

**AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND
REGATTA SOLUTIONS**

THIS AGREEMENT, entered into this _____ day of _____, 2013, by and between the COUNTY OF SAN MATEO, hereinafter called "County," and REGATTA SOLUTIONS, hereinafter called "Contractor";

WITNESSETH:

WHEREAS, pursuant to Government Code, Section 31000, County may contract with independent contractors for the furnishing of such services to or for County or any Department thereof;

WHEREAS, it is necessary and desirable that Contractor be retained for the purpose of maintaining, repairing, and overhauling the COGEN micro-turbines at the Youth Services Center Central Plant.

**NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO
AS FOLLOWS:**

1. Exhibits and Attachments

The following exhibits and attachments are included hereto and incorporated by reference herein:

Exhibit A—Services

Exhibit B—Payments and rates

Attachment I—§504 Compliance

2. Services to be Performed by Contractor

In consideration of the payments set forth herein and in Exhibit "B," Contractor shall perform services for County in accordance with the terms, conditions and specifications set forth herein and in Exhibit "A."

3. Payments

In consideration of the services provided by Contractor in accordance with all terms, conditions and specifications set forth herein and in Exhibit "A," County shall make payment to Contractor based on the rates and in the manner specified in Exhibit "B." The County reserves the right to withhold payment if the County determines that the quantity or quality of the work performed is unacceptable. In no event shall the County's total fiscal obligation under this Agreement exceed three hundred seventy thousand and 00/100 dollars, \$370,000.

4. Term and Termination

Subject to compliance with all terms and conditions, the term of this Agreement shall be from April 1, 2013 through March 31, 2019.

This Agreement may be terminated by Contractor, the Director of Public Works and Parks or his/her designee at any time without a requirement of good cause upon thirty (30) days' written notice to the other party.

In the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and materials (hereafter referred to as materials) prepared by Contractor under this Agreement shall become the property of the County and shall be promptly delivered to the County. Upon termination, the Contractor may make and retain a copy of such materials. Subject to availability of funding, Contractor shall be entitled to receive payment for work/services provided prior to termination of the Agreement. Such payment shall be that portion of the full payment which is determined by comparing the work/services completed to the work/services required by the Agreement. Additionally, contractor shall be entitled to compensation per Amendment A to Exhibit A.

5. Availability of Funds

The County may terminate this Agreement or a portion of the services referenced in the Attachments and Exhibits based upon unavailability of Federal, State, or County funds, by providing written notice to Contractor as soon as is reasonably possible after the County learns of said unavailability of outside funding.

6. Relationship of Parties

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent Contractor and not as an employee of the County and that Contractor acquires none of the rights, privileges, powers, or advantages of County employees.

7. Hold Harmless

Contractor shall indemnify and save harmless County, its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description, brought for, or on account of: (A) injuries to or death of any person, including Contractor, or (B) damage to any property of any kind whatsoever and to whomsoever belonging, (C) any sanctions, penalties, or claims of damages resulting from Contractor's failure to comply with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, or (D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of County, its officers, agents, employees, or servants, resulting from the performance of any work required of Contractor or payments made pursuant to this Agreement, provided that this shall not apply to injuries or damage for which County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of Contractor to indemnify and save harmless as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

8. Assignability and Subcontracting

Contractor shall not assign this Agreement or any portion thereof to a third party or subcontract with a third party to provide services required by contractor under this Agreement without the prior written consent of County. Any such assignment or subcontract without the County's prior written consent shall give County the right to automatically and immediately terminate this Agreement.

9. Insurance

The Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this paragraph has been obtained and such insurance has been approved by Risk Management, and Contractor shall use diligence to obtain such insurance and to obtain such approval. The Contractor shall furnish the County with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending the Contractor's coverage to include the contractual liability assumed by the Contractor pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the County of any pending change in the limits of liability or of any cancellation or modification of the policy.

- (1) **Worker's Compensation and Employer's Liability Insurance** The Contractor shall have in effect during the entire life of this Agreement Workers' Compensation and Employer's Liability Insurance providing full statutory coverage. In signing this Agreement, the Contractor certifies, as required by Section 1861 of the California Labor Code, that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of the work of this Agreement.
- (2) **Liability Insurance** The Contractor shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him/her while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from contractors operations under this Agreement, whether such operations be by himself/herself or by any sub-contractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than the amount specified below.

Such insurance shall include:

- | | |
|---|-------------|
| (a) Comprehensive General Liability | \$1,000,000 |
| (b) Motor Vehicle Liability Insurance | \$1,000,000 |
| (c) Professional Liability | \$1,000,000 |

County and its officers, agents, employees and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that the insurance afforded thereby to the County, its officers, agents, employees and servants shall be primary insurance to the full limits of liability of the policy, and that if the County or its officers and employees have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, the County of San Mateo at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work pursuant to this Agreement.

10. Compliance with laws; payment of Permits/Licenses

All service to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, including, but not limited to, Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, and the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, as amended and attached hereto and incorporated by reference herein as Attachment "I," which prohibits discrimination on the basis of handicap in programs and activities receiving any Federal or County financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including, but not limited to, appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. Further, Contractor certifies that the Contractor and all of its subcontractors will adhere to all applicable provisions of Chapter 4.106 of the San Mateo County Ordinance Code, which regulates the use of disposable food service ware.

In the event of a conflict between the terms of this agreement and State, Federal, County, or municipal law or regulations, the requirements of the applicable law will take precedence over the requirements set forth in this Agreement.

Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

11. Non-Discrimination and Other Requirements

- A. *Section 504 applies only to Contractors who are providing services to members of the public.* Contractor shall comply with §504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this Agreement.
- B. *General non-discrimination.* No person shall, on the grounds of race, color, religion, ancestry, gender, age (over 40), national origin, medical condition (cancer), physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, or political affiliation be denied any benefits or subject to discrimination under this Agreement.
- C. *Equal employment opportunity.* Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor's equal employment policies shall be made available to County of San Mateo upon request.
- D. *Violation of Non-discrimination provisions.* Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Manager, including but not limited to
 - i) termination of this Agreement;
 - ii) disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years;
 - iii) liquidated damages of \$2,500 per violation;

- iv) imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this section, the County Manager shall have the authority to examine Contractor's employment records with respect to compliance with this paragraph and/or to set off all or any portion of the amount described in this paragraph against amounts due to Contractor under the Contract or any other Contract between Contractor and County.

Contractor shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint, and a description of the circumstance. Contractor shall provide County with a copy of their response to the Complaint when filed.

- E. *Compliance with Equal Benefits Ordinance.* With respect to the provision of employee benefits, Contractor shall comply with the County Ordinance which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.
- F. The Contractor shall comply fully with the non-discrimination requirements required by 41 CFR 60-741.5(a), which is incorporated herein as if fully set forth.

12. Compliance with Contractor Employee Jury Service Ordinance

Contractor shall comply with the County Ordinance with respect to provision of jury duty pay to employees and have and adhere to a written policy that provides that its employees shall receive from the Contractor, on an annual basis, no less than five days of regular pay for actual jury service in San Mateo County. The policy may provide that employees deposit any fees received for such jury service with the Contractor or that the Contractor deduct from the employees' regular pay the fees received for jury service.

13. Retention of Records, Right to Monitor and Audit

(a) CONTRACTOR shall maintain all required records for three (3) years after the COUNTY makes final payment and all other pending matters are closed, and shall be subject to the examination and/or audit of the County, a Federal grantor agency, and the State of California.

(b) Reporting and Record Keeping: CONTRACTOR shall comply with all program and fiscal reporting requirements set forth by appropriate Federal, State and local agencies, and as required by the COUNTY.

(c) CONTRACTOR agrees to provide to COUNTY, to any Federal or State department having monitoring or review authority, to COUNTY's authorized representatives, and/or their appropriate audit agencies upon reasonable notice, access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules and regulations, and this Agreement, and to evaluate the quality, appropriateness and timeliness of services performed.

14. Merger Clause

This Agreement, including the Exhibits attached hereto and incorporated herein by reference, constitutes the sole Agreement of the parties hereto and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement or specification set forth in this body of the agreement conflicts with or is inconsistent with any term, condition, provision, requirement or specification in any exhibit and/or attachment to this agreement, the provisions of this body of the agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and signed by the parties.

15. Controlling Law and Venue

The validity of this Agreement and of its terms or provisions, as well as the rights and duties of the parties hereunder, the interpretation, and performance of this Agreement shall be governed by the laws of the State of California. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or the United States District Court for the Northern District of California.

16. Notices

Any notice, request, demand, or other communication required or permitted hereunder shall be deemed to be properly given when both (1) transmitted via facsimile to the telephone number listed below and (2) either deposited in the United States mail, postage prepaid, or when deposited for overnight delivery with an established overnight courier that provides a tracking number showing confirmation of receipt for transmittal, charges prepaid, addressed to:

In the case of County, to:

Department of Public Works and Parks
Attn: James C. Porter, Director
555 County Center, 5th Floor
Redwood City, CA 94063
Phone: (650) 363-4100
Fax: (650) 361-8220

In the case of Contractor, to:

Mark Parriott, VP Customer Engineering
Regatta Solutions
27122 Paseo Espada #901
San Juan Capistrano, CA 92675
Office: (949) 481-9670
Fax: (949) 481-9674
Mobile: (310) 869-5161

In the event that the facsimile transmission is not possible, notice shall be given both by United States mail and an overnight courier as outlined above.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

COUNTY OF SAN MATEO

By: _____
President, Board of Supervisors, San Mateo County

Date: _____

ATTEST:

By: _____
Clerk of Said Board

Regatta Solutions



Contractor's Signature

Date: 2/26/13

Exhibit A - Services

Contractor shall provide factory protection plan services for 8 turbines, as identified in Attachment 1, and 4 Copeland FGBs for a period of six years or 79,999 trh, Parts & Labor, with Overhaul. Scope of maintenance covered is identified in the following table under the Heading “OTHER”.

A. Description of Factory Protection Plan Services

FACTORY PROTECTION PLAN INCLUDED SERVICES	PLAN A	PLAN B	PLAN C	PLAN D	OTHER
Maintenance Parts:					
➤ Scheduled maintenance parts as needed pursuant to the then current Capstone Turbine Standard Maintenance Schedule (Capstone Turbine document number 440000 for Model C30 or Model C60, or Capstone Turbine User Manual for Model C65 or C200).	✓	✓	✓	✓	☒
➤ Unscheduled maintenance parts as needed, including:					
• Engine assembly (Engine/Generator)	✓	✓	✓	✓	☒
• All power electronics components	✓	✓	✓	✓	☒
• All fuel system components	✓	✓	✓	✓	☒
• Optional/Accessory equipment (if installed)					
- Main battery pack	✓	✓	✓	✓	☒
- Heat Recovery Module (HRM) coil	✓	✓	✓	✓	☒
- Advanced Power Server (APS)	✓	✓	✓	✓	☒
- Dual Mode Controller (DMC)	✓	✓	✓	✓	☒
- External Fuel Filter	✓	✓	✓	✓	☒
- External Regulator	✓	✓	✓	✓	☒
Maintenance Labor:¹					
➤ Scheduled maintenance labor.	No	✓	No	✓	☒
➤ Unscheduled maintenance labor.	No	✓	No	✓	☒
Engine Overhaul at 40,000 trh	No	No	✓	✓	☒

Additional Services:					
➤ Access to Capstone Turbine Call Center, including 24/7 access to Technical Support.	✓	✓	✓	✓	☒
➤ Priority response to unscheduled maintenance service requests.	No	✓	No	✓	☒
➤ System software upgrades as released by Contractor.	✓	✓	✓	✓	☒

¹ Normal Regatta Solutions service hours are 8:00 am to 5:00 pm (domestic) / 7:00 am to 6:00 pm (international) local time weekdays, excluding Regatta Solutions holidays.

➤ Installation of system software upgrades.	No	✓	No	✓	☒
<p>Other – Description:</p> <p><u>Response Time</u> Contractor agrees to provide a 24 response to address microturbine failures. This response may come in the form of on-site visit, remote diagnostics or phone support.</p> <p><u>Operating Hour Overage</u> In the event of a microturbine system exceeding 79,999 operating hours before contract end of services, all work performed on said microturbine, excluding warranty, will be billed on a time and material basis accordingly.</p> <p><u>Equipment Covered</u> Under this contract, all Capstone supplied equipment as defined in Exhibit 1, will be covered.</p>					

B. Service Conditions

1. Sites must be clean, free of debris and any other obstructions, well lit, and operating in an environment that will not cause excessive usage, or need for replacement, of consumables and filters outside the parameters of Capstone Turbine standard service intervals.
2. Sites must be installed in accordance with all Capstone Turbine installation requirements.
3. Sites must be commissioned in accordance with Capstone Turbine specifications and Contractor must have an approved Commissioning Checklist on file.
4. Owner shall retain title to all hardware Contractor designates to be scrap. Contractor shall provide a list of approved disposal providers.
5. If CSN is checked in Section A above, then County is responsible for providing Contractor with an internet connection for CSN starting on the Start of Services Date and terminating on the End of Services Date (see Section D below).

C. Excluded Services

The following are specifically excluded from the Agreement:

1. Changes to the original design and configuration (alterations from “as commissioned”).
2. Application engineering and installation; correction of latent or discovered defects or equipment failure due to application engineering, installation, settings and/or connections.
3. Operation of Covered Equipment on a day-to-day basis.
4. Emissions testing or testing of exhaust gas.
5. Fuel analysis or laboratory analysis to confirm fuel composition.
6. Operator classroom training.
7. Operation of the Covered Equipment outside of Capstone Turbine standard operating guidelines defined in the Contractor User Manual.
8. City, state, and/or federal permits, rebates, or incentive applications or filings.
9. Any services requested by County which are determined, in Contractor’ sole discretion, to be outside the scope of this Agreement.
10. Balance of plant equipment: Contractor will provide Services for the Covered Equipment listed in Exhibit 1 only, as may be amended by the parties from time to time in writing.

11. Using the CSN, Contractor may provide remote monitoring service diagnostics as a courtesy to the customer. The CSN equipment is capable of monitoring additional Balance of Plant equipment (i.e., anything outside of the housing and not included in the definition of "Covered Equipment" set forth below) which may impact the successful operation of the Covered Equipment under this Agreement. Under no circumstances is Contractor obligated to provide any Services for Balance of Plant equipment or any other equipment that is not listed as Covered Equipment.
12. Internet connection, service, maintenance, or hardware related fees.

D. Additional Terms of Service:

1. **Contractor' Services; Warranty.** Contractor agrees that it will comply with applicable laws and regulations relating to its provision of the Services and such Services will be provided in a professional and workmanlike manner consistent with the applicable Scope of Services and with generally accepted industry standards and practices with regard to the type of services provided hereunder. Contractor on behalf of Capstone Turbine provides the warranties with respect to Parts and labor provided by Contractor for the applicable Covered Product (the "**Service-Related Warranties**"). Notwithstanding any term contained in a Service-Related Warranty or this Agreement to the contrary, any and all Service-Related Warranties expire upon the completion of the Services.
2. **County's Obligations.** In addition to all other obligations stated in this Agreement, when requested, County shall provide Contractor with: (i) records and information concerning the Covered Equipment; and (ii) any special tools or instruments needed for the Covered Equipment which County already possesses. County shall designate an authorized representative who shall be available to Contractor at all times while Contractor is performing the Services on County's premises. County agrees that the Scope of Services excludes all trade labor work and any supervision, management or regulation of County's employees, agents or contractors and work related thereto, and it does not include responsibility for planning, scheduling, monitoring or management of the work to be performed by County. County agrees that any written or oral reports and advice provided by Contractor to County in connection with the provision of Services shall be utilized solely by County and shall not be used or conveyed by County to any third party.
3. Pursuant to this Services Agreement (the "Agreement"), County hereby authorizes Contractor to provide the services described above (the "Services"), including the provision of any necessary parts (the "Parts"), on the Capstone Turbine generator systems, controls and/or accessories identified above (the "Covered Equipment") in accordance with and subject to the terms and conditions described above and on the pages attached hereto

SITE NAME/ LOCATION	DESCRIPTION	MANUFACTURER	MODEL/CONFIGURATION OR PART NUMBER	SERIAL NO.	STARTING TRH
San Mateo Youth Complex	C60 Microturbine	Capstone	HPNG GC GP	3476	25,689
San Mateo Youth Complex	C60 Microturbine	Capstone	HPNG GC	3470	19,144
San Mateo Youth Complex	C60 Microturbine	Capstone	HPNG GC GP	3482	20,872
San Mateo Youth Complex	C60 Microturbine	Capstone	HPNG GC	3475	15,571
San Mateo Youth Complex	C60 Microturbine	Capstone	HPNG GC GP	3474	29,653
San Mateo Youth Complex	C60 Microturbine	Capstone	HPNG GC	3484	20,352
San Mateo Youth Complex	C60 Microturbine	Capstone	HPNG GC GP	3471	9,673
San Mateo Youth Complex	C60 Microturbine	Capstone	HPNG GC	3483	25,873

Attachment 1 to Exhibit A

Exhibit B – Payment

1. Payment for the Service Agreement will be made in equal ☐ Annual or ☒ Other (specify: 24 equal quarterly) installments of \$12,772.26. The first installment is due upon the Start of Services Date (see Section D above). The remaining installments will be due 30 days prior to each succeeding Anniversary (Annual or Other, whichever is specified in the first sentence of this paragraph) of the Start of Services Date.
2. Unless otherwise provided for in the payment descriptions above, payments for Services are due 30 calendar days from date of invoicing, are stated in U.S. dollars and include any fees, licenses and permits required for the performance of the Services, and exclude sales and other taxes.
3. Overdue payments shall be subject to a late charge, calculated from the date of invoice to the date of payment, equal to the lesser of 1.5% per month or the highest applicable rate allowed by law. The foregoing shall in no way limit any other remedy that may be available to Contractor.
4. County's obligations to Contractor to pay in full all amounts owed to Contractor as of the termination or expiration of this Agreement shall survive the termination for any reason or expiration of this Agreement.
5. Contractor may adjust pricing by up to 2% annually for the services provided hereunder upon written notice to County should the total Consumer Price Index (CPI) exceed 2% in the previous year of the contract.
6. County has the right to terminate this contract with 30 days prior written notice. The County will then be obligated to pay a percentage of the remaining total contract balance as listed in table A-1. Such obligation shall not apply if termination is for cause, i.e. failure to comply with all contract provisions as described in Exhibit A. Upon County cancelation, Contractor may cease performance of any services.
7. When necessary to perform services on a time and material basis, the rates in Table A-2 shall apply.

Table A-1
Payment on Contract Termination

Contract Year	% of Total Contract Balance Owed
1	25
2	25
3	30
4	45
5	60
6	75

Table A-2
Billing Rates

The following time, travel and material rates apply to services performed per individual Field Services Order(s).

Hourly Labor Rate - \$180.00 - Per Hour (2 Hour Minimum)

Phone Support - \$100.00 – Per Hour (1 Hour Minimum)

Travel Hours - \$75.00 - Per Hour

Mileage - \$ 1.75 cents - Per Mile

Extended Travel Costs (flight, hotel, car rental, etc.): Billed at cost plus 10% to Regatta Solutions

ATTACHMENT I
Assurance of Compliance with Section 504 of the Rehabilitation Act of 1973, as Amended

The undersigned (hereinafter called the "Contractor(s)") hereby agrees that it will comply with Section 504 of the Rehabilitation Act of 1973, as amended, all requirements imposed by the applicable DHHS regulation, and all guidelines and interpretations issued pursuant thereto.

The Contractor(s) gives/give this assurance in consideration of for the purpose of obtaining contracts after the date of this assurance. The Contractor(s) recognizes/recognize and agrees/agree that contracts will be extended in reliance on the representations and agreements made in this assurance. This assurance is binding on the Contractor(s), its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Contractor(s).

The Contractor(s): (Check a or b)



a. Employs fewer than 15 persons.



b. Employs 15 or more persons and, pursuant to section 84.7 (a) of the regulation (45 C.F.R. 84.7 (a)), has designated the following person(s) to coordinate its efforts to comply with the DHHS regulation.

Mark Parriott

Name of 504 Person - Type or Print

MARK PARRIOTT

Name of Contractor(s) - Type or Print

27122 Paseo Espada #901

Street Address or P.O. Box

San Juan Capistrano, CA 92675

City, State, Zip Code

I certify that the above information is complete and correct to the best of my knowledge.

[Signature]

Signature

V.P. Customer Engineering

Title of Authorized Official

2/26/13

Date

*Exception: DHHS regulations state that:

"If a recipient with fewer than 15 employees finds that, after consultation with a disabled person seeking its services, there is no method of complying with (the facility accessibility regulations) other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible."