

COMMENTS ON PROPOSED HOST AGREEMENT – ADAPTIVE ARC 10/15/08

Format of these comments-

The text of the proposed Host Agreement is copied below. The comments are listed under the pertinent section of the host agreement and consist of either 1) text to be eliminated (in ~~strikeout~~), 2) new text to be added (underlined), or 3) comments or questions (in a separate paragraph) to be responded to. ~~Comments are in Arial font highlighted in yellow.~~

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HOSTING AGREEMENT

This Hosting Agreement (this "Agreement"), effective as of _____, 2008 (the "Effective Date") is entered into between adaptiveARC, Inc., a ~~California Delaware~~ corporation ("adaptiveARC"), with a place of business at 7683 Sitio Manana, Carlsbad, California 92009, and the County of Santa Cruz, a political subdivision of the State of California (the "County"), having a place of business at 701 Ocean Street, Santa Cruz, California 95060. The parties agree as follows:

1. Definitions. For purposes of this Agreement, the terms defined in this Section 1 shall have the respective meanings set below:

1.1 "Industrial Facility" shall mean adaptiveARC's I-2 industrial plasma arc gasification (or plasmaFILL™) facility, including all necessary reactors, generator sets, shredders, conveyers and other ancillary equipment.

1.2 "Industrial Facility Specifications" shall mean the written technical specifications and features of the Industrial Facility provided by adaptiveARC to the County.

~~The County needs to see these Specifications, in final form, before any further discussion /negotiation on this proposed Host Agreement can take place.~~

1.3 "Landfill" shall mean the Buena Vista Landfill, located in Santa Cruz County, California.

1.4 "Mixed Solid Waste" shall mean non-hazardous unsorted mixed solid municipal waste delivered to the Landfill in the ordinary course of operation.

1.5 "Permits" shall mean all permits, licenses, authorizations, consents and approvals from any federal, state or local governmental authority to construct or operate the Pilot Facility or the Industrial Facility, as applicable.

1.6 "Pilot Facility" shall mean adaptiveARC's CE 100 mobile plasma arc gasification (or plasmaFILL) reactor together with the related generator set, shredder, conveyer and other ancillary equipment.

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~~What is "other ancillary equipment"? Does it include the poles and wires and what not that connect the facility to the electrical grid? We assume adaptiveARC will pay for the labor to construct and connect?~~

1.7 "Pilot Facility Specifications" shall mean the written technical specifications and features of the Pilot Facility provided by adaptiveARC to the County.

~~The County needs to see these Specifications in final form before any further discussion /negotiation on this proposed Host Agreement can take place.~~

1.8 "Site" shall mean the specific site at the Landfill, more specifically described in the Pilot Facility Specifications.

2. Construction of the Pilot Facility.

2.1 The County hereby engages adaptiveARC to construct and install the Pilot Facility at the Site. adaptiveARC shall construct and install the Pilot Facility at the Site in accordance with the Pilot Facility Specifications: ~~and in compliance with all federal, state and local laws, ordinances and regulations.~~ Except as otherwise set forth in this Agreement, adaptiveARC shall be solely responsible for all expenses of constructing and installing the Pilot Facility.

2.2 ~~The County~~ adaptiveARC shall construct and install, at its sole expense, the concrete pad at the Site, and all utilities and related infrastructure to the Site, required for the Pilot Facility as more specifically described in the Pilot Facility Specifications.

~~The County has not agreed to, and is not in a position, financially, to pay for these costs. The County could only provide the pad as it pertains to grading out an area with our recycled asphalt brick and base stockpile.~~

~~The term "all utilities and related infrastructure" needs to be defined. Is this meant to include water (potable and non-potable), wastewater, electrical power lines, interface with PG&E? Is this meant to include all labor and materials? Does it include any buildings or structures? Does it include electricity during the operation of the Pilot Facility? "Related infrastructure" needs a specific, precise and all-inclusive definition.~~

~~The County will need drawings, engineering specifications, etc., for all such improvements in order to properly identify them for the land use permitting process.~~

2.3 The County shall cooperate with and assist adaptiveARC to obtain all Permits necessary to construct, ~~and install and operate~~ the Pilot Facility. All such permits shall be obtained before any construction begins.

~~All permits necessary should be identified (named) in this document, either in a list in this section or as an attachment.~~

2.4 adaptiveARC shall own all right, title and interest in the Pilot Facility. The County shall own all right, title and interest in the Site. The County shall

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lease to adaptiveARC the Site, at no cost to adaptiveARC, for the purpose of constructing, installing, testing and validating the Pilot Facility.

2.5 Construction and installation of the Pilot Facility shall be complete when the Pilot Facility is ready to commence testing and validation operations in batch mode.

~~Provide an implementation schedule including benchmark dates by which time adaptiveARC is required to begin construction, and to move from validation/test to operation.~~

3. Testing and Validation of the Pilot Facility.

3.1 Following completion of the construction and installation of the Pilot Facility, adaptiveARC shall test and validate the Pilot Facility by operating the Pilot Facility in batch mode during normal business hours (7:30AM to 3:30PM) of the Landfill. Except as otherwise set forth in this Agreement, adaptiveARC shall be solely responsible for all expenses of testing and validating the Pilot Facility ~~including the provision, supervision, and compensation (both direct and indirect, including coverage for Workers' Compensation) of all personnel employed, contracted, or subcontracted by adaptiveARC to construct, maintain, and staff the Pilot Facility. Such compensation shall comply with the County's Living Wage Ordinance. None of such personnel shall be considered employees of the County.~~

~~In batch mode" needs to be defined in tons per day or tons per hour.~~

3.2 The County shall provide, at its sole expense, all necessary Mixed Solid Waste to operate the Pilot Facility for the purpose of testing and validation.

~~How much Mixed Solid Waste is "necessary"?~~

~~Is there a required Btu value range for the MSW? There should be a "not-to-exceed" TPD number.~~

3.3 The County shall provide to adaptiveARC only residuals from its existing recycling program.

~~This needs further definition: which specific program?, what type of residuals? In what quantities?~~

~~Is there a required Btu value range for these residuals?~~

3.4 ~~adaptiveARC shall be responsible for testing the ash and reporting results to County on a regular basis. Ash determined to be hazardous, or not acceptable at the Buena Vista Landfill per the County's Solid Waste Facility Permit, must be disposed at an appropriate site by adaptiveArc.~~ adaptiveARC shall be responsible, at its sole expense, for depositing the ash and other byproducts of the operation of the Pilot Facility at the appropriate location at the Landfill; provided, however, that the County shall not charge adaptiveARC any fee to deposit such materials.

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The term "other by-products" needs to be defined precisely. This shall only include materials that are accepted at the County Class II landfill, i.e., no hazardous wastes.

Will adaptiveARC be operating vehicles on the EcoPark site to move ash and byproducts or recycleables? If so, those vehicles must be insured to County specs, and the drivers must be appropriately licensed. County must be named as an additional insured; adaptiveARC shall provide copies of its insurance certificates.

3.5 The County shall cooperate with and assist adaptiveARC to obtain all Permits necessary to test and validate the Pilot Facility and, following completion of the testing and validation, to continuously operate the Pilot Facility at full scale during normal business hours of the Landfill. ~~County shall not be obligated to provide personnel to test, validate, operate or maintain the Pilot Facility.~~

~~"at full scale" needs definition in terms of tons per hour or tons per day. "Normal business hours" is 7:30AM to 3:30PM.~~

3.6 Testing and validation of the Pilot Facility shall be complete when the Pilot Facility has received all Permits necessary to continuously operate the Pilot Facility at full scale during normal business hours of the Landfill, ~~as well as any other governmental permits or permissions which may be thereafter required.~~

~~"all permits necessary" should be identified and listed individually.~~

4. Construction, Validation and Operation of the Industrial Facility.

Following completion of the testing and validation of the Pilot Facility, upon the mutual agreement of the parties, adaptiveARC construct and validate the Industrial Facility at the Site as follows:

4.1 adaptiveARC shall install the additional equipment necessary and construct the Industrial Facility at the Site substantially in accordance with the Industrial Facility Specifications. Except as otherwise set forth in this Agreement, adaptiveARC shall be solely responsible for all expenses of constructing the Industrial Facility.

4.2 ~~The County~~ adaptiveARC shall construct, at its sole expense, all utilities and related infrastructure to the Site, required for the Industrial Facility as more specifically described in the Industrial Facility Specifications.

County must have Industrial Facility Specifications prior to completing its review of this proposed Host Agreement.

4.3 The County shall provide to adaptiveARC only residuals from its existing recycling program.

Same comments on Section 3.3 apply here.

4.4 The County shall provide, at its sole expense, all necessary Mixed Solid Waste to operate the Industrial Facility for the purpose of testing and validation.

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Same comments on Section 3.2 apply here.

4.5 adaptiveARC shall be responsible, at its sole expense, for sorting recyclables from the Mixed Solid Waste and depositing such recyclables at the appropriate location at the Landfill; provided, however, that the County shall not charge adaptiveARC any fee to deposit such recyclables. Recyclables shall be sorted to standards set by County.

4.6 The County shall cooperate with and assist adaptiveARC to obtain all Permits necessary to construct, validate and operate the Industrial Facility.

Same comments on Section 3.6 apply here.

4.7 Construction and validation of the Industrial Facility shall be complete when the Industrial Facility has received all Permits necessary to continuously operate the Industrial Facility at full scale 24-hour, 7 days per week of the Landfill.

The phrase "of the Landfill," seems out of place, please clarify.

4.8 The County shall own all right, title and interest in the Site. The County shall lease to adaptiveARC the Site, at no cost to adaptiveARC, for the purpose of constructing, validating and operating validating the Industrial Facility.

4.9 Initially, adaptiveARC shall own all right, title and interest in the Industrial Facility. Following completion of the construction and validation of the Industrial Facility, (a) adaptiveARC shall transfer to the County all right, title and interest in the Industrial Facility, (b) adaptiveARC shall grant to the County a limited license under adaptiveARC's intellectual property rights to operate the Industrial Facility at the Site, and (c) the County shall engage adaptiveARC (or its designated operator) to operate the Industrial Facility at the Site, all on terms and conditions customary for transactions of such types and mutually acceptable to the parties.

Item (c) will require a separate contract between adaptiveARC and the County.

4.10 Following completion of the construction and validation of the Industrial Facility, (a) if the County desires to move the Industrial Facility to another location, the County shall engage adaptiveARC (or its designated contractor) to move the Industrial Facility, or (b) if the County desires to expand the capacity of the Industrial Facility, the County shall engage adaptiveARC (or its designated contractor) to expand the Industrial Facility, all on terms and conditions customary for transactions of such types and mutually acceptable to the parties.

5. Termination.

5.1 Prior to completion of the testing and validation of the Pilot Facility, the County shall have the right to terminate this Agreement in its sole discretion at any time, upon thirty (30) days prior written notice to adaptiveARC.

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Promptly following any such termination, adaptiveARC shall remove from the Site, at its sole expense, all equipment constructed or installed by adaptiveARC at the Site, within days of such termination. County shall also have right to terminate after Pilot Facility testing/validation per conditions above.

5.2 Prior to completion of the testing and validation of the Pilot Facility, adaptiveARC shall have the right to terminate this Agreement, upon thirty (30) days prior written notice to the County if adaptiveARC reasonably determines that it is unable or not commercially practicable to obtain. Promptly following any such termination, adaptiveARC shall remove from the Site, at its sole expense, all equipment constructed or installed by adaptiveARC at the Site, within days of such termination.

unable or not commercially practicable to obtain - there seems to be a word(s) missing at the end of this sentence, please clarify.

5.3 If the parties fail to reach mutual agreement regarding the construction and validation of the Industrial Facility as set forth above within six (6) months following completion of the testing and validation of the Pilot Facility (or such later date as the parties otherwise agree in writing), this Agreement automatically shall terminate. Promptly following any such termination, adaptiveARC shall remove from the Site, at its sole expense, all equipment constructed or installed by adaptiveARC at the Site, within days of such termination.

6. Miscellaneous.

6.1 Indemnification and Insurance Requirements.

The following is the County's standard contract language for indemnification and insurance:

INDEMNIFICATION FOR DAMAGES, TAXES AND CONTRIBUTIONS: CONTRACTOR shall exonerate, indemnify, defend, and hold harmless COUNTY (which for the purpose of paragraphs 5 and 6 shall include, without limitation, its officers, agents, employees and volunteers) from and against:

A. Any and all claims, demands, losses, damages, defense costs, or liability of any kind or nature which COUNTY may sustain or incur or which may be imposed upon it for injury to or death of persons, or damage to property as a result of, arising out of, or in any manner connected with the CONTRACTOR'S performance under the terms of this Agreement, excepting any liability arising out of the sole negligence of the COUNTY. Such indemnification includes any damage to the person(s), or property(ies) of CONTRACTOR and third persons.

B. Any and all Federal, State and Local taxes, charges, fees, or contributions required to be paid with respect to CONTRACTOR and CONTRACTOR'S officers, employees and agents engaged in the performance of this Agreement (including, without limitation, unemployment insurance, social security and payroll tax withholding).

INSURANCE. CONTRACTOR, at its sole cost and expense, for the full term of this Agreement (and any extensions thereof), shall obtain and maintain at a minimum compliance with all of the following insurance coverage(s) and requirements. Such insurance coverage shall be primary coverage as respects COUNTY and any insurance or self-insurance maintained by County shall

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be excess of CONTRACTOR'S insurance coverage and shall not contribute to it.

IF CONTRACTOR utilizes one or more subcontractors in the performance of this Agreement, CONTRACTOR shall obtain and maintain independent Contractor's insurance as to each subcontractor or otherwise provide evidence of insurance coverage for each subcontractor equivalent to that required of CONTRACTOR in this Agreement, unless CONTRACTOR and COUNTY both initial here.

A. Types of Insurance and Minimum Limits

(1) Worker's Compensation in the minimum statutorily required coverage amounts. This insurance coverage shall not be required if the CONTRACTOR has no employees and certifies to this fact by initialing here.

(2) Automobile Liability Insurance for each of CONTRACTOR'S vehicles used in the performance of this Agreement, including owned, non-owned (e.g. owned by CONTRACTOR'S employees), leased or hired vehicles, in the minimum amount of \$500,000 combined single limit per occurrence for bodily injury and property damage. This insurance coverage shall not be required if vehicle use by CONTRACTOR is not a material part of performance of this Agreement and CONTRACTOR and COUNTY both certify to this fact by initialing here.

(3) Comprehensive or Commercial General Liability Insurance coverage in the minimum amount of \$1,000,000 combined single limit, including coverage for: (a) bodily injury, (b) personal injury, (c) broad form property damage, (d) contractual liability, and (e) cross-liability.

(4) Professional Liability Insurance in the minimum amount of \$1,000,000.00 combined single limit, if, and only if, this Subparagraph is initialed by CONTRACTOR and COUNTY.

B. Other Insurance Provisions

(1) If any insurance coverage required in this Agreement is provided on a "Claims Made" rather than "Occurrence" form, CONTRACTOR agrees to maintain the required coverage for a period of three (3) years after the expiration of this Agreement (hereinafter "post agreement coverage") and any extensions thereof. CONTRACTOR may maintain the required post agreement coverage by renewal or purchase of prior acts or tail coverage. This provision is contingent upon post agreement coverage being both available and reasonably affordable in relation to the coverage provided during the term of this Agreement. For purposes of interpreting this requirement, a cost not exceeding 100% of the last annual policy premium during the term of this Agreement in order to purchase prior acts or tail coverage for post agreement coverage shall be deemed to be reasonable.

(2) All required Automobile and Comprehensive or Commercial General Liability Insurance shall be endorsed to contain the following clause:

"The County of Santa Cruz, its officials, employees, agents and volunteers are added as an additional insured as respects the operations and activities of, or on behalf of, the named insured performed under Agreement with the County of Santa Cruz."

(3) All required insurance policies shall be endorsed to contain the following clause:

"This insurance shall not be canceled until after thirty

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(30) days prior written notice has been given to:
(NAME)
COUNTY OF SANTA CRUZ
DEPARTMENT OF PUBLIC WORKS
701 OCEAN STREET ROOM 410
SANTA CRUZ, CA 95060

(4) CONTRACTOR agrees to provide its insurance broker(s) with a full copy of these insurance provisions and provide COUNTY on or before the effective date of this Agreement with Certificates of Insurance for all required coverages. All Certificates of Insurance shall be delivered or sent to:

(NAME)
COUNTY OF SANTA CRUZ
DEPARTMENT OF PUBLIC WORKS
701 OCEAN STREET ROOM 410
SANTA CRUZ, CA 95060

6.2 Further Assurances. The parties shall take such further actions, and shall execute and deliver such further documents, instruments and agreements, as necessary or as reasonably requested by either party to effectuate the foregoing, all on terms and conditions customary for transactions of such types and mutually acceptable to the parties.

6.3 Notices. Any consent, notice or report required or permitted to be given or made under this Agreement by one of the parties hereto to the other party shall be in writing, delivered by any lawful means to such other party at its address first set forth above, or to such other address as the addressee shall have last furnished in writing to the addressor and (except as otherwise provided in this Agreement) shall be effective upon receipt by the addressee.

6.4 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to the conflicts of law principles thereof. Any mediation, arbitration or litigation shall be venued only in the County of Santa Cruz, State of California.

6.5 Entire Agreement. This Agreement embodies the entire agreement between the parties and supersedes any prior representations, understandings and agreements between the parties regarding the subject matter hereof. There are no representations, understandings or agreements, oral or written, between the parties regarding the subject matter hereof that are not fully expressed herein.

6.6 Severability. Any of the provisions of this Agreement which are determined to be invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability in such jurisdiction, without rendering invalid or unenforceable the remaining provisions hereof and without affecting the validity or enforceability of any of the terms of this Agreement in any other jurisdiction.

6.7 Subcontractors. adaptiveARC shall have the right to engage one or more third parties to perform its obligations (or any part thereof) under this Agreement. Any such subcontractor shall be approved by the County, whose approval shall not be unreasonably withheld. Any such subcontractor must independently comply with the insurance requirements set forth in this Agreement.

6.8 Force Majeure. Neither party shall be held liable or responsible to the other party nor be deemed to have defaulted under or breached this Agreement for failure or delay in fulfilling or performing any term of this Agreement to the extent, and for so long as, such failure or delay is caused by or results from causes beyond the reasonable control of the affected party including but not limited to fire, floods, embargoes, war, acts of war (whether war be declared or not), acts of terrorism, insurrections, riots, civil commotions, strikes, lockouts or other labor disturbances, acts of God or acts, omissions or delays in acting by any governmental authority or the other party.

6.9 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have duly executed and delivered this Agreement effective as of the Effective Date.

adaptiveARC, Inc., a Delaware corporation

County of Santa Cruz

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

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