



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: September 18, 2019

Department: Public Works Agenda Planning Date: 9/12/2019 Time required: 10 mins

Audio/Visual aids: N/A

Contact: Thomas Kissinger Phone: 503-566-4139

Department Head Signature:

TITLE: Consider Approval of Amendment #4 to the Service Agreement with Covanta Marion, Inc.

Issue, Description & Background: Marion County Public Works intends to extend the existing agreement with Covanta Marion, Inc. by one (1) year through September 20, 2020. Amendment #4 extends the agreement through September 20, 2020; revises Section 6.09(h) to clarify the period for measuring Supplemental Waste processing in 2019; adds Section 6.09(i) to define the amount of allowable Supplemental Waste for the extended contract period and the fees associated with that waste; adds Section 4.13(f) defining the amount of medical waste originating outside of the County for the extended contract period and the fees associated with that waste; adds Section 7.06(c) to assign liability for adverse effects from Change in Law; deletes section (d) from the Unforeseen Circumstance definition; and amends Section 4.13(a)(iii), Section 4.13(a)(vii), Section 6.10A and Schedule 11 in order to further clarify the amount of acceptable medical waste originating outside of the County and the fees associated with that waste.

Financial Impacts: Increases not-to-exceed value of expenses related to contract by \$10,496,547. Changes to Supplemental and Medical Waste will increase revenues earned by County. Additionally, reduces County's financial exposure to Change in Law risk.

Impacts to Department & External Agencies: Approval of this amendment will allow the County to continue disposal of waste at the Energy-from-Waste Facility through September 20, 2020. Additionally, approval of this amendment will allow the County to receive additional revenue from Supplemental and Medical Waste programs.

Options for Consideration: 1) Approve Amendment #4 to Contract # PW-1022-14 2) Withhold approval of Amendment #4 to Contract # PW-1022-14

Recommendation: Public Works staff recommends approval of Amendment #4 to Contract # PW-1022-14

List of attachments: Amendment #4 to Contract # PW-1022-14; Sole Source Justification; Board Order #13-55

Presenter: Brian May, Environmental Services Division Manager

Copies of completed paperwork sent to the following: (Include names and e-mail addresses.)



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Copies to:

Thomas Kissinger, tkissinger@co.marion.or.us



Contract Review Sheet

Contract #: PW-1022-14

Person Sending: Thomas Kissinger Department: Public Works

Contact Phone #: 503-566-4139 Date Sent: Tuesday, August 27, 2019

Contract Amendment # 4 Lease IGA MOU Grant (attach approved grant award transmittal form)

Title: Contract for Services #101202

Contractor's Name: Covanta Marion, Inc.

Term - Date From: Upon Signature Expires: Sep 20, 2020

Contract Total: _____ Amendment Amount: _____ New Contract Total: _____

Source Selection Method: Sole Source (attach approval) # _____

Additional Considerations (check all that apply)

- Board Order# 13-55
- Incoming Funds
- Independent Contractor (LECS) approval date: _____
- Insurance Waiver (attach)
- CIP# _____ (required for all goods /software greater than \$5,000)
- Feasibility Determination (attach approved form)
- Federal Funds (attach sub-recipient / contractor analysis)
- Reinstatement (attach written justification)
- Retroactive (attach written justification)

Description of Services or Grant Award:

Amendment #4 to the contract with Covanta Marion, Inc. extends the agreement by one year; revises Section 6.09(h) to clarify the measuring Supplemental Waste processing; Adds Section 6.09(i) to define the amount of allowable Supplemental Waste for the extension and the fees associated with that waste; Adds Section 4.13(f) defining the amount of allowable Blue and Grey Bin Waste for the extension and the fees associated with that waste; Adds Section 7.06(c) to assign liability for adverse effects from Change in Law; Deletes section (d) from the Unforeseen Circumstance definition; Amends Section 4.13(a) (iii), Section 6.10A and Schedule 11

FOR FINANCE USE

Date Finance Received: _____ BOC Planning Date: _____ Date Legal Received: _____

Comments: _____

REQUIRED APPROVALS:

Finance - Contracts _____ Date _____ Risk Manager _____ Date _____

Legal Counsel _____ Date _____ Chief Administrative Officer _____ Date _____

Date _____ To be filed Added to master list

Returned to _____ Department for _____ signatures

AMENDMENT NO. 4 TO THE SERVICE AGREEMENT FOR THE SUPPLY AND PROCESSING OF
SOLID WASTE

This is Amendment No. 4, dated as of the __day of ____, _____, to the Service Agreement for the Supply and Processing of Solid Waste, dated September 11, 2013 (as amended, the "Service Agreement"), between Marion County, Oregon ("County") and Covanta Marion, Inc. ("Company").

WHEREAS, the parties desire to amend the Service Agreement to provide for the extension of the Agreement.

WHEREAS, the parties desire to memorialize certain agreements regarding Supplemental Waste.

WHEREAS, the parties desire to memorialize certain agreements regarding medical waste.

WHEREAS, the parties desire to memorialize certain agreements regarding the acceptance of liability related to Changes in Law affecting the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Company and the County, intending to be legally bound, agree that the Service Agreement shall be amended as follows:

1. **Section 11.01 Term** is hereby amended to read in full as follows:

Unless sooner terminated in accordance with the provisions hereof this Agreement shall continue in effect until September 20, 2020.

2. Section 6.09(h), added to **Section 6.09 – Supplemental Waste** by Amendment 3 to the Service Agreement, is hereby amended to read in full as follows:

- (h) Notwithstanding any other provision of this Service Agreement, the Company will not process more than 4,125 tons of Supplemental Waste at the Facility for the period beginning January 1, 2019 and ending September 20, 2019. The County shall be due a 75% share in any revenue earned from Supplemental Waste processed in excess of 4,125 tons during this period.

3. The following shall be added to **Section 6.09 – Supplemental Waste**:

- (i) Notwithstanding any other provision of this Service Agreement, the Company will not process more than 7,000 tons of Supplemental Waste at the Facility for the period beginning September 21, 2019 and ending September 20, 2020. The County shall be due a fee of \$100.00 per ton for all tons of Supplemental Waste received up to and including 7,000 tons during this period. The County shall be due a fee of \$150.00 per ton for all tons received in excess of 7,000 tons total during this period.

4. The following shall be added to **Section 4.13 – Grey Bin Waste and Blue Bin Waste**:

- (f) Notwithstanding any other provision of this Service Agreement, the Company will not process more than a combined total of 13,500 tons of medical waste from any source originating outside Marion County for the period beginning September 21, 2019 and

ending September 20, 2020. The County shall be due a fee of \$275.00 per ton for all tons of medical waste from any source originating outside Marion County received up to and including 13,500 tons during this period. The County shall be due a fee of \$550.00 per ton for all medical waste from any source originating outside Marion County received in excess of the combined total of 13,500 tons during this period.

5. Section 6.07(c)(i) in Article VI is deleted.

6. The following shall be added to **Section 7.06 – Other Provisions With Respect to Unforeseen Circumstances:**

(c) Notwithstanding any other provision of this Service Agreement, the Company accepts any and all liability for any material adverse effects originating from any Change in Law which occurs after this amendment is fully executed, including any and all liability that originates from a Change in Law that occurs before this Amendment is fully executed.

7. Section (d) of the definition of "Unforeseen Circumstance" in Article I is deleted.

8. Section 4.13(a) (iii), Section 4.13(a) (vii), Section 6.10A and Schedule 11 to the Service Agreement shall each be amended to read in full as follows: "[RESERVED]." The parties agree that: 1. Covanta shall not be required to obtain County approval for contracts for customers supplying medical waste from any source originating outside Marion County; and 2. Covanta will not accept or process more than 13,500 tons of medical waste from any source originating outside Marion County for the period beginning September 21, 2019 and ending September 20, 2020 without being charged a fee of \$550 per ton by the County.

All other terms of the Service Agreement shall remain in full force and effect.

IN WITNESS THEREOF, the parties hereto have signed this Amendment No. 4 the day and year first above written.

COVANTA MARION, INC.

By: _____

Title: _____

MARION COUNTY BOARD OF COMMISSIONERS

By: _____

Chair

By: _____

Commissioner

By: _____

Commissioner

APPROVED AS TO FORM

By: _____

Marion County Legal Counsel

By: _____

Marion County Contracts

RECOMMENDED BY

By: _____

Marion County Public Works

BEFORE THE BOARD OF COMMISSIONERS
FOR MARION COUNTY, OREGON

In the matter of granting an exemption to)
award a sole source contract pursuant to the)
Marion County Public Contracting Rules)

ORDER NO. 13-55

This matter came before the Marion County Board of Commissioners, acting as the Marion County Contract Review Board (Board), on at its regularly scheduled public meeting on Wednesday, May 22, 2013.

WHEREAS, the Board finds that Marion County Public Works Department seeks an exemption from Marion County Public Contracting Rules, pursuant to Section 20-275, which allows a contract to be awarded without competition as a sole source procurement as directed by the Board of Commissioners under ORS 279B.275; and

WHEREAS, Section 20-275 allows the Board to award a contract as a sole source contract exception to the prescribed public contracting practices in Oregon and its use must be justified in accordance with public contracting code and Marion County Public Contracting Rules; and

WHEREAS, the original contract with Ogden Martin Systems of Marion, Inc. (predecessor to Covanta Marion, Inc.) for the supply and acceptance of solid waste was entered into on September 19, 1984, as set forth in the attached Exhibit A Findings; and

WHEREAS, the County has a solid waste management plan ("Plan") pursuant to ORS 459.017; and the Plan recommends entering into a new Agreement with Covanta Marion, Inc.; and

WHEREAS, ORS 459.125 through 459.153 were enacted in 1981, specifically authorizing Marion County to direct persons who generate or pick up solid waste to make use of disposal, transfer, or material or energy recovery sites designed by the County; and

WHEREAS, the Findings, attached as Exhibit A, must document the written justifications for the award of a sole source contract pursuant to Marion County Public Contracting Rules Section 20-0275 and ORS 279B.075; and

WHEREAS, the Board has received justification and testimony during the properly noticed period before consideration of a sole source procurement request on May 22, 2013 and finds the award of a sole source contract for supply and acceptance of solid waste services is justified and consistent with the Marion County Public Contracting Rules; now, therefore,

IT IS HEREBY ORDERED that the Board adopts the findings attached hereto as Exhibit A and grants an exemption to award an initial three year contract with Covanta Marion, Inc. to provide solid waste services.

DATED this 22nd day of May 2013.

MARION COUNTY BOARD OF COMMISSIONERS



Chair



Commissioner

Not Present at meeting

Commissioner

Original: Clerk
cc: BOC
Public Works Department
Finance – Contracts

Attachments:
Exhibit A – Department Findings

EXHIBIT A

FINDINGS FOR SOLE SOURCE EXEMPTION FROM MARION COUNTY CONTRACT REVIEW BOARD RULES TO AWARD A CONTRACT TO COVANTA MARION INC

BACKGROUND/AUTHORITY/FINDINGS:

On September 19, 1984, Marion County (County) and Ogden Martin Systems of Marion, Inc. (predecessor to Covanta Marion, Inc. ("Company")) entered into a Second Amended and Restated Agreement for the Supply and Acceptance of Solid Waste (Agreement), which provided, among other things, for the Company to design, construct, operate and maintain a waste to energy facility (Facility) for the County, and for the County to supply non-recycled solid waste to the Facility.

The Agreement had an initial term of twenty years and included an option to extend the initial term for an additional ten years to September 2014, which the County exercised on September 21, 1994. The Agreement has been modified several times over the years due to changes in law and changes in circumstances.

Covanta Marion, Inc. owns the Facility. The Facility is the only one of its kind in the State of Oregon. It is located just off I-5 in the community of Brooks, which is just north of the cities of Salem and Keizer and south of Woodburn and Gervais. The Facility is centrally located near most of the largest population centers in the County.

The County has a solid waste management plan ("Plan") pursuant to ORS 459.017, et seq. The Plan recommends entering a new agreement with the Company for processing of post-recycled solid waste generated by the residents, businesses and institutions of the County. ORS 459.125 through 459.153 were enacted in 1981 in contemplation of the Agreement, in order to specifically authorize Marion County to direct any persons who generate or pick up solid waste to make use of the disposal, transfer, or material or energy recovery sites designated by the County. This authority is generally referred to as "flow control," and County is the only county in Oregon with such authority.

The Facility processes about 90% of the County's garbage. The other 10% consists of construction and demolition wastes, food processing waste, and other miscellaneous non-burnable materials. These materials are placed in the County's existing demolition landfill in Salem or hauled to an out-of-county landfill. Approximately 13 megawatts of electricity is also generated annually at this Facility. In addition to generating useful energy, it also provides an additional recycling service of separating out ferrous materials for cleaning and recycling. The Agreement includes cost sharing provisions for both revenues and expenditures generated from the Facility.

The County's direction is to continue to utilize the waste to energy facility to manage the County's solid waste management needs versus sending more waste materials to landfills.

Marion County Public Contracting Rules Section 20-0275 Sole Source Procurements allow the County to award a public contract without competition as a sole source procurement pursuant to the requirements of ORS 279B.075, when the County determines in writing that the services are available from only one source. Those findings may include:

EXHIBIT A

- 1) The efficient utilization of existing goods requires the acquisition of compatible goods or services;
- 2) Other findings that support the conclusion that the goods or services are available from only one source.

RECOMMENDATION:

Based on the information provided, it is recommended that the Marion County Board of Commissioners acting as the Marion County Contract Review Board, approve a board order granting an exemption to the public contracting rules to award a sole source contract with Covanta Marion Inc., for the supply and acceptance of Solid Waste for an initial term of three (3) years.

Public Notice of Intent to
Award a Sole Source Contract

Notice is hereby given that Marion County intends to enter into a contract with Covanta Marion, Inc. for an initial term of three years to operate and maintain the waste to energy facility located in Brooks, Oregon. This contract is being awarded as sole source procurement pursuant to Marion County Public Contracting Rules Section 20-0275 Sole Source Procurements.

Any person wishing to comment for or against the sole source determination for the award of the contract to Covanta Marion, Inc., may do so in writing. All written comments or protests against the County's intent to award a sole source contract may be directed to Peggy Mitchell, Marion County Finance, PO Box 14500, Salem OR 97309; by fax: 503-373-4379 or via email: pmitchell@co.marion.or.us and must be delivered prior to 5:00 PM on Tuesday, May 21, 2013. Additional information for this process may be obtained on Marion County's website: <http://www.co.marion.or.us> under Special Procurement Process Link.

/s/ Peggy Mitchell
Contracts & Procurement Manager

Publish: Statesman Journal Tuesday, May 14, 2013



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date:

Department:

Title of Agenda Item:

Agenda Planning Date: Audio/Visual aids required Time required:

Contact: Phone:

Department Head Signature: *[Handwritten Signature]*

Presenters:

Description of Issue:

Description of Background:

Financial Impacts:

Impacts: to departments and/or external entities



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Options for Consideration:

The Board, acting as the Marion County Contract Review Board, may:
1. Approve the board order granting an exemption to award a contract to Marion Covanta, Inc. as a sole source procurement, or
2. Deny the request and require a competitive solicitation be conducted; or
3. Take no action at this time.

Recommendation:

It is recommended that the Marion County Board of Commissioners, acting as the Marion County Contract Review Board approve the board order granting an exemption to the public contract rules to award a sole source contract with Covanta Marion, Inc.

List of attachments:

Board Order, Exhibit A Findings, and Legal Notice

Copies of completed paperwork to the following:

Name:

Peggy Mitchell, Finance

E-mail:

pmitchell@co.marion.or.us

Name:

E-mail:

Name:

E-mail:

Name:

E-mail:

Name:

E-mail:

