

FINAL DRAFT
June 7, 1988

TOOELE COUNTY CORPORATION
CONTRACT # 88-40

AGREEMENT

APTUS AND TOOELE COUNTY

This Agreement is made and entered into by and between APTUS, a general partnership between National Electric, Inc. (NEI) and Westinghouse Specialty Services, hereinafter "Aptus", and TOOELE COUNTY, a body politic and corporate of the State of Utah, hereafter "County";

WITNESSETH

WHEREAS, on May 10, 1988, the County approved the request of Aptus to re-zone Section 16, Township 1 South, Range 10 West, Salt Lake Base and Meridian, located in Tooele County, Utah to a zoning designation of MG-H (Hazardous Industrial District); and

WHEREAS, Aptus has applied to the County for a conditional use permit for the purpose of facilitating the constructing and operating of an industrial and hazardous waste transfer, storage and incineration facility, hereafter "facility", on said property, hereafter "site", and

WHEREAS, Tooele County is concerned about the social and economic impacts that said facility will have upon Tooele County and its residents, and also the impacts upon the County's road department, fire protection departments, public health facilities, law enforcement, economic development needs, and other County departments and agencies; and

WHEREAS, the parties have considered the following factors in an effort to determine the costs of the foregoing impacts and the fair allocation of such costs to Aptus:

(a) The costs of the County's existing capital facilities;

(b) The manner in which the County has financed its existing capital facilities;

(c) The fact that the proposed facility has not yet contributed in any way (through special assessments or general taxes) to the cost of existing County capital facilities and that additional services required of the County hereunder will be attributable solely to the new Aptus facility;

(d) The relative extent to which the Aptus facility and other properties in the County may be expected to use and contribute to the cost of existing County capital facilities in the future;

(e) The extraordinary costs of servicing the proposed Aptus facility;

(f) The time-price differential inherent in the comparisons of amounts paid at different times; and

WHEREAS, Aptus desires to enter into an agreement with the County for coordination of emergency police, fire, and medical services pursuant to federal regulations governing facilities such as that proposed by Aptus; and

WHEREAS, the parties desire to enter into an agreement that will be mutually beneficial, provide for increased governmental facilities and services, and provide for a reasonable allocation to Aptus of the costs to be incurred by the County in providing such additional facilities and services;

NOW, THEREFORE, in consideration of the following mutual promises, terms and conditions, the parties agree as follows:

SECTION I - MITIGATION OF IMPACTS. Aptus agrees to pay to Tooele County for mitigation of social, economic, and health and safety impacts the sum of \$180,000 per annum, commencing from the later of the dates that it has received all of the local, state and federal permits and licenses that are necessary to commence construction of its proposed facility within Tooele County or the date upon which Tooele County first incurs costs relative to this project. Said fees are based on a good faith effort on the part of the parties to determine the costs of the impacts of the Aptus facility in Tooele County. Said fees shall continue to be

paid to the County annually thereafter through the date that said facility is no longer used as an industrial or hazardous waste transfer, storage or incinerator operation. Said annual fee shall be paid on a quarterly basis in advance on or before the 1st day of January, April, July and October of each year that said fees are payable. Said impact fees shall be apportioned on a monthly basis during the first and last years that said fee is to be paid. Said impact fee shall remain the amount specified herein until December 31, 1990. Commencing January 1, 1991, and annually thereafter, said impact fee shall be increased or decreased as compared to the previous yearly amount by the same percentage as the annual increase or decrease in the Consumer Price Index for All Urban Consumers U.S. City Average All Items 1967 = 100 (CPIU) as published by the U.S. agency which reports said information for the previous calendar year. Said fees shall be deposited into a segregated account for provision of services under This Agreement.

SECTION II - OTHER FEES AND CHARGES. The impact fees specified here in are in addition to any other amounts Tooele County may receive as a result of ad valorem property or sales taxes imposed upon Aptus, existing County building permit and conditional use permit fees, and hazardous waste disposal fees charged pursuant to existing State statutes or any other fees, taxes, charges, or revenues imposed under

the laws of the State of Utah, which are allocated to the County and dedicated to specific hazardous waste related activities, such as monitoring and response programs. If, however, any new fees are hereafter imposed under State statutes upon Aptus' hazardous waste activities within Tooele County, which fees may be allocated to the County for uses unrelated to hazardous wastes or for duplication of services pursuant to this Agreement, then the impact fee provided in Section I herein shall be reduced by the dollar amount of the fees received by Tooele County during any calendar year in which such fees are received by Tooele County and which fees were derived directly from Aptus.

SECTION III - CONTINGENCY PLAN. The County agrees that it will respond to emergencies as described in Aptus' Contingency Plan, provided that said plan is reviewed and approved by Tooele County. The response shall include appropriate medical, fire, and law enforcement services. The County agrees that it will hereafter confirm the provision of said services in writing as necessary to assist Aptus in obtaining its state and federal permits.

SECTION IV - OTHER COUNTY SERVICES. The County agrees to provide appropriate County services as necessary for the safe and efficient construction and operation of the Aptus facility, including, but not limited to:

1. Tooele County Road maintenance;
2. Routine law enforcement;

3. Fire response;
4. Public health;
5. Public safety;
6. Hospital isolation unit; and
7. Telecommunications.

SECTION V - PERMITS AND LICENSES. The parties hereto agree and understand that this Agreement shall not alter the Tooele County Planning Commission's authority to impose other reasonable terms and conditions upon Aptus' construction and operation of its proposed facility and that Aptus shall comply with all other federal and state regulations applicable to its facility.

SECTION VI - TERM. This Agreement shall take effect upon its execution by the parties and shall continue in full force and effect until such time as Aptus ceases to develop or operate the Tooele County facility as an industrial or hazardous waste transfer, storage, or incineration facility.

SECTION VII - ASSIGNMENT. All terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective transferees, successors, and assigns.

SECTION VIII - ATTORNEY'S FEES. If any party commences litigation for the breach of, for a declaration of the rights or duties of the parties, or for any other reason relating to this agreement, the successful party shall be entitled to a reasonable attorney's fees and costs.

SECTION IX - AUTHORITY. Each of the parties hereto, by executing this Agreement, represents and warrants that the person executing this agreement is duly authorized to do so, and to deliver this Agreement on behalf of said party in accordance with any applicable legal requirements. This Agreement is binding upon said party in accordance with its terms.

SECTION X - COMPLIANCE WITH LAW. The parties represent to each other that they have complied with all applicable zoning ordinances and regulations relating to the development of the Aptus facility.

SECTION XI - SEVERABILITY. If one or more provisions of this Agreement are hereinafter determined to be invalid and unenforceable, this shall not operate to defeat or invalidate the remainder of this Agreement, unless the enforceability or invalidity has the effect of substantially changing the terms and conditions of this Agreement, or operates in such a manner as to invalidate or to defeat the primary purposes or objective of this Agreement. If any provision hereof is determined to be unreasonable in scope or extent, any court of competent jurisdiction may revise such unreasonable provisions to the extent necessary to comply with such standards of reasonableness as the court may determine to be applicable, and this Agreement thereafter shall be enforced as so revised.

SECTION XII - MODIFICATION AND CHANGES. This Agreement cannot be changed or modified except by instrument in writing signed by all parties, with the exception of the adjustment in annual impact fees as provided herein.

SECTION XIII - CONFLICTS OF LAW. This Agreement shall be deemed to have been made and shall be construed and interpreted in accordance with the laws of the State of Utah and if any legal action shall be commenced to interpret or enforce this Agreement, it shall be commenced in the District Courts of the State of Utah.

SECTION XIII - NOTICES. Any notice or communication by either party to the other shall be in writing and shall be given, and be deemed to have been duly given, if either delivered personally, or mailed postage prepaid by certified mail, return receipt requested, and addressed as follows: If to Tooele County, Tooele County Commission, Tooele County Courthouse, 47 South Main Street, Tooele, Utah, 84074; if to Aptus: 7050 Union Park Center, Suite 680, Midvale, Utah 84047. Any notice, demand, or other communication shall be deemed to have been received on the date delivered, or five (5) days following the date deposited in the U.S. mail, properly addressed, postage prepaid. Either party may change the address stated herein by written notice to the other party.

IN WITNESS WHEREOF, the parties by their duly authorized representatives, have executed this agreement as of the 8th day of June, 1988.

TOOELE COUNTY:

ATTEST:

Louis B. McArthur
~~DENNIS D. EWING Clerk~~
Louis B. McArthur Deputy

By Kelly H. Gubler, M.D.
KELLY H. GUBLER, M.D., Chairman

APTUS:

ATTEST:

Title: _____

By Ray G. Stewart 6-8-88
Title: V.P. Engr

APPROVED AS TO FORM
Donald L. Blum
Tooele County Attorney

STATE OF UTAH)

:ss

County of Tooele)

On the _____ day of _____, 1988, personally
 appeared before me _____, and
 _____, who being by me duly
 sworn, did say, each for himself, that he, the said
 _____, is the _____,
 and he, the said _____, is the
 _____ of Aptus, and that the within and foregoing
 instrument was signed in behalf of Aptus by authority of a
 resolution of its governing board, and said
 _____, and _____, each duly
 acknowledged to me that Aptus executed the same and that the
 seal affixed is the seal of said Corporation.

NOTARY PUBLIC

Residing at: _____

My Commission Expires: _____