

# **HOST AGREEMENT**

Between the

**TOWN OF NORMAL, ILLINOIS**

and

**PARADIGM BIOAVIATION, LLC**

For a Solid Waste Pollution Control Facility

\_\_\_ October 2014

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## Host Agreement

Between the Town of Normal, Illinois and  
Paradigm BioAviation, LLC  
For a Solid Waste Pollution Control Facility

This host agreement is dated November \_\_\_\_, 2014 and is between the TOWN OF NORMAL, ILLINOIS, a home rule municipal corporation ("Town") and PARADIGM BIOAVIATION LLC, a Delaware limited liability company ("Paradigm").

WHEREAS, Paradigm plans to file an application with the Town for local siting approval for the development and operation, within the Town, of a pollution control facility that is an integrated bio-refinery facility to receive and process waste materials to generate green electrical power, specified recycled fuel, and alternative jet fuel; and

WHEREAS, Section 39.2 of the Illinois Environmental Protection Act expressly acknowledges a local government's power to negotiate and enter into a host agreement with an applicant for site location of a pollution control facility; and

WHEREAS, Paradigm desires to provide environmental protections and other benefits to the Town and assume various obligations as set forth in this Agreement if the proposed pollution control facility obtains all required governmental approvals; and

WHEREAS, The Town desires to obtain the environmental protections and other benefits, but with the understanding that it has no obligation to grant site-location approval of the pollution control facility unless and until, through the local siting process, it finds that the facility meets or exceeds all of the criteria required in Section 39.2 of the Illinois Environmental Protection Act.

The parties, therefore, agree as follows:

### Article 1. Definitions and Term of Contract

**Section 1.1. Definitions.** As used in this Agreement:

**"Act"** means the Illinois Environmental Protection Act (415 ILCS 5/).

**"Acceptable Waste"** means any waste that is not defined as "Unacceptable Waste".

**"Commissioning"** means the process whereby all or part of the IBR plant equipment is tested and monitored under actual operating conditions over an extended period of time, **verified and certified by a recognized qualified agency** for satisfactory performance and compliance with the full terms of the Engineering, Procurement and Construction ("EPC") contract, carried out **in compliance and accordance with all Federal, State and Local statutory requirements** with a formal acceptance of and handover of the plant by the contractor to Paradigm has occurred.

**"CPI"** means the Consumer Price Index for All Urban Communities published by the United States Bureau of Labor Statistics.

**"IEPA"** means the Illinois Environmental Protection Agency.

1        **“IBR”** means the integrated bio-refinery facility that integrates sorting and materials recycling with  
2 biomass conversion process and equipment to produce fuels, power, heat, and value-added chemicals  
3 from biomass. “IBR” includes the facility and the site upon which the facility is located.

4        **“Operating Hours”** means any hours that any portion of the IBR is operating and employees are  
5 present.

6        **“Operating Year”** means the year commencing on the Operational Date or anniversary of the  
7 Operational Date.

8        **“Operational Date”** means the date on which the IBR is certified as fully compliant with all  
9 regulations and requirements pertaining to its operations and is first able to receive and process  
10 Municipal Solid Waste from the City and is accepting Municipal Solid Waste, post the commissioning of  
11 the IBR.

12        **“Public Access Hours”** during which provision is made at the IBR for receiving from the public  
13 residential waste deemed unacceptable for pick up by the town to include by way of example: E-waste,  
14 Paints, motor oils, herbicides, batteries, electrical and computer goods, means 9am to 4pm seven days a  
15 week.

16        **“Refuse-derived fuel” (“RDF”)** or **“Solid Recovered Fuel/Specified Recovered Fuel” (“SRF”)** is a fuel  
17 that is produced by shredding and dehydrating solid waste (MSW) with a Waste converter technology  
18 such as that to be deployed in the Paradigm IBR.

19        **“Regular Business Hours”** during which waste can be received or shipped means 5:00 a.m. to 7:00  
20 p.m. on weekdays and 5:00 a.m. to 1:00 p.m. on Saturdays, with no operation on Sundays or federal  
21 holidays. For a Saturday following a federal holiday, “Regular Business Hours” means 5:00 a.m. to 6:00  
22 p.m.

23        **“Unacceptable Waste”** means any of the following:

24            (i) **“hazardous waste”** as defined by Section 3.15 of the Act;

25            (ii) **“industrial process waste”** as defined by Section 3.235 of the Act except allowable special  
26 waste and any industrial process waste that poses no present or potential threat to human health or  
27 the environment and that has no inherent properties that make its disposal in a landfill difficult to  
28 manage by normal means and that has been specifically approved by the Town;

29            (iii) **“pollution control waste”** as defined by Section 3.335 of the Act;

30            (iv) **“sludge”** as defined by Section 3.465 of the Act;

31            (v) **“potentially infectious medical waste”** as defined by Section 3.360 of the Act;

32            (vi) **“special waste”** as defined by Section 3.475 of the Act, except treated wood;

33            (vii) **“polychlorinated byphenyls”** as defined in the federal Toxic Substances Control Act and  
34 related federal regulations;

35            (viii) **“source, special, or byproduct nuclear materials”, “radioactive waste”, or “transuranic  
36 waste”** as defined by the federal Atomic Energy Act and related federal regulations; or

37            (ix) **“asbestos”** as defined in 40 CFR 763.83.

38        **“Waste”** has the meaning set forth in Section 3.535 of the Act.

39  
40        **Section 1.2. Term.** This Agreement commences on the date that both parties sign the Agreement,  
41 and it continues in full force and effect until the IBR ceases to operate and is no longer permitted by the  
42 IEPA to accept solid waste. If this Agreement is terminated at any time for any reason, including

1 termination pursuant to Section 3.5(b), then Paradigm may not operate the IBR and must close the  
2 facility in a manner that is consistent with the terms of this Agreement and with all applicable law.

## 3 4 5 **Article 2. Representations and Warranties**

### 6 **Section 2.1. Authority to enter into Agreement.**

7 (a) Paradigm is a duly organized and validly existing corporation in good standing under the laws of  
8 the jurisdiction of its organization and is duly qualified and authorized to do business and is in good  
9 standing in all jurisdictions where it is required to be so qualified.

10 (b) Paradigm has the corporate power and authority to (i) own its property and assets and to  
11 transact the business in which it is engaged and presently proposes to engage and (ii) execute, deliver,  
12 and perform this Agreement.

13 (c) Paradigm has taken all necessary action to authorize the execution, delivery, and performance of  
14 this Agreement. Paradigm agrees to provide the Town, at the time of the signing of this Agreement, with  
15 a copy of the corporate resolution authorizing the execution of this Agreement.

16 (d) Paradigm certifies that it has not been barred from contracting with a unit of local government  
17 as a result of a violation of Section 33E-3 or 33E-4 of the Illinois Criminal Code.

18  
19 **Section 2.2. Site location decision.** The Town has not, by entering into this Agreement,  
20 predetermined whether it will grant or deny the site-location application for the IBR. The Town is  
21 required to review Paradigm's application for site location approval for the IBR on the IBR Site in  
22 accordance with the criteria set forth by Illinois law as provided for in Section 39.2 of the Act.

23  
24 **Section 2.3. Siting application.** Any siting application submitted by Paradigm is required to be  
25 consistent with the terms of this Agreement and with the requirements of Section 39.2 of the Illinois  
26 Environmental Protection Act and the Town's Siting Ordinance.

27  
28 **Section 2.4. Enforcement of siting conditions.** Paradigm agrees that, if the Town grants siting  
29 approval for the IBR, then any final and non-appealable condition imposed on the IBR or on Paradigm as  
30 part of that approval is enforceable by the Town against Paradigm, in the same manner in which the  
31 Town's ordinances or this Agreement are enforceable, or pursuant to any Town ordinance in effect at  
32 the time of the enforcement.

## 33 34 35 **Article 3. Paradigm's Obligations**

### 36 **Section 3.1. Compliance with laws.**

37 (a) In connection with the development and operation of the IBR, Paradigm is required to comply, at  
38 all times, with all of the following:

39 (1) all laws, ordinances, rules, and regulations pertaining to the development and operation of  
40 the IBR;

41 (2) all final and non-appealable conditions of the site-location approval;

1 (3) all conditions and requirements of any permit that is issued for the development or  
2 operation of the IBR; and

3 (4) all requirements and conditions set forth in this Agreement.

4 (b) If the Town approves the siting of the IBR, but Paradigm appeals one or more conditions placed  
5 on that approval, Paradigm agrees that it will not commence permitting, development, construction, or  
6 operation of the IBR until a final and non-appealable decision has been entered over the issue, unless  
7 that permitting, development, construction, or operation complies with the contested condition.

8 (c) With respect to the termination or closing of the IBR, Paradigm is required to comply with any  
9 government ordinance, rule, law, or directive as to post-closure requirements and to pay the entire  
10 costs associated therewith.

11  
12 **Section 3.2. Waste acceptability.**

13 (a) Paradigm may only allow Acceptable Waste to be intentionally accepted at, transported to,  
14 stored at, or otherwise present at the IBR.

15 (b) All Waste, except when being transported to or from the IBR, must be kept within a fully  
16 enclosed area of the IBR. Waste that has been processed into fuel may be kept in enclosed, sealed  
17 containers outside.

18 (c) Paradigm must properly remove all Unacceptable Waste accepted at, transported to, stored at,  
19 or otherwise present at, on, or in the IBR within 48 hours.

20  
21 **Section 3.3. Operating hours.**

22 (a) The IBR may accept delivery of Waste during its Regular Business Hours.

23 (b) The IBR may accept delivery from the public of residential waste deemed unacceptable for pick  
24 up by the town, during its Public Access Hours.

25 (c) All other activities related to operation of the IBR facilities are specifically not restricted to  
26 regular business hours and may be conducted 24 hours a day, seven days a week inside the IBR with the  
27 doors closed.

28  
29 **Section 3.4. Capacity.**

30 (a) Except with the prior written consent of the Town, Paradigm must restrict the amount of Waste  
31 received at the IBR to 1,000 tons per day, on an annual daily average basis.

32 (b) The annual daily average basis is calculated by dividing (i) the total number of tons of Waste  
33 received at the IBR during the Operating Year by (ii) the number of days that the IBR was operational  
34 during that Operating Year. For the purpose of this calculation, each operating weekday is 1 operating  
35 day, and each operating Saturday is 0.5 operating day. The number of operating days in the Operating  
36 Year may not exceed 286.

37 (c) If the cumulative amount of Waste received in any given Operating Year is greater than 286,000  
38 tons, then Paradigm shall pay a penalty to the Town of \$10 for each ton of Waste in excess of 286,000  
39 tons that is received during that Operating Year. This penalty must be paid within 30 days after the end  
40 of the Operating Year.

41 (d) The Town agrees to consider the future requests of Paradigm to increase the capacity under this  
42 Section. The Town Council has the sole discretion to approve or deny any such request, but the same  
43 may not be unreasonably denied. The request does not require Paradigm to obtain further approval  
44 from the Town under Section 39.2 of the Act unless otherwise required by State law. The Town Council



1 shall review the request and make a specific determination at a public meeting that the increased  
2 capacity is necessary and appropriate, that the impacts of any operations changes due to the increase  
3 will not adversely affect the health, safety, and welfare of the citizens, and that the operation with the  
4 increased tonnage will be in the best interest of the Town. The Town Council may take revenues and any  
5 other amendments to the Agreement into account in making its determination. The Town Council may  
6 require Paradigm to conduct and produce a traffic impact study or any other study that the Council  
7 deems necessary in the consideration of the approval for increased capacity.

8  
9 **Section 3.5. Financial assurance for operations and closure.**

10 (a) Paradigm may not construct or operate the IBR until it has provided the Town with a financial  
11 assurance in a form reasonably acceptable to the Town, in the amount \$2,500,000 sufficient to cover  
12 the costs of Paradigm's potential liability in its operation of the IBR, payment of the Host Benefit Fee,  
13 compliance with all obligations under this Agreement and any costs of properly closing the IBR. The  
14 financial assurance shall be maintained until Paradigm ceases operations at the IBR or 5 years,  
15 whichever comes sooner and notifies the Town of such under Section 3.5(b).

16 (b) The parties may review the amount of the security required under subsection (a) on every fifth  
17 anniversary of the Operations date or if the Environmental Protection Agency requires Paradigm to post  
18 security under Section 21.1 of the Act.

19 (c) Any financial assurance under this Section must be in the form of a letter of credit, escrow account,  
20 policy of insurance, or a guaranty from a creditworthy guarantor.

21  
22 **Section 3.6. Insurance.**

23 (a) Paradigm is required to purchase and maintain such insurance from date of commencement of  
24 construction as is necessary to fully protect Paradigm and the Town from claims that may arise out of or  
25 in any way result from Paradigm's operations, conduct, or activities.

26 (b) The insurance required under this Section in the type and minimum amounts as follows:

27 (1) Commercial general liability insurance in an amount of not less than \$1,000,000 per occurrence  
28 and a combined limit of \$3,000,000;

29 (2) Excess liability insurance covering claims in excess of the underlying insurance in the commercial  
30 general liability policy with a \$3,000,000 minimum limit;

31 (3) Workers' compensation insurance as required by the laws and regulations of the State of Illinois;

32 (4) Employer's liability insurance in the amount of \$1,000,000;

33 (5) Environmental impairment and liability insurance covering on-site and off-site contamination in  
34 an amount not less than \$2,000,000 per occurrence and a combined limit of \$5,000,000.

35 (c) The insurance, other than workers' compensation insurance, must include the Town as an  
36 additional insured.

37 (d) For each insurance policy, Paradigm must file with the Town either the insurance policy or a  
38 certificate of insurance acceptable to the Town. If Paradigm files a certificate of insurance, it must also  
39 file an affirmation that there is not conflict in coverage as disclosed between the certificate of insurance  
40 and the insurance policy.

41 (e) Each certificate and the insurance policy required by this Section must contain a provision that  
42 coverage afforded under the policy may not be canceled, allowed to expire, or the limits in any manner  
43 reduced until at least 90 days prior written notice has been given to the Town.

44 (f) To ensure maintenance of adequate levels of future insurance coverage for the term of this  
45 Agreement, on January 15 of the fifth calendar year that begins after this Agreement is signed and

1 construction commences and on January 15 of every fifth year thereafter, Paradigm is required to  
2 increase the levels of insurance coverage set forth under subsection (b) by the percentage increase in  
3 the CPI during the preceding 5-year period.

4 (g) The Town may inspect any or all policies of insurance at any time.

5  
6 **Section 3.7. Access by Town.**

7 (a) Paradigm must provide the Town and its officers, employees, and agents, upon advance  
8 telephone notice, with access to the IBR during its Operating Hours for the purpose of inspecting the  
9 facility's compliance with this Agreement and will all applicable laws and permits. Paradigm must  
10 designate a contact person who shall be contacted if the Town or its agents desire access under this  
11 Section.

12 (b) In exigent or emergency circumstances, as determined by the Town, the Town and its officers,  
13 employees, and agents shall have immediate access to the IBR and all records pertaining to its  
14 operation.

15 (c) The Town agrees that its officers, employees, and agents will abide by all safety-related rules and  
16 regulations pertaining to visitors at the facility.

17 (d) If Paradigm is charged by the Town with having violated any Town enforceable law, ordinance,  
18 rule or regulation, or any of Paradigm's permit or site location approval conditions, and if found by a  
19 court or administrative body, to be guilty of a violation, or if Paradigm admits guilt or pleads no contest  
20 to a violation, Paradigm shall reimburse the Town for all reasonable fees and costs associated with the  
21 Town's investigation and prosecution of the violation, including, but not limited to, attorneys' fees.  
22 Additionally, if Paradigm fails to comply with Section 3.6 or with any siting condition concerning tarping  
23 or untarping of vehicles, pick-up or clean-up of litter, noise control, vector control, dust control, or  
24 random load inspections, Paradigm agrees to pay the Town \$1,000 per day as liquidated damages for  
25 any violation that remains uncorrected for more than 72 hours after notice thereof.

26  
27 **Section 3.8. Prevention of waste, litter, and debris.**

28 (a) Paradigm must abide by any litter-control plan as approved by the Town as a result of the siting  
29 process. At a minimum, Paradigm must patrol and remove litter, waste, and debris from the IBR  
30 property and from all public streets designated as access routes within a 0.75-mile radius from the  
31 property. Paradigm shall keep the IBR and all buildings and other improvements built or used by  
32 Paradigm in good condition and repair for the term of this Agreement. In addition, Paradigm must  
33 comply with all of the following requirements:

34 (1) All tipping of waste at the IBR must be on the tipping floor inside the IBR, and processed  
35 within a 24 hour period and the tipping floor cleaned free of waste at least once within each 24 hour  
36 period.

37 (2) No waste may be left outside the building on the property overnight, except:

38 (i) in transfer trailers that are stored indoors and suitably covered; or

39 (ii) in the event of an emergency, the person previously appointed by the Town Council or,  
40 in the absence of such an appointment, the Mayor has given prior approval of temporary  
41 outside storage;

1 (3) Empty Waste collection containers may be stored outside the IBR building but within the IBR  
2 facility grounds;

3 (4) Empty tarped transfer trailers may be stored outside the IBR building;

4 (b) Paradigm must conduct all operations in a manner that is protective of the public health, safety,  
5 welfare, groundwater resources, and the environment. Paradigm shall comply with all Town ordinances  
6 and all applicable laws, ordinances, rules, and regulations, including but not limited to, Pollution Control  
7 Board regulations and the Town Code.

8 (c) The IBR facility and any area used for the outdoor storage of any material or equipment must be  
9 fenced and visually screened from viewing from off the IBR property by means of the fence and  
10 appropriate landscaping as approved by the Town.

11 (d) Waste that is being or has been processed into fuel is not subject to any of the storage or  
12 removal restrictions in this Section, but must be stored in accordance with applicable Town ordinances.

13  
14 **Section 3.9. Fire, Spill, and Accident Prevention.**

15 (a) Prior to starting the first day on on-site employment, Paradigm must require all operating  
16 personnel who handle machinery or waste have completed at least 40 hours of hazard communication  
17 training in accordance with OSHA Standard 1910.1200. Paradigm must also cooperate with the Town  
18 Fire Department so that the Department is familiar with the operations at the IBR.

19 (b) All operating personnel must receive training to ensure that equipment is operated in  
20 accordance with local, State, and federal regulations.

21 (c) The IBR must be equipped with a sprinkler system that is designed in accordance with the  
22 requirements of the National Fire Protection Association and the Town Building Ordinance.

23 (d) Flammable or combustible liquids must be stored in accordance with OSHA requirements and  
24 local regulations.

25 (e) All operating personnel must be trained in the procedures for isolating and cleaning up any spill.  
26 If the nature of the spill is hazardous and it is determined that on-site operating personnel cannot safely  
27 control and manage the spill, then Paradigm must immediately notify outside emergency response  
28 agencies. Operating personnel must be instructed to first implement control measures to prevent the  
29 spill from spreading.

30 (f) Spill control devices, such as absorbent booms or oil-dry, must be kept on site. Surfaces that  
31 come into contact with spilled material must be thoroughly cleaned and decontaminated.

32 (g) If any hazardous substance is released into the environment, operating personnel must  
33 immediately notify the National Response Center and the community emergency coordinator of the  
34 Town and any adjacent areas potentially affected by the release. All notifications under this subsection  
35 must be made in accordance with all applicable federal regulations. For the purpose of this subsection,  
36 "hazardous substance" means any substance designated pursuant to 40 CFR part 302.

37  
38 **Section 3.10. Dust control.**

39 (a) Paradigm agrees that all interior access drives, parking areas, and vehicle maneuvering areas on  
40 the IBR property shall be paved.

41 (b) Paradigm shall install a misting system within the IBR building to mitigate the generation of dust.

1           **Section 3.11. Landscaping.** Paradigm agrees that it will install and maintain appropriate landscaping  
2 on the IRB property that is compatible with and complements the surrounding area pursuant to a plan  
3 approved by the Town, and any special siting conditions imposed. This plan may include a scheme of  
4 shrubbery placement that provides screening around the perimeter of the IBR in a manner and form  
5 acceptable to the Town.  
6

7           **Section 3.12. Complaint resolution.**

8           (a) As of the date of commencement of development of the IBR, and for the balance of the  
9 operating life of the IBR, Paradigm shall assign and designate a telephone number and representative  
10 who are responsible for receipt of inquiries, complaints, and calls that may arise from the public relative  
11 to the operation of the IBR as outlined in this Agreement. This telephone number must be answered by  
12 a person employed or retained by Paradigm during Regular Business Hours. Paradigm must also provide  
13 a voice mail telephone number and a website for public inquiries and complaints.

14           (b) All complaints must be initially investigated by Paradigm within 24 hours regular business hours..  
15 All such complaints and inquiries received from the public must be responded to and addressed  
16 promptly.

17           (c) Paradigm must keep a log of the date and time that each complaint, inquiry, or communication  
18 was received, the nature of the complaint, inquiry, or communication, the name of the person initiating  
19 the contact, the date and time that response was made to the complaint, inquiry, or communication, as  
20 well as the method in which the complaint, inquiry or communication was addressed and or resolved.  
21 Paradigm must supply this information to the Town, as requested by the Town from time to time.

22           (d) Paradigm must provide the Town with an emergency telephone number for contacting the IBR  
23 Manager or designated contact person after Regular Business Hours in the event of an emergency.  
24

25           **Section 3.13. Local preference.**

26           (a) Paradigm agrees that it shall give preference to suitably skilled applicants residing in the Town  
27 before hiring applicants residing in other communities for work at the IBR, to the extent that such  
28 preference does not violate any state or federal employment, civil rights, or similar laws, or union  
29 contracts. Further, Paradigm agrees that, for all work performed by Paradigm in the Town, it shall,  
30 whenever feasible, have its contractors give preference to hiring new employees from suitably skilled  
31 applicants residing in the Town before hiring applicants residing in other communities but the ultimate  
32 decision will be left with the Paradigm.

33           (b) Paradigm will notify the Town promptly of each job opening and contract opportunity at the IBR,  
34 and shall use reasonable efforts to provide such notice not less than 48 hours before Paradigm publicly  
35 announces such opening or opportunity.  
36

37

38                                 **Article 4. Indemnification.**

39           **Section 4.1. Definitions.** For the purpose of this Article 4:

40           “Litigation Expense” means any court or agency filing fee, court or agency cost, arbitration fee or  
41 cost, witness fee, and each other fee and cost of investigating and defending or asserting any claim for  
42 indemnification under this Agreement, including, without limitation, in each case, reasonable attorneys’  
43 fees.

1 "Loss" means any liability, loss, claim, settlement payment, cost and expense, interest, award,  
2 judgment, damages (including punitive damages), diminution in value, fine, fee, penalty, or other charge  
3 other than a Litigation Expense.

4 "Third-Party Claim" means any claim, action, suit, or proceeding against the Town by a third party.

5 "Town", for the purposes of the duty to indemnify and defend under this Article, includes not only  
6 the municipal corporation, but it also includes any of its officers, employees, or agents.  
7

8 **Section 4.2. Paradigm's duty to indemnify.** Paradigm is required to indemnify and defend the Town  
9 against all Losses and reasonable and necessary Litigation Expenses arising out of or relating to either or  
10 both (i) Paradigm's operation of the IBR and (ii) any breach by Paradigm of any covenant set forth in this  
11 Agreement.  
12

13 **Section 4.3. Notice of claims.**

14 (a) The Town must use best efforts to give prompt written notice of any claim that does not involve  
15 a third-party claim. If any third party makes any claim or brings any action, suit, or proceeding against  
16 the Town, it is a condition precedent to Paradigm's obligation to indemnify and defend against that the  
17 Town notify Paradigm (i) in writing of the third-party claim and (ii) promptly, but in no event later than  
18 20 business days after the Town's receipt of written notice of the claim.

19 (b) If the Town fails to give proper notice, then Paradigm is still obligated to indemnify the Town,  
20 except that Paradigm is not liable for any Litigation Expense that the Town incurs during the period in  
21 which the Town failed to give proper notice.  
22

23 **Section 4.4. Third-Party Claims.**

24 (a) If Paradigm wishes to assume the defense of the third-party claim, it shall do so by sending  
25 notice of the assumption to the Town. Paradigm's assumption of the defense acknowledges its  
26 obligation to indemnify. Promptly after sending the notice, Paradigm shall choose and employ  
27 independent legal counsel with the advice and consent of the Town, which consent shall not be  
28 unreasonably withheld. After sending the notice, Paradigm is entitled to contest, pay, settle, or  
29 compromise the Third-Party Claim as it may determine, subject to the provisions of subsection (d).

30 (b) Notwithstanding the provisions of subsection (a), the Town is entitled to:

31 (1) participate in the defense of a Third-Party Claim; and

32 (2) defend a Third-Party Claim with counsel of its own choosing and without the participation of  
33 Paradigm if:

34 (i) Paradigm fails or refuses to defend the Third-Party Claim on or before the 10<sup>th</sup> day after  
35 the Town has given written notice to Paradigm of the Third-Party Claim; or

36 (ii) the representation of the Town and Paradigm by the same counsel would, in the opinion  
37 of the Town, constitute a conflict of interest.

38 (c) Paradigm is required to pay for all reasonable and necessary Litigation Expenses incurred by the  
39 Town to and including the date that Paradigm assumes the defense of the Third-Party Claim. Upon  
40 Paradigm's assumption of the defense of the Third-Party Claim, Paradigm's obligation ceases for any  
41 Litigation Expense that the Town voluntarily incurs in connection with the defense of that claim except  
42 if:

43 (1) the Town has employed counsel in accordance with the provisions of item (2) of subsection

44 (b) of this Section; or

45 (2) Paradigm has authorized the Town's employment of counsel.

46 (d) Except as otherwise provided in this subsection, if Paradigm assumes the defense of a  
47 Third-Party Claim, it may not effect any compromise or settlement of that claim without the consent of

1 the Town, and the Town has no liability with respect to any compromise or settlement of any  
2 Third-Party Claim effected without its consent. Paradigm may effect a compromise or settlement of a  
3 Third-Party Claim without the Town's consent if all of the following conditions are met:

4 (1) there is no finding or admission of any violation of law or any violation of the rights of any  
5 person and no effect on any other claim that may be made against the Town;

6 (2) the sole relief provided is monetary damages that are paid in full by Paradigm; and

7 (3) the compromise or settlement includes, as an unconditional term, the claimant's or the  
8 plaintiff's release of the Town, in form and substance satisfactory to the Town, from all liability in  
9 respect of the Third-Party Claim.

10  
11 **Section 4.5. Payment of judgments.** Paradigm is required to pay, promptly upon entry, any non-  
12 appealable order, judgment, or other final resolution of any claim or dispute arising out of the matters  
13 to be indemnified under this Agreement and shall pay promptly when due any fines, penalties, or  
14 agreed settlements arising out of the matters to be indemnified under this Agreement.

15  
16 **Section 4.6. Limitation for Town's errors and omissions.** Paradigm is not responsible for  
17 indemnification of any injury or damage to the Town if that injury or damage results from the Town's  
18 negligence or willful misconduct.

19  
20 **Section 4.7. No legal relationship; non-exclusive remedy; no waiver.**

21 (a) This Agreement does not create any legal relationship between Paradigm and the Town (such as  
22 a joint venture or partnership) with regard to the operation of the IBR. Nor does the Town undertake, by  
23 virtue of this Agreement, any responsibility or liability for compliance with any law, rule, or regulation  
24 relating to the operation of the IBR or the depositing, storage, or control of any waste within the area of  
25 the IBR.

26 (b) Any rights or remedies set forth under this Article 4 do not constitute the exclusive rights or  
27 remedies of the Town in respect of the matters indemnified under this Article. In addition, any defense  
28 and indemnity provided in this Article is independent of and is not limited by reason of the enumeration  
29 of any insurance coverage that Paradigm has obtained.

30 (c) Nothing in this Agreement may be construed as a waiver of any common law or statutory  
31 immunity the Town may have to any liability.

## 32 33 34 **Article 5. Host Fee**

35 **Section 5.1. Host Benefit Fees.**

36 (a) In consideration of the additional costs incurred by the Town by the operation of the IBR,  
37 Paradigm agrees to pay the Town a Host Benefit Fee as set forth in this Article 5.

38 (b) The Fee is payable to the Town on a quarterly basis. The payment for the preceding calendar  
39 quarter is due not later than the last calendar day of the calendar month following the end of that  
40 calendar quarter. Past due payments of the fees are subject to a late charge of 1.5% per month or  
41 fraction of a month for which the payment is late. The payment of the interest penalty does not  
42 otherwise excuse or cure any default by Paradigm under this Agreement.

43 (c) After the first six months from the Operational Date the amount of the Host Benefit Fee due each  
44 calendar quarter is the greater of (i) \$40,000 per calendar quarter or (ii) \$1.40 per ton based on the  
45 quarterly average tonnage of waste per operating day.

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2 For the purpose of this calculation, each operating weekday (Monday through Friday) is 1 operating  
3 day, and each operating Saturday is 0.5 operating day.  
4

5  
6 **Section 5.2. Inflation Adjustment.** Beginning as of January 1 of the fifth year following the effective  
7 operational date, and each January 1 of each subsequent anniversary of 5 years thereafter, the amount  
8 of the Host Benefit Fee is increased or decreased by the average percentage increase or decrease in the  
9 CPI during the previous 5-calendar-year period. At no time, however, shall the increase be less than 0%  
10 or greater than 5% rounded to the nearest \$0.01.  
11

12 **Section 5.3. Identification and Weight of Receipts.**

13 (a) For the purpose of calculating the Host Benefit Fee and of confirming compliance with capacity  
14 limitations, Paradigm is required to weigh all receipts of Waste on a certified scale, which, at Paradigm's  
15 sole cost, is inspected and certified by the State of Illinois at least once each calendar year. Paradigm  
16 must submit a certificate of calibration to the Town after each inspection and certification. In addition,  
17 Paradigm shall identify, for the Town, in writing, a listing of all receipts categorized by date, type of  
18 Waste, and weight of Waste in each receipt, so that the Town can determine by its review of these  
19 records, the number of incoming vehicles, the type of vehicle and identification of the hauling entity or  
20 person (in the case of an individual rather than business hauler), the load weight and total weight of  
21 each vehicle, and type of waste or material contained on each vehicle received at the IBR each calendar  
22 day.

23 (b) Paradigm must keep records of outgoing Waste, such that the Town can determine, by its review  
24 of these records, the number of outbound vehicles, the type of vehicle, the destination of each vehicle,  
25 and the type of Waste contained on each vehicle leaving the IBR each calendar day. If the Town  
26 requests records concerning the load weight and total weight of each outbound vehicle, Paradigm  
27 agrees to provide that information, from weights measured at the IBR or at the destination of the  
28 vehicles leaving the IBR, from the time Paradigm receives the Town's request on a moving-forward basis  
29 for any time period designated by the Town.  
30

31 **Section 5.4. Auditing.**

32 (a) Paradigm is required to keep complete and accurate books and records relating to the  
33 determination of the Host Benefit Fee in an auditable form, including those records described in Section  
34 5.3.

35 (b) Paradigm must permit the Town's designated representatives access to its on-site books and  
36 records (paper and electronic version) for inspection and copying during the IBR's Regular Business  
37 Hours, for the limited purpose of verifying the accuracy of host benefit fee payments. Any information  
38 obtained by the town pursuant to this paragraph shall remain confidential, except if required to be  
39 disclosed pursuant to FOIA requests

40 (c) If an inspection reveals any underpayment of the Host Benefit Fee, Paradigm shall promptly pay  
41 the Town the amount of the underpayment together with interest at 1.5% per month from the time that  
42 the Fee was due and owing to the Town. Additionally, if the underpayment exceeds \$1,500, Paradigm



1 must reimburse the Town for its reasonable and necessary costs and expenses of the inspection and the  
2 collection, including any attorneys' fees, professional fees, or technical fees in connection with the  
3 inspection and collection.

4 (d) If an inspection reveals any overpayment of the Host Benefit Fee, Paradigm may credit the  
5 amount of the overpayment against the payments of the Fee in subsequent quarters.  
6  
7

## 8 **Article 6. Town's Obligations**

9 **Section 6.1. Agreement for the exclusive delivery of Municipal Waste.** The Town will negotiate in  
10 good faith with Paradigm for an agreement under which the Town agrees to supply its Municipal Waste  
11 exclusively to Paradigm. The agreement may set forth the manner and form of delivery of the waste, the  
12 tipping fees payable by the Town, and any other mutually-agreeable terms. This agreement shall not be  
13 in effect unless a waste supply and disposal agreement between the parties is also in effect  
14

15 **Section 6.2. Power-purchase agreement.** The Town will negotiate in good faith with Paradigm for  
16 an agreement under which the Town agrees to purchase quantities of Green electrical power generated  
17 by the IBR. The failure to execute a power-purchase agreement or any breach of that agreement does  
18 not constitute a breach of this Host Agreement or affect the powers and duties of the parties under this  
19 Host Agreement.  
20

21 **Section 6.3. Permitting assistance.** The Town, provided that the Siting Application is approved, must  
22 use its reasonable efforts to assist Paradigm in obtaining all necessary permits from IEPA for the  
23 construction and operation of the IBR.  
24  
25

## 26 **Article 7. Default and Remedies**

27 **Section 7.1. Default of Paradigm.** The occurrence of any one or more of the following items  
28 constitutes a material default and breach of this Agreement by Paradigm:

29 (1) The failure of Paradigm to make payment of any Host Benefit Fee or other payment in  
30 connection with that Fee under Article 5 after 10 days of written notice of the failure to make the  
31 payment.

32 (2) The failure of Paradigm to properly maintain the insurance required under the terms and  
33 conditions of Section 3.4.

34 (3) The failure of Paradigm to promptly and properly remedy any actual violation by Paradigm of any  
35 law, statute, rule, regulation, permit, or ordinance relating to the development, operation, closure, or  
36 post-closure of the IBR. Paradigm is deemed to have acted promptly if it corrects or commences  
37 correction of the violation in question within the time allowed by law or within the time otherwise  
38 allowed by a court, tribunal, or governmental agency of competent jurisdiction.

39 (4) The failure of Paradigm to observe or perform any other covenant, term, condition, or provision  
40 of this Agreement to be observed or performed by Paradigm if the failure continues for a period of 30  
41 days after written notice by the Town of the failure. If, however, the nature of the failure is such that



1 more than 30 days are reasonably required for its cure and if the Town agrees in writing that this is the  
2 case then Paradigm is not deemed to be in default if it commences the cure within the 30-day period  
3 and, thereafter, diligently prosecutes the cure to completion.

4 (5) The making by Paradigm of any general assignment, or general assignment for the benefit of  
5 creditors; the filing by or against Paradigm of a petition to have Paradigm adjudged a bankrupt or a  
6 petition for reorganization or arrangement under any law relating to bankruptcy; the appointment of a  
7 trustee or receiver to take possession of substantially all of Paradigm's assets located at or servicing the  
8 IBR or of Paradigm's interest in this Agreement; or the attachment, execution, or other judicial seizure of  
9 substantially all of Paradigm's assets located at or servicing the IBR site or of Paradigm's interest in this  
10 Agreement.

11  
12 **Section 7.2. Town's remedies.** If Paradigm is in default of this Agreement under Section 7.1, then, in  
13 addition to any other remedy under this Agreement or under law, the Town may, in its sole discretion,  
14 elect to terminate this Agreement. The election to terminate this Agreement must be made by written  
15 notice and may be made under the terms of this Agreement or otherwise by operation of law. If the  
16 Town elects to terminate this Agreement, then it may recover from Paradigm all damages that it has or  
17 may incur through the date of the termination by reason and as a consequence of Paradigm's default,  
18 including but not limited to reasonable and necessary attorneys' fees, court costs, and litigation expenses.  
19 In addition, if Paradigm defaults and the Town brings legal proceedings to enforce and protect its rights  
20 and remedies under this Agreement, Paradigm must pay all reasonable attorneys' fees, court costs, and  
21 expenses of litigation incurred by the Town should it prevail.

22  
23 **Section 7.3 Default by Town.** The Town is in material default and breach of this Agreement if it fails  
24 to observe or perform any other covenant, term, condition, or provision of this Agreement to be  
25 observed or performed by the Town if the failure continues for a period of 30 days after written notice  
26 by Paradigm of the failure. If, however, the nature of the failure is such that more than 30 days are  
27 reasonably required for its cure and if Paradigm agrees in writing that this is the case, then the Town is  
28 not deemed to be in default if it commences the cure within the 30-day period and, thereafter, diligently  
29 prosecutes the cure to completion.

30  
31 **Section 7.4. Paradigm's remedies.** If the Town is in default under this Agreement, Paradigm has the  
32 right to enforce all rights and remedies under this Agreement, as well as to pursue any other remedy  
33 now or hereafter available under applicable law, but Paradigm may not terminate its duties and  
34 obligations under this Agreement unless it ceases operations, as provided in Section 1.2. If the Town  
35 defaults and Paradigm brings legal proceedings to enforce and protect its rights and remedies under this  
36 Agreement, the Town must pay all reasonable attorneys' fees, court costs, and expenses of litigation  
37 incurred by Paradigm should it prevail.

38  
39 **Section 7.5. Force majeure.** Neither party will be deemed to be in default or to have breached any  
40 provision of this Agreement as a result of any delay, failure in performance, or interruption of services  
41 resulting directly or indirectly from acts of God, acts of civil or military authority, civil disturbance, labor  
42 interruptions or strikes, or war that are beyond the control of the non-performing party.

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**Article 8. General Provisions**

**Section 8.1. Choice of law; jurisdiction.**

(a) This Agreement is to be governed by and construed in accordance with the laws of the State of Illinois. This contract shall be construed without the aid of any rule of law requiring or permitting construction against the drafter of the contract.

(b) Any litigation filed by Paradigm or the Town against the other party and involving this Agreement must be filed in the Circuit Court of McLean County, Illinois.

**Section 8.2. Rights and remedies cumulative.** The enumeration of remedies expressly conferred upon a party by this Agreement are cumulative with and not exclusive of any other remedy conferred by this Agreement or by law on that party, and the exercise of any one remedy does not preclude the exercise of any other.

**Section 8.3. Waivers.**

(a) The parties may waive any provision in this Agreement only by a writing executed by the party against whom the waiver is sought to be enforced.

(b) No failure or delay in exercising any right or remedy or in requiring the satisfaction of any condition under this Agreement, and no act, omission, or course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition.

(c) A waiver made in writing on one occasion is effective only in that instance and only for the purpose stated. A waiver, once given, is not to be construed as a waiver on any future occasion or against any other person.

**Section 8.4. Notice.** Any notice to be given hereunder by either party to the other shall be in writing and be sent by personal delivery, by overnight delivery service or by registered or certified mail, postage prepaid, return receipt requested, and shall be deemed communicated when delivered or 3 business days from the date of mailing, whichever is earlier. Notices shall be addressed as set forth below, but each party may change its address by written notice to the other in accordance with this Section:

To the Town, notice shall be sent to both the Town and the Town’s Attorney at the following addresses:

TO THE TOWN AT:

WITH COPY TO THE TOWN’S ATTORNEYS AT:

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To Paradigm, notice shall be sent to the Company at the following addresses:

TO PARADIGM AT:

Attention:

Address:

WITH A COPY TO:

Attention:

Address:

**Section 8.5. Captions.** Captions of the Articles and Sections of this Agreement are for convenience or reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction, or meaning of the provisions of this Agreement.

**Section 8.6. Amendments.** This Agreement may be amended only by a written agreement of the parties that identifies itself as an amendment to this Agreement.

**Section 8.7. Assignment.**

(a) This Agreement is binding on Paradigm and its successors and assigns. If the Town grants siting approval for the IBR, then Paradigm may not (i) assign its obligations and liabilities under this Agreement, (ii) transfer a controlling interest in the ownership of the IBR to a third party or (iii) transfer 50% or greater interest in Paradigm or any parent company of Paradigm, having more than a 50% ownership interest in Paradigm, without the prior written approval by the Town Council. The Town Council may not unreasonably withhold the approval for the assignment or transfer.

(b) Paradigm does not have the right to request approval for an assignment or transfer unless all payments to the Town by Paradigm have been made and if Paradigm is not otherwise in default in connection with obligations under this Agreement.

(c) To request the Town’s consent to an assignment or transfer, Paradigm shall submit written notice containing at least the following information, plus any information required by the Town:

- (1) The name of the proposed assignee or transferee;
- (2) The terms of the proposed assignment or transfer except that Paradigm is not required to disclose consideration, price or payment terms;
- (3) The nature of business of the proposed assignee or transferee and the proposed use by the assignee or transferee; and
- (4) Information relating to the financial responsibility and general reputation in the solid waste field of the proposed assignee or transferee that Town may require.

1 (d) The Town has 60 days after the date of notification by Paradigm of a proposed assignment or  
2 transfer in which to notify Paradigm whether the Town approves. If it disapproves the assignment or  
3 transfer, the Town shall state in writing its reasons for the disapproval. If the Town does not notify  
4 Paradigm of its decision within that 90-day period, then the transfer is deemed to be approved.

5 (e) In deciding whether to grant the approval for an assignment or transfer, the Town Council shall  
6 consider the ability of the assignee or transferee, both financially and operationally, to comply with the  
7 terms of this Agreement, all licenses and permits, and all other applicable federal, State and local  
8 statutes, ordinances, rules, regulations, and conditions pertaining to the IBR. The Town Council may  
9 require a written commitment by the assignee or transferee to assume and comply with the duties and  
10 obligations of this Agreement as a precondition of its approval of any assignment or transfer.

11 (f) If the Town agrees to the assignment or transfer, then the assignee or transferee shall agree to  
12 the following:

13 (1) To assume all obligations and duties of Paradigm under this Agreement and any conditions  
14 placed on the site location approval by the Town;

15 (2) To be bound as an original party to this Agreement; and

16 (3) To make any and all payments due.

17 (g) Unless otherwise agreed between the parties, if the Town agrees to an assignment, then  
18 Paradigm is released from any obligation or duty under this Agreement or any siting condition.

19  
20 **Section 8.8. Third parties.** Nothing in this Agreement is intended to confer any right or remedy on  
21 any person other than the Town and Paradigm, and their respective successors and permitted assigns,  
22 nor is anything in this Agreement intended to affect or discharge any obligation or liability of any third  
23 persons to the Town or to Paradigm, nor to give any such third person any right of action or subrogation  
24 against the Town or Paradigm.

25  
26 **Section 8.9. Covenant.** This Agreement constitutes a covenant in the nature of a covenant running  
27 with the land. Paradigm agrees to execute all additional documents necessary for the recording of this  
28 Agreement in the chain of title of the IBR site location.

29  
30 **Section 8.10. Severability.** If any provision of this Agreement is determined to be invalid, illegal, or  
31 unenforceable, then the remaining provisions remain in full force if the essential terms and conditions of  
32 this Agreement for each party remain valid, binding, and enforceable.

33  
34 **Section 8.11. Merger.** This Agreement constitutes the final agreement between the parties. It is the  
35 complete and exclusive expression of the parties' agreement on the matters contained in this  
36 Agreement. All prior and contemporaneous negotiations and agreements between the parties on the  
37 matters contained in this Agreement are expressly merged into and superseded by this Agreement. The  
38 provisions of this Agreement may not be explained, supplemented, or qualified through evidence of  
39 trade usage or a prior course of dealings. In entering into this Agreement, neither party has relied upon  
40 any statement, representation, warranty, or agreement of the other party except for those expressly  
41 contained in this Agreement. There are no conditions precedent to the effectiveness of this Agreement  
42 other than those expressly stated in this Agreement.

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**Section 8.12. Surviving provisions.** The following provisions of this Agreement survive upon the termination of this Agreement: Section 1.2, Section 3.1, Section 3.4, Article 4, Article 7, and Article 8.

The parties are signing this Agreement on the date stated in the introductory clause.

PARADIGM BIOAVIATION, LLC

By: \_\_\_\_\_  
NAME  
TITLE

TOWN OF NORMAL

By: \_\_\_\_\_  
NAME  
TITLE