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**COMMISSION DISTRICT:** All                      **FILE NO.:** SW23-0430                      **DATE:** 9/5/2023

**SUBJECT:** Approval of Waste to Energy (WTE) Design-Build Agreement, Contingent Payments Agreement, and Service Agreement for WTE Expansion and Continued Facility Operation – Covanta Pasco, Inc. – \$260,000,000.00 Design-Build Agreement and \$290,000,000.00 Service Agreement

**REFERENCES:** UTSW20-0373, UTSW22-0050

**AGENDA SECTION:** Regular Agenda

**THRU:** Branford Adumuah, Assistant County Administrator

**FROM:** Justin Roessler, Solid Waste Director

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**RECOMMENDED BOARD ACTION:**

Approve the Fourth Amended and Restated Service Agreement (Service Agreement), the Design-Build Agreement (DBA) for WTE Facility Expansion, and the Contingent Payments Agreement between Covanta Pasco, Inc. (Covanta) and Pasco County. The Not to Exceed (NTE) price for the DBA is \$260 Million (M), inclusive of \$9.85M for allowance work. The anticipated direct costs (not inclusive of pass-through costs for consumables such as chemicals) to be incurred over the 10 year term of the service agreement, are estimated to be \$290M. The Contingent Payments Agreement may provide tax credits to the County. Authorize the Chairman to execute three originals of each Agreement, and direct Board Records to distribute as set forth under the Distribution section below.

**BACKGROUND SUMMARY/ALTERNATIVE ANALYSIS:**

In 1988, the Board of County Commissioners (BCC) entered into an agreement with Covanta to design, build, and operate the Pasco County WTE facility. On March 28, 1989, the BCC approved an Amended and Restated Service Agreement with Covanta to operate and maintain the WTE facility for a 20-year period. This agreement has been extended twice since that time, most recently on December 5, 2013, and is currently set to expire on December 31, 2024.

On April 2, 2019, the Solid Waste and Resource Recovery Department (Department) presented the BCC its solid waste master plan, outlining the long-term waste management strategy for the County. The key component of this plan is expanding the capacity of the WTE Facility to allow for processing of all garbage within the County into renewable energy, thereby reducing the volume of waste landfilled. On February 18, 2020, the BCC authorized staff to begin negotiations with Covanta on a 10-year service agreement (2025 through 2034) and the DBA for the WTE expansion.

On December 7, 2021, the BCC awarded Covanta a Stage 1 Design and Pre-Procurement Services contract to develop the expansion up to a 30% design level of effort and to secure more firm commitments from large equipment suppliers. On August 16, 2022, the Inflation Reduction Act (IRA) was signed into law. The IRA provides certain financial incentives and tax credits for renewable energy projects, under which the DBA qualifies, provided certain labor and domestic materials requirements are met.

Consistent with directions from the BCC, the Department has reached an agreement with Covanta for the WTE DBA and Service Agreements and is presenting them for execution. In addition, a Contingent Payments Agreement has been developed which outlines the steps the parties will take in pursuing funding under the IRA and the cost and labor structure associated with that process. A high-level summary of the critical components of the agreements is provided in the bullets below:

***Design Build Agreement***

- A NTE of \$260M for the WTE expansion. The NTE price is inclusive of a \$30M project contingency fund used for cost escalation due to the dynamic construction and supply chain marketplace and additional possible cost increases. In the event the contingency fund is not depleted during the project the remaining funds will be split between the parties.
- A 36-month project timeline; the table below outlines the project schedule:

<b>Project Phase</b>	<b>Start</b>	<b>Finish</b>
Design and Off-Site Fabrication	Summer 2023	Fall 2024
Construction	Summer 2024	Summer 2026
First Fire and Commissioning	Summer 2026	Summer 2026
Commercial Operation	Summer 2026	September 2026

- Liquidated damages of up to \$29,500.00 dollars per day of delay in the event that Covanta fails to reach full commercial operation prior to the 36-month contract end date.
- A funds drawdown schedule outlining the County’s maximum monthly obligation with respect to payments for WTE expansion construction. This will allow the enterprise fund to effectively manage its cash reserves and appropriately plan its borrowing schedule.
- WTE expansion performance guarantees garbage throughput, electrical generation, and environmental permit compliance. In the event these guarantees are not met, there are significant financial penalties for Covanta up to and including repayment of all project funds.
- The DBA includes an allowance that can be authorized by the Assistant County Administrator for County authorized changes to the scope of work.

***Inflation Reduction Act (IRA)***

- The Contingent Payments Agreement requires Covanta’s initial funding of costs associated with qualification for the Investment Tax Credit (ITC) under the IRA.

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This will include an insurance product to provide reimbursement in the event that the funds associated with the ITC are not captured or not paid in the maximum amount.

- The parties will split the ITC following reimbursement to Covanta of the expenses associated with qualification.
- The County’s net award is anticipated to be on the order of approximately \$20M following completion of the project and federal approval of the associated tax return in 2027.

***Fourth Amended and Restated Service Agreement***

- A 10-year service agreement extension, starting on January 1, 2025, and continuing through December 31, 2034.
- An extension of the current cost per ton pricing structure for the existing WTE facility prior to expansion operation. Once the expansion commences operation, Covanta’s fee will be reduced by 6.6%. The cost structure is presented in the table below. It is in 2023 dollars, and will escalate annually consistent with the cost escalation indices contained in the agreement. The per ton costs do not consider revenues received by the County from the sale of power and recycled materials generated during the WTE process.
- Covanta will receive a \$9.75 MW/hr payment for the generation of electricity from the WTE facility starting in 2025. This is materially lower than the \$26 MW/hr the County is obligated to pay in FY 2024 under its current agreement.

Facility Size	Cost Per Ton	
Existing Plant	1 to 326,000 tons - \$53.82	326,001 tons and above - \$36.70
Expanded Plant	1 to 448,001 tons - \$50.50	448,002 tons and above - \$33.38

Costs associated with the project fall within the budgeted range of the Department's 7 dollars for 7 years non-ad valorem assessment rate adjustment plan. The 7 for 7 plan was developed in 2019 prior to Covid-19 and the nationwide economic and inflationary impacts associated with the recovery. It is expected that following the 7 for 7 plan the non-ad valorem rates will need to be adjusted periodically to remain consistent with inflation. The Department does expect to secure debt financing on the order of \$90M to \$100M in late 2025 to fund a portion of the construction costs.

**FISCAL IMPACT/COST/REVENUE STATEMENT:**

Funding in the amount of \$19,000,000.00 is budgeted and available for FY 2023, \$62,000,000.00 in FY 2024; \$106,000,000.00 in FY 2025; \$73,000,000.00 in FY 2026; in the Solid Waste Capital Fund, Solid Waste Capital, Project #20132 subject to approval from the BCC of future year budgets. There is a drawdown schedule attached to the contract that provides a maximum spend per fiscal year. At this time, Solid Waste is requesting permission to allow leftover funds to roll to subsequent periods and years

(in the Not-to-Exceed amount of \$260,000,000.00 to be encumbered as needed). Therefore, the amounts described above, including remaining amounts to be financed with debt, per Reimbursement Resolution No. 23-084 will serve as identification of funding sources for this project.

Funding in the amount of \$290,000,000.00 for the service agreement component described above, and which is subject to future commodity price indexing, will be identified and requested beginning with the FY 2025 budget process and will continue through the duration of the agreement in the Solid Waste System Fund, Solid Waste/Resource Recovery Department, and other various accounts within the Public Infrastructure Branch. These amounts will be subject to board approval of the various budgets.

**DISTRIBUTION:**

Board Records to distribute as set forth below:

1. Retain One Original
2. Electronically to:
  - a. Scott Holkeboer, Vice President, Covanta, Inc., at [sholkeboer@covanta.com](mailto:sholkeboer@covanta.com)
  - b. Justin Roessler, Solid Waste Director, at [jroessler@pascocountyfl.net](mailto:jroessler@pascocountyfl.net)
  - c. Joseph Richards, Pasco County Attorney's Office, at [jrichards@pascocountyfl.net](mailto:jrichards@pascocountyfl.net)
3. Mail One Original to:  
Scott Holkeboer, Vice President  
Covanta, Inc.  
3001 110th Avenue N  
St. Petersburg, FL 33716  
Telephone: (616)481-8246
4. Provide One Original to the Solid Waste Department

**ATTACHMENT(S):**

1. SW23-0430 Design-Build Agreement (Three Originals)
2. SW23-0430 Contingent Payment Agreement (Three Originals)
3. SW23-0430 Fourth Amended and Restated Service Agreement (Three Originals)