

**Lee County Board Of County Commissioners
Agenda Item Summary**

Blue Sheet No. 20051127

1. ACTION REQUESTED/PURPOSE: Approve a Fourth 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 August 9, 2005 to September 27, 2005.

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

4. Departmental Category: 8

5. Meeting Date: August 9, 2005

6. Agenda:

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

7. Requirement/Purpose: (specify)

- Statute
- Ordinance
- Admin. Code
- Other Agrmt.

8. Request Initiated:

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

Lindsey J. Sampson

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 be completed in final draft form and ready for the Board's consideration by August 9, 2005. Inasmuch as this date is not achievable by the Parties for a variety of reasons, the Fourth Amendment to the Interim Development Agreement provides that the Parties agree to extend the completion date for the Definitive Agreement to September 27, 2005, a date that both the County and Covanta believe can be reasonable 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 |
|------------------------------------|---------------------------|-----------------|-------|------------------------------|--|------------------------------|
| <i>J. J. [Signature]</i> 8-8-05 | <i>[Signature]</i> 8/8 | NIA | | <i>[Signature]</i> 8/8/05 | <i>Ann 8/8</i> Risk <i>[Signature]</i> 8/8/05 | <i>[Signature]</i> 8-8-05 |

11. Commission Action:

- Approved
- Deferred
- Denied
- Other

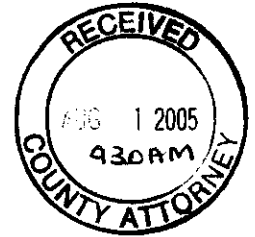
REC'D 8/8/05
 by CO. ATTY.
 3:55 PM
 CO. ATTY 8/8/05
 FORWARDED TO:
 BUDGET

RECEIVED BY
 COUNTY ADMIN:
 8-8-05
 3:55 pm
 COUNTY ADMIN
 FORWARDED TO:
 8/8/05
 J. J.

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



July 29, 2005

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

Dear David:

I'm forwarding you three (3) executed copies of the 4th Amendment to the Interim Development Agreement. I will call you Monday morning to discuss the date of insertion to paragraph 1(A).

Thanks for all of your assistance in this matter of mutual interest.

Sincerely,

A handwritten signature in black ink that appears to read "Scott W. Whitney".

Scott W. Whitney

cc: Sheila Bilder

FOURTH AMENDMENT TO INTERIM DEVELOPMENT AGREEMENT

THIS AMENDMENT TO INTERIM DEVELOPMENT AGREEMENT (this "Amendment"), made and entered into as of August ~~9~~, 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 a Third Amendment To Interim Development Agreement dated as of May 17, 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 "August 9, 2005" and insert in lieu thereof "September ~~27~~, 2005".

(B) In Exhibit D; Paragraph 3;

in the first paragraph, third sentence,

strike the date "August 31, 2005" and insert in lieu thereof "September 30, 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:

| | | | |
|--------------------|---------|--------------------|--------------|
| "September 1, 2005 | through | September 30, 2005 | €2,500,000.- |
|--------------------|---------|--------------------|--------------|

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

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

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

ATTEST:

LEE COUNTY, FLORIDA

By _____

Name: Douglas St. Cerny

Title: Chairman, Board of County Commissioners
Lee County

ATTEST

COVANTA LEE, INC., a Delaware
Corporation

Jane Gross

By _____

Name: Scott W Whitney

Title: Senior Vice President

APPROVED AS TO LEGAL FORM
AND CONTENT

OFFICE OF THE LEE COUNTY
ATTORNEY