

WALK ON #1

ASW

Lee County Board Of County Commissioners
Agenda Item Summary

Blue Sheet No. 20051386

1. ACTION REQUESTED/PURPOSE: Approve a Fifth 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 September 27, 2005 to November 1, 2005.

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

4. Departmental Category:

5. Meeting Date: September 27, 2006

6. Agenda:

7. Requirement/Purpose: (specify)

8. Request Initiated:

<input type="checkbox"/> Consent	<input type="checkbox"/> Statute	<input type="checkbox"/> Commissioner
<input type="checkbox"/> Administrative	<input type="checkbox"/> Ordinance	<input type="checkbox"/> Department
<input type="checkbox"/> Appeals	<input type="checkbox"/> Admin. Code	<input type="checkbox"/> Division
<input type="checkbox"/> Public	<input checked="" type="checkbox"/> Other	<input type="checkbox"/> Public Works
<input checked="" type="checkbox"/> Walk-On	<input type="checkbox"/> Agmt.	<input type="checkbox"/> Solid Waste
		By: Lindsey J. Sampson, P.E., Director

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 September 27, 2005. Inasmuch as this date is not achievable by the Parties for a variety of reasons, the Fifth Amendment to the Interim Development Agreement provides that the Parties agree to extend the completion date for the Definitive Agreement to November 1, 2005, a date that both the County and Covanta believe can be reasonably reached.

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.
				<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>
				9/24/05	9/26/05	9/26/05	9/26/05	9-26-05


11. Commission Action:

- Approved
- Deferred
- Denied
- Other

RECEIVED BY
COUNTY ADMIN:
9-26-05
9:45
COUNTY ADMIN
FORWARDED TO:
9/26/05
2:45 PM

CO. ATTN
FORWARDED
TO CO. ADMIN.
9:55 AM

**MEMORANDUM
FROM THE
SOLID WASTE MANAGEMENT**

		Date:	September 26, 2005
To:	Libby Walker, Director	From:	
	Public Resources		Lindsey J. Sampson, P.E., Director
RE:	WALK-ON BLUESHEET NO. 20051386 - SEPTEMBER 27, 2005 FIFTH AMENDMENT TO INTERIM DEVELOPMENT WITH COVANTA BOARD OF COUNTY COMMISSIONERS' REGULAR MEETING OF SEPTEMBER 27, 2005		

Libby;

Covanta, Inc., and Lee County have not yet completed negotiations for the Definitive Agreement. This amendment preserves the County's required conditions for the Martin Stoker System until the final Definitive Agreement is provided to the Board for its consideration.

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

Thanks.

LJS/dm
Attachment

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

FIFTH AMENDMENT TO INTERIM DEVELOPMENT AGREEMENT

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

in the first sentence, strike the date "September 27, 2005" and insert in lieu thereof "November 22, 2005";

at the end of the first sentence insert "and a restated service agreement that amends and restates the Service Agreement".

(B) In Exhibit D; Paragraph 3;

in the first paragraph, third sentence, strike the date "September 30, 2005" and insert in lieu thereof "December 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:

"October 1, 2005	through	October 31, 2005	€2,750,000.-
November 1, 2005	through	November 30, 2005	€3,150,000.-
December 1, 2005	through	December 31, 2005	€3,200,000.-

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

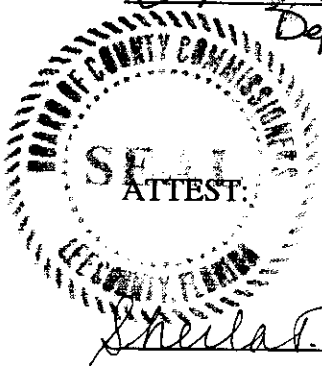
3. **Counterparts.** This Amendment may be executed in one or more counterparts, each of which will be deemed to be an original and all of which, when taken together, will be deemed to constitute one and the same Amendment.

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:

Charlie Green, Clerk

Alice A. Pierce
Deputy Clerk



Sheila T. Bilder

LEE COUNTY, FLORIDA

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

COVANTA LEE, INC., a Delaware Corporation

By [Signature]
Name: Scott W. Whitney
Title: Senior Vice President

APPROVED AS TO LEGAL FORM
AND CONTENT

[Signature]
OFFICE OF THE LEE COUNTY
ATTORNEY