparts.

This MOU 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 memorandum.

17. Binding Effect.

Except with respect to payments to Covanta pursuant to paragraph 11(b) in such amounts as are determined by paragraph 3, the provisions of Paragraphs 1 through 8 of this MOU are intended only as an expression of intent on behalf of the Parties, are not intended to be legally binding on either of the Parties and are expressly subject to the execution of an appropriate Definitive Agreement. Moreover, except as expressly provided in the Binding Provisions (or as expressly provided in any binding written agreement that the Parties may enter into in the future), no past or future action, course of conduct or failure to act relating to the Project, or relating to the negotiation of the terms of the Definitive Agreement, will give rise to or serve as a basis for any obligation or other liability on the part of either of the Parties.

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

ATTEST:

LEE COUNTY, FLORIDA

By _____
Name: John Albion
Title: Chairman, Board of County Commissioners

Lee County

ATTEST

COVANTA LEE, INC., a Delaware Corporation

By _____
Name:
Title:

APPROVED AS TO LEGAL FORM
AND CONTENT

APPROVED TO LEGAL FORM
AND CONTENT

OFFICE OF THE LEE COUNTY
ATTORNEY

COUNSEL TO COVANTA LEE, INC.

1008836.02

Exhibit B
Lee Expansion Project
Man hour Billing Rates*
April 8, 2004

DRAFT

| Billing Category | \$/Man hour** |
|--|----------------------|
| <u>Professional Staff</u> | \$194.35/hr |
| Legal Business Development Project Management Policy & Communications | |
| <u>Technical Staff</u> | \$166.03/hr |
| Business Finance Operations Group Support Environmental Permitting Environmental Testing/CEM All Engineering Disciplines Purchasing/Expediting Cost Control/Estimating Scheduling | |
| <u>Administrative Staff</u> | \$65.80/hr |
| Administrative Support Document Control | |
| <u>Construction Management</u> | \$134.18/hr |
| Ash Building Contract Mngt Pre-GC Mobilization | |

* Man hour rates are not subject to adjustment for duration of the Project unless Ground Breaking ("Mobilization of the County's Primary General Contractor) does not occur on or before July 1, 2005. If Ground Breaking does not occur on or before July 1, 2005, all man hour rates will be subject to escalation as of July 1, 2005 and annually thereafter as of the 1st of July. Adjustments will be made using CWUR0300SAO South Urban Cities - Base Month January 2004 = 175.0

** Man hour rates do not include travel/non payroll expense which will be billed separately.

Covanta will commence invoicing the County on a monthly basis for actual man hours expended, travel/non-payroll expenses and use of Approved Outside Consultants (Covanta Outside Legal Counsel, Public Relations Consultant) utilized in support of the County's Project. Invoicing will start within 30 days of signature of this MOU.

The County will review, process and make payment to Covanta on each invoice submitted within 30 days of the County receipt.

Page 3 of 4 of this Exhibit presents the monetary and man hour budget agreed to between the County and Covanta for Engineering Oversight for the duration of the Project.

Page 4 of 4 of this Exhibit presents the monetary rates Covanta will be paid by the County for Non- Personnel Reimbursable Expenses and Costs (travel/non-payroll expenses) during the execution of the Expansion Project.

Exhibit B
Page 3 of 4

Project Estimate Summary Lee 636TPD - Covanta Engineering Oversight Cost Updated April 8, 2004

| | | | | | | | | | |
|--|--------------------|-----------------|------------------------|--------------------------|------------------------|-------------------------------|--------------------|------------------|------------------|
| Current Index - Jan 2004 | 175 | | | | | | | | |
| CWUR0300SAO South Urban Cities | | | | | | | | | FINAL 4/8/04 JRT |
| <u>Description</u> | <u>Size/Rating</u> | <u>Quantity</u> | <u>Reference Price</u> | <u>Bid/Purchase Date</u> | <u>Reference Index</u> | <u>Current Adjusted Price</u> | | | |
| Covanta Home Office Staff Support | Manhours | 22107.0 | \$3,472,435 | J-04 | 175 | \$3,472,435 | | | |
| Dev & Impl* + Engr Oversight Phase | Salaries | 16977.5 | \$2,762,178 | J-04 | 175 | \$2,762,178 | D&I+E | | |
| Constr Mngt + Start Up Phase | Salaries | 5129.5 | \$710,257 | J-04 | 175 | \$710,257 | | CM+S | |
| Travel/Non-Payroll | | | \$149,183 | J-04 | 175 | \$149,183 | | | |
| Dev & Impl + Engr Oversight Phase | Expense | | \$54,208 | J-04 | 175 | \$54,208 | D&I+E | | |
| Constr Mngt + Start Up Phase | Expense | | \$94,975 | J-04 | 175 | \$94,975 | | CM+S | |
| Approved Outside Consultants | Allowance | | \$350,000 | J-04 | 175 | \$350,000 | D&I+E | | |
| Covanta Engineering Oversight Cost | | | \$3,971,618 | | | \$3,971,618 | | | |
| Dev & Impl + Engr Oversight Phase | | | | | | | \$3,166,386 | | |
| Constr Mngt + Start Up Phase | | | | | | | | \$805,232 | |
| Total Cost | | | | | | \$3,971,618 | | | |

* Includes \$671,569.35 representing 3910 man hours expended by Covanta through February 29, 2004 attributable to supporting the County's Project permitting and development efforts, including A/E Procurement. This sum will be paid to Covanta by the County within 30 days of signature of this MOU.

Exhibit C
Covanta Compensation
April 8, 2004

DRAFT

The following table sets forth the fees to be paid to Covanta for services established in Section 3 of the MOU and further details how each of these fees are to be invoiced for by Covanta and paid for by the County.

1. Covanta Engineering Oversight Fee

| | |
|---|-----------------------|
| (a). Pre-Contractor Mobilization Services as described in paragraphs 1. (a), (b) and (c) | \$3,166,386.00 |
| (b). Post-Contractor Mobilization Services as described in paragraphs 1. (a), (b) and (c) | \$805,232.00 |
| Total Projected Covanta Engineering Oversight Fee | \$3,971,618.00 |

Covanta Engineering Oversight Fee - Covanta will commence invoicing the County on a monthly basis, pursuant to the rate schedule in Exhibit B, for actual man hours expended, travel/non-payroll expenses and use of Approved Outside Consultants utilized in support of the County's Project until the Project is fully accepted as complete by the County. Invoicing will start within 30 days of signature of this MOU.

The County will review, process and make payment to Covanta on each invoice submitted within 30 days of County receipt.

2. Covanta Construction Management Fee

| | |
|--|----------------|
| Post Contractor Mobilization Construction Management Services as described in paragraph 1. (d) | \$3,217,977.00 |
|--|----------------|

To be paid by the County to Covanta ratably in equal installments (minus agreed to retainage of 5 %) commencing at Contractor Mobilization and ending 22 months thereafter, or, if the Project is completed and accepted by the County earlier than 22 months after Contractor Mobilization all outstanding installments due Covanta (including all retainage being held by the County) will be paid within 45 days of the County's acceptance of the Project.

3. Covanta Start Up Fee

| | |
|---|--------------|
| Post Contractor Mobilization Start Up Services as described in paragraph 1. (d) | \$679,198.00 |
|---|--------------|

To be paid by the County to Covanta in 3 equal sequential monthly installments commencing with the month in which "First Fire" of the new combustion unit occurs.

Covanta Start Up Fees do not include the cost of equipment vendor support during Start Up, which will be paid for directly by the County, nor, do they include the cost of utilities, reagents or environmental testing which will be paid by the County as a pass through cost (all as identified in paragraph 1. (d) (xxxv)).

Escalation

Covanta Fees including man hour rates, travel/non-payroll expenses and Approved Outside Consultant fees are not subject to adjustment for duration of the Project unless Ground Breaking ("Mobilization of the County's Primary General Contractor) does not occur on or before July 1, 2005. If Ground Breaking does not occur on or before July 1, 2005, all Covanta fees, man hour rates, travel/non-payroll expenses and Approved Outside Consultant fees will be subject to escalation as of July 1, 2005 and annually thereafter as of the 1st of July. Adjustments will be made using CWUR0300SAO South Urban Cities - Base Month January 2004 = 175.0