

WALK ON #1

DSW

Lee County Board Of County Commissioners

Blue Sheet No. 20050700

Agenda Item Summary

1. ACTION REQUESTED/PURPOSE: Approve a Third Amendment to the Interim Development Agreement between Covanta, Inc. and Lee County for the construction of the Waste-to-Energy Facility Expansion Project.

2. WHAT ACTION ACCOMPLISHES: Revises the date for completing the Definitive Agreement between the Parties from May 17, 2005 to 8/9, 2005.

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

4. Departmental Category: 10

5. Meeting Date:

05-17-2005

6. Agenda:

7. Requirement/Purpose: (specify)

8. Request Initiated:

Consent

Administrative

Appeals

Public

Statute

Ordinance

Admin. Code

Other

Agmt.

Commissioner

Department

Solid Waste

Division

By:

Lindsey Sampson, P.E.

Director

X Walk-On

9. Background:

Lee County and Covanta have entered into two prior Agreements establishing conditions and responsibilities of the Parties for the Waste-to-Energy Expansion Project. These Agreements include an Interim Development Agreement and a Memorandum of Understanding. Both of these Agreements anticipated a "Definitive Agreement" to be completed in final draft form and ready for the Board's consideration by May 17, 2005. Inasmuch as this date is not achievable by the Parties for a variety of reasons, the Third Amendment to the Interim Development Agreement provides that the Parties agree to extend the completion date for the Definitive Agreement to 8/9, 2005, a date that both the County and Covanta believe can be reasonably reached without further extensions.

10. Review for Scheduling:

| Department Director | Purchasing or Contracts | Human Resources | Other | County Attorney | Budget Services | | | | County Manager/P.W. Director |
|---------------------|-------------------------|-----------------|-------|-----------------|-----------------|---------|---------|---------|------------------------------|
| | | | | | Analyst | Risk | Grants | Mgr. | |
| J. J. [Signature] | 5/16/05 | 5/16/05 | | [Signature] | 5/16/05 | 5/16/05 | 5/16/05 | 5/16/05 | J. J. [Signature] |

11. Commission Action:

- Approved J/JANES
- Deferred (5-0)
- Denied
- Other

| | |
|---------------|-------------|
| RECEIVED BY | PM |
| COUNTY ADMIN: | 5-16-05 (P) |
| 4221 | |
| COUNTY ADMIN | |
| FORWARDED TO: | 5/16/05 |
| 4210 P/M | |

Scott W. Whitney
Senior Vice President
Business Development & Construction



Covanta Energy Corporation
40 Lane Road
Fairfield, NJ 07004
Tel: 973 882 7178
Fax: 973 244 5540
Email: swhitney@covantaenergy.com

May 20, 2005

David Owen, Esq.
County Attorney
Lee County, Florida
2115 2nd Street, 6th Floor
Ft. Myers, FL 33902

RE: Lee County Waste to Energy Facility Expansion

Dear David:

Enclosed are two executed originals of the Third Amendment to the Interim Development Agreement. We look forward to working with you, Lindsey Sampson and the County's team to finalize and execute the construction agreement for the expansion and the O&M agreement extension.

Best regards,

A handwritten signature in black ink, appearing to read "Scott Whitney".

Scott Whitney

cc: Sheila Bilder
Scott Whitney

THIRD AMENDMENT TO INTERIM DEVELOPMENT AGREEMENT

THIS AMENDMENT TO INTERIM DEVELOPMENT AGREEMENT (this "Amendment"), made and entered into as of May 17, 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, and as further amended by a Second Amendment To Interim Development Agreement dated as of March 22, 2005; and

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

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

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

(A) In Paragraph 5(B), first sentence, strike the date "May 17, 2005" and insert in lieu thereof "August 9, 2005".

(B) In Exhibit D; Paragraph 3;

in the first paragraph, third sentence,

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

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:

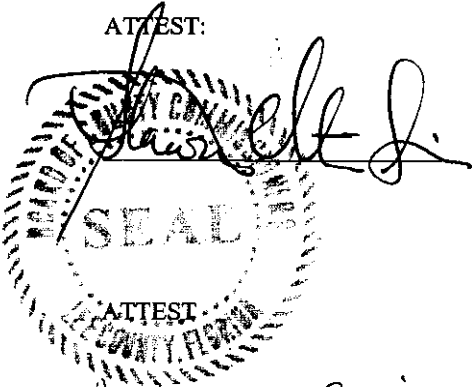
| | | | |
|---------------|---------|-----------------|--------------|
| "June 1, 2005 | through | August 31, 2005 | €2,400,000.- |
|---------------|---------|-----------------|--------------|

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


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

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

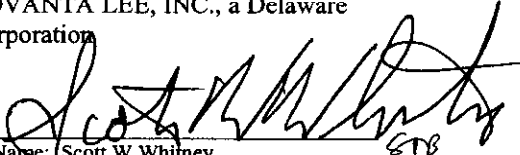
ATTEST:



LEE COUNTY, FLORIDA

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

COVANTA LEE, INC., a Delaware Corporation

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

APPROVED AS TO LEGAL FORM AND CONTENT


OFFICE OF THE LEE COUNTY ATTORNEY