



Commission Data Requests Docket 3707  
Set I

Comm.1-1: Provide a summary of revenues for the fiscal year 2005; present the summary by account number using the revenue accounts as listed at Schedule WEE-1, Page 1.

Answer: Please see Schedule WEE-3 in filing.

Prepared by WEE

Comm.1-2: Provide the RIRRC contract that supports the sludge disposal rates at WEE-7. Also, if the rates used to calculate the rate year costs (\$325 & \$381.18) were calculated by NBC for this rate filing, provide the supporting calculations.

Answer: See attached (Contract and Rate Calculation sheet).

Prepared by WEE

## Calculation of FY 2007 Biosolids Disposal Rate

### Calculation of Escalation Factor:

Projected 2006 CPIU	224.78
Divided by:	
Base 2001 CPIU	<u>191.65</u>
Escalation Factor	1.173

### Calculation of FY 2007 Biosolids Disposal Rate:

Current Biosolids Disposal Rate	\$	325
Multitplied by Escalation Factor		<u>1.173</u>
Projected March 2007 Biosolids Disposal Rate	\$	381.18

# RIRRC AGREEMENT

## AMENDED AND REINSTATED BIOSOLIDS PROCESSING SERVICES AGREEMENT

THIS BIOSOLIDS PROCESSING SERVICES AGREEMENT is made as of this 30<sup>th</sup> day of April, 2004, by and between RHODE ISLAND RESOURCE RECOVERY CORPORATION, a public corporation of the State of Rhode Island created pursuant to Title 23, Chapter 19 of Rhode Island General Laws ("R.I.G.L."), having its principal offices at 65 Shun Pike, Johnston, Rhode Island 02919 ("RIRRC"), and NARRAGANSETT BAY COMMISSION, a public corporation of the State of Rhode Island created pursuant to Title 46, Chapter 25 of R.I.G.L., having its principal offices at One Service Road, Providence, RI 02905 ("NBC", and, together with RIRRC, the "Parties" or either one or individually, "Party").

### WITNESSETH:

WHEREAS, RIRRC operates a landfill facility (the "Landfill") in Johnston, Rhode Island, where it currently receives municipal biosolids generated by certain Rhode Island wastewater treatment plants; and

WHEREAS, RIRRC desires to phase out the landfilling of municipal biosolids in order to extend the useful life of the Landfill and to create a more economical and environmentally sound statewide processing and recycling plan for the beneficial reuse of Rhode Island municipal biosolids; and

WHEREAS, RIRRC, in furtherance of its desire to phase out the landfilling of municipal biosolids, desires to engage a subcontractor to design, construct, operate and maintain a regional biosolids processing facility that could process all Rhode Island municipal biosolids currently disposed of at the Landfill, and certain biosolids generated by other Rhode Island generators, in a manner that would permit their beneficial reuse; and

WHEREAS, to effectuate its desire to phase out the landfilling of municipal biosolids at the Landfill and utilize a regional biosolids processing facility to process municipal

biosolids, RIRRC issued a Request for Qualifications/Request for Proposals (the "RFP"), dated September 23, 1998 for the design, construction, operation and maintenance of a regional biosolids processing facility that could process all Rhode Island municipal biosolids currently disposed of at the Landfill, and certain biosolids generated by other Rhode Island generators, in a manner that would permit their beneficial reuse; and

WHEREAS, upon completion of the RFP process, RIRRC selected a proposal submitted by Residual Technologies, Limited Partnership, a Delaware limited partnership ("RESTEC"), to execute the requirements and specifications contained in the RFP; and

WHEREAS, NBC owns and operates two wastewater treatment plants in the State of Rhode Island that generate biosolids, including the Field's Point Wastewater Treatment Plant located at 2 Ernest Street, Providence, Rhode Island 02905 ("Field's Point") and the Bucklin Point Wastewater Treatment Plant located at 102 Campbell Avenue, East Providence, Rhode Island 02916 ("Bucklin Point"); and

WHEREAS, NBC desires to have all of its municipal biosolids generated at Field's Point and Bucklin Point managed by RIRRC and/or its subcontractor and RIRRC desires to do such management; and

WHEREAS, NBC desires that RIRRC, as part of the management services, design, permit, construct and operate a regional biosolids processing facility as well as improved dewatering facilities at the Bucklin Point and Field's Point Wastewater Treatment Plants; and

WHEREAS, RESTEC formed Providence Soils, LLC, ("PSLLC") a Rhode Island limited liability corporation and wholly owned subsidiary of Synagro Technologies Inc. ("Synagro"), for the specific purpose of managing the NBC biosolids for RIRRC and performing the obligations, in accordance with Applicable Laws, to permit, design, construct, operate, and maintain a regional biosolids processing facility to process the municipal biosolids currently

disposed of at the Landfill, and certain biosolids generated by other Rhode Island generators, in a manner that would permit their beneficial reuse.

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein contained, the Parties hereto mutually agree as follows:

## ARTICLE I

### DEFINITIONS AND CONSTRUCTION

**Section 1.1 Definitions.** When capitalized and used in this Agreement the following terms have the meanings set forth below:

**“Acceptable Biosolids”** means all Biosolids which at the time they are received by RIRRC in accordance with this Agreement: (a) comply with all applicable federal, state and local laws and regulations, including but not limited to 40 C.F.R. §§ 503 et seq., (b) comply with DEM quality standards with respect to heavy metals, (c) are not Hazardous Waste, and (d) do not otherwise deviate in any material respect from general industry standards for Biosolids.

**“Affiliate”** means, with respect to any Person, any other Person that directly or indirectly controls or is controlled by or is under common control with such Person.

**“Agreement”** means this Amended and Reinstated Biosolids Processing Services Agreement between RIRRC and NBC, together with all the Schedules hereto, as the same may from time to time be amended, modified or supplemented in accordance with the terms hereof.

**“Annual Cycle”** means a period consisting of 12 consecutive Billing Periods, commencing with the Billing Period beginning on the Commencement Date or the next Billing Period thereafter if the first Billing Period is not a complete calendar month, and each succeeding period of twelve (12) consecutive Billing Periods, except that the last Annual Cycle shall end on the date of termination of this Agreement, and in the case of said last Annual Cycle, the

obligations of the Parties hereto shall be adjusted to reflect the actual length of such Annual Cycle.

**“Applicable Laws”** means all laws, rules, ordinances, rulings and regulations, in effect as of the Contract Date, of any federal, state or local Governmental Authority having jurisdiction over the Facility, the WWTFs, the Processing Services, the Dewatering Services or the Transportation Services, including, without limitation, any such Environmental Laws.

**“Applicable Permits”** means any permit, authorization, license or similar Governmental Approval required by Applicable Laws to be obtained or maintained in connection with the Facility, the WWTFs Improvements Services, the Dewatering Services, the Processing Services or the Transportation Services.

**“Backup Services”** has the meaning set forth in Section 4.6 hereof.

**“Billing Period”** means each calendar month, except that (a) the first Billing Period shall begin on the earlier of the Commencement Date or the date on which RIRRC begin rendering any services pursuant to Section 4.13 hereof, and shall continue to the last day of the calendar month in which such date occurs, and (b) the last Billing Period shall end on the last day of the final Contract Year.

**“Biosolids”** means the liquid, semisolid or solid substances, including primary and secondary sludge, thickened and digested sludge, sludge cake and scum, produced by a wastewater treatment plant as a result of the treatment process, but not including grit and screenings.

**“Bucklin Point”** has the meaning set forth in the recitals to this Agreement.

**“Business Day”** means any of the five working days, Monday through Friday.

**“CERCLA”** means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended 42 U.S.C. §§ 960, et seq.

**“C.F.R.”** means the Code of Federal Regulations.

**“Change in Law”** means (a) the enactment, adoption, amendment, promulgation, modification, change of interpretation or repeal after the Contract Date by any Governmental Authority (including, without limitation, NBC, RIRRC, DEM or EPA) of any federal, state or local statute, ordinance, code, rule, regulation or executive order that was not so enacted, adopted, promulgated, modified, interpreted or repealed on or before the Contract Date, or (b) the imposition by, or a change of interpretation by, a Governmental Authority (including, without limitation, NBC, RIRRC, DEM or EPA) after the Contract Date of any material conditions in connection with the issuance, renewal or modification of any official permit, license or approval, which in the case of either (a) or (b) establishes requirements more burdensome than the most stringent requirements applicable to the WWTFs Improvements Services, Processing Services, Dewatering Services and Transportation Services provided for herein as of the Contract Date.

**“Commencement Date”** means the date upon which all final Governmental Approvals for the WWTFs Improvements have been issued by the DEM, the WWTFs Improvements have been accepted by NBC and the WWTFs Improvements are placed into commercial operation.

**“Construction Period”** means, for each of the WWTF Improvements and the Facility individually, the period beginning on the date upon which the last of the conditions specified in Section 11.1 hereof is satisfied for such facility and ending on the date of issuance of all final Governmental Approvals for operation of the facility in question.

**“Contract Date”** means the date of this Agreement and specifically does not refer to the July 31, 2000 date of the original Biosolids Processing Services Agreement between RIRRC and NBC.

**“Contract Year”** means the consecutive twelve (12) month period beginning January 1st and ending December 31st, except that the first Contract Year shall commence on the Commencement Date and shall end on the following December 31st, and the last Contract Year shall end on the date of the termination of this Agreement, and in the case of said first and last Contract Years, the obligations of the Parties hereto shall be adjusted to reflect the actual length of such Contract Years.

**“Cost Substantiation”** means, with respect to any cost, a certificate executed and delivered to NBC by an authorized representative of RIRRC setting forth, in reasonable detail, the amount of and basis for such cost and stating that such cost was or will be actually incurred as a direct result of an event giving RIRRC the right to reimbursement under this Agreement and further stating that such cost is a competitive and reasonable price for the service or materials supplied.

**“CPIU”** shall mean the Consumer Price Index, All Items, for Urban Wage Earners and Clerical Workers for the Boston, Massachusetts Statistical Area, as published by the U.S. Department of Labor in the Bureau of Labor Statistics Series #CWURA103SA0 CPI Detailed Report for Selected Areas in Table 11 for the month of November in the year immediately prior to the year in which the calculation to which CPIU applies is made. If, at any time that escalation is to be calculated in accordance with this Agreement, CPIU is not available or is substantially altered with respect to base, component elements, timing or publication, a comparable index reasonably satisfactory to RIRRC and NBC shall be used or, failing agreement, a comparable index shall be selected pursuant to the Dispute resolution provisions of Section 12.12 hereof.

**“CPIU Base”** shall mean the Consumer Price Index, All Items, for Urban Wage Earners and Clerical Workers for the Boston, Massachusetts Statistical Area, as published by the U.S. Department of Labor in the Bureau of Labor Statistics Series #CWURA103SA0 CPI Detailed Report for Selected Areas in Table 11 for the month of August, 2001. The Index for August 2001 shall be calculated by taking the average of the Indices for July and September 2001.

**“DEM”** means the Rhode Island Department of Environmental Management.

**“Dewatering Facilities”** has the meaning set forth in Section 3.3(b) hereof.

**“Dewatering Services”** means those services to be rendered by RIRRC to NBC pursuant to this Agreement with respect to dewatering NBC Biosolids, including, without limitation, operating and maintaining thickening and/or dewatering equipment and providing polymer, or other thickening/coagulating chemicals.

**“Dispose”** or **“Disposal”** means the act of, or the making of arrangements for, the discharging, depositing, injecting, recycling, reusing or placing of NBC Biosolids or any other material into or on any land for final disposal.

**“Dispute”** has the meaning set forth in Section 12.12 hereof.

**“DPUC”** means the Division of Public Utilities & Carriers, created pursuant to Title 39, Chapter 1 of R.I.G.L. as amended from time to time, and its successors and assigns.

**“Dry Ton”** means the unit of weight (in Tons) of dewatered Biosolids representing the weight of Biosolids free from moisture, calculated by multiplying the number of wet Tons of Biosolids (i.e., Biosolids as received by RIRRC including the moisture contained therein) by the percentage solids content of the Biosolids expressed as a decimal.

**“Environmental Laws”** means all federal, state and local laws, rules, ordinances, rulings and regulations in effect as of the Contract Date relating to pollution or protection of human health or the environment (including, without limitation, ambient air, surface water, ground water, wastewater, land surface or subsurface strata), including, without limitation, laws, rules, ordinances, rulings and regulations relating to emissions, discharges, releases or threatened releases of Hazardous Waste, or otherwise relating to the manufacture, processing, refining, distribution, use, treatment, storage, disposal, transport, recycling, reporting or handling of Hazardous Waste, and including, without limitation, such laws, rules, ordinances, rulings and regulations as applied to or because of the generation, transportation, treatment or disposal of Biosolids.

**“EPA”** means the United States Environmental Protection Agency.

**“Escalation Factor”** has the meaning set forth in Section 5.2 hereof.

**“Event of Default”** means those events of default as described in Sections 8.1 and 8.2 of this Agreement.

**“Exhibit”** means each exhibit, schedule or annex to this Agreement, as such exhibit, schedule or annex may be modified or supplemented from time to time in accordance with the Agreement.

**“Facility”** means the regional biosolids processing facility to be permitted, designed, constructed, operated and maintained in accordance with Section 3.2(a) by RIRRC at the Facility Site, including the land, all real estate improvements and any Biosolids Processing equipment, fixtures, buildings and related facilities and specifically does not mean the WWTFs Improvements.

**“Facility Plan(s)”** means the NBC’s *Field’s Point Wastewater Treatment Facility Dewatering and Incinerator Improvements Final Report Facility Plan Amendment*, dated July

1997 and the NBC's *Final Wastewater Treatment and Solids Management Facilities Plan Amendment* for the Bucklin Point Wastewater Treatment Facility, dated August 1997.

**"Facility Site"** has the meaning set forth in Section 3.2(a) hereof.

**"Field's Point"** has the meaning set forth in the recitals to this Agreement.

**"Field's Point Emergency"** means the occurrence of an event that hinders the NBC's ability to dewater and/or incinerate its Biosolids at Field's Point, including but not limited to a denial and/or prohibition by RIDEM, contained in the applicable NBC permits or otherwise, for operation of its incinerator in the same manner as is currently operated.

**"Force Majeure Event"** as used in Sections 5.5 and 8.4 hereof means any act, event or condition if the same has had, or may reasonably be expected to have, a material adverse effect on the rights or the obligations of the Parties to this Agreement and if such act, event or condition is beyond the reasonable control of the Party relying thereon as justification for not performing an obligation or complying with any condition required of such Party under this Agreement and is the direct and proximate cause of such failure to perform or comply. Force Majeure Event shall include, but not be limited to, any of the following:

(a) an act of God, landslide, lightning, earthquake, fire, flood, explosion, acts of a public enemy, war, blockade, insurrection, riot or civil disturbance, labor disturbance, strike, hurricane, tornado, blizzard or ice storm (but not including reasonably anticipated weather conditions normal for the geographic area of the place of performance of the Party's obligations), and perils of the sea and air; and

(b) a delay or denial in receiving any permit, authorization or consent from any Governmental Authority required in order for RIRRC or NBC to perform its obligations under this Agreement, so long as RIRRC or NBC demonstrates that it has diligently pursued such permit, authorization or consent.

It is expressly understood and agreed that, notwithstanding any other provision of this definition, the following shall not constitute Force Majeure Events:

- (i) adverse changes in the financial ability of any Party to perform its obligations hereunder; and
- (ii) the consequences of errors of design, construction, startup and shutdown, compliance testing, operation or maintenance of the Facility or the WWTFs Improvements on the part of RIRRC or any of its employees, agents, contractors, subcontractors, suppliers or Affiliates; and
- (iii) an act of gross negligence or intentional wrongdoing on the part of the party seeking force majeure protection; and
- (iv) a Change in Law.

**“Governmental Approval”** means (a) any authorization, consent, approval, license, lease, ruling, permit, tariff, rate, certification, exemption, filing, variance, claim, order, judgment, decree or publication of, by or with, (b) any notice to, (c) any declaration of, or (d) any registration with, any Governmental Authority.

**“Governmental Authority”** means any federal, state, municipal, local, territorial or other governmental department, commission, board, bureau, agency, regulatory authority, instrumentality, or judicial or administrative body.

**“Hazardous Waste”** means materials the handling, transportation, Processing or Disposal of which would subject RIRRC or NBC to liability under, or would otherwise contravene, Subtitle C of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§ 6901 et seq., CERCLA or any analogous state law.

**“Indemnified Party”** has the meaning set forth in Section 9.5(a) hereof.

**“Indemnifying Party”** has the meaning set forth in Section 9.5(a) hereof.

**“Landfill”** has the meaning set forth in the recitals to this Agreement.

**“NBC”** means the Narragansett Bay Commission, a public corporation of the State of Rhode Island created pursuant to R.I.G.L. Title 46, Chapter 25, as amended from time to time, and its successors and assigns.

**“NBC Biosolids”** means Acceptable Biosolids that are made available to RIRRC by NBC pursuant to this Agreement (that is, all municipal biosolids which are Acceptable Biosolids and which are generated at Field's Point and Bucklin Point); provided however, that Biosolids from both Field's Point and Bucklin Point shall be deemed to be Acceptable Biosolids only if they have a minimum monthly average solids content of 1% at each WWTF.

**“NBC Fees”** has the meaning set forth in Section 4.7(b) hereof.

**“Notice to Proceed”** has the meaning set forth in Section 3.1.

**“Other Biosolids”** means Acceptable Biosolids originating from generators, other than NBC, who are parties to agreements for the Processing of such Acceptable Biosolids at the Facility.

**“Party(ies)”** has the meaning set forth in the preamble to this Agreement.

**“Pass-through Costs”** means those costs for which RIRRC is entitled to reimbursement (subject to the requirement for Cost Substantiation) through the Service Fee pursuant to Section 5.3 hereof.

**“Person”** means any individual or business or governmental entity, including, without limitation, any corporation, partnership, limited liability company, Governmental Authority or business trust.

**“Pre-Construction Permits”** means those required Applicable Permits that must be obtained before construction of the Facility or the WWTFs Improvements may begin.

**“Prior Processing Services”** has the meaning set forth in Section 4.13 hereof.

**“Prior Processing Services Fee”** has the meaning set forth in Section 5.1(c) hereof.

**“Process”** or **“Processing”** means to treat Biosolids by means of dewatering, thickening, drying, stabilizing, gasification, incineration, chemical treatment and composting, and generally in a manner intended to achieve, at a minimum, compliance with 40 C.F.R. Part 503.

**“Processed Biosolids”** means the material produced as a result of RIRRC’s Processing of Biosolids in accordance with the terms of this Agreement.

**“Processing Services”** means those services to be rendered by RIRRC to NBC with respect to NBC Biosolids pursuant to this Agreement, including, without limitation, all services, including but not limited to Backup Services, necessary for the acceptance and Processing of NBC Biosolids.

**“Processing Services Date”** means the date upon which all final Governmental Approvals necessary for operation of the WWTFs Improvements and the Facility have been issued by the DEM, and the WWTFs Improvements and the Facility are placed into commercial operation or as set forth in Section 8.6.

**“Project”** means the design, construction, maintenance and operation of the Facility, the WWTF Improvements and all other associated improvements.

**“Project Schedule”** has the meaning set forth in Section 3.1(d) hereof.

**“PUC”** means the Public Utilities Commission, created pursuant to Title 39, Chapter 1 of R.I.G.L. as amended from time to time, and its successors and assigns.

**“Representatives”** of a Party means such Party's directors, officers, partners, members, employees, agents, consultants, advisors and other representatives, including, without limitation, such Party's legal counsel, accountants, engineers and technicians.

**“Return Water”** means all wastewater generated in the operation of the Facility and the WWTF Improvements, including, without limitation, centrate or filtrate water from the dewatering of Biosolids.

**“RIRRC”** means the Rhode Island Resource Recovery Corporation, a public Corporation of the State of Rhode Island created pursuant to Title 23, Chapter 19 of R.I.G.L., as amended from time to time, and its successors and assigns.

**“Service Fee”** means the fee payable to RIRRC or RIRRC's designee by NBC for RIRRC's performance of the Processing Services, Dewatering Services and Transportation Services, as calculated pursuant to Section 5.1(a) hereof.

**“Shall” or “shall”** means shall or shall cause its Representatives and Subcontractors.

**“Subcontractor”** has the meaning set forth in Section 6.1 hereof.

**“Term”** has the meaning set forth in Section 2.1 hereof.

**“Testing Services Fee”** has the meaning set forth in Section 5.1(b) hereof.

**“Third Party Claim”** has the meaning set forth in Section 9.5(a) hereof.

**“Ton”** means a short ton of two thousand (2,000) pounds.

**“Transportation Services”** means those transportation services provided to NBC pursuant to Section 4.3 hereof.

**“Unacceptable Biosolids”** means all NBC Biosolids that are made available to RIRRC by NBC other than Acceptable Biosolids.

**“Variable Service Fee”** has the meaning set forth in Section 5.1 hereof.

**“WWTFs”** means, collectively, Bucklin Point and Field’s Point.

**“WWTFs Improvements”** means those improvements to the WWTFs to be designed, constructed, permitted and compliance tested by RIRRC pursuant to Section 3.3 hereof.

**“WWTFs Improvements Services”** shall mean (i) all aspects of the design, financing, construction, permitting, startup and shakedown, and compliance testing of the WWTFs Improvements to be completed by RIRRC pursuant to Section 3.3 hereof and (ii) the furnishing of all materials, labor, equipment, tools, supplies, transportation, administration, insurance and incidentals, and other services and items required for the full performance and completion by RIRRC of the requirements of Section 3.3 hereof.

**“WWTFs Improvements Design Documents”** has the meaning set forth in Section 3.3(b) hereof.

**“WWTFs Improvements Preliminary Plans”** means the technical specifications for the design of the WWTFs Improvements set forth on Exhibit 2 hereto.

**Section 1.2 Construction.** In this Agreement:

(a) the terms "hereby", "hereof", "hereto", "herein", "hereunder" and any similar terms refer to this Agreement;

(b) words of the masculine gender shall mean and include correlative words of the feminine and neuter genders and words importing the singular number shall mean and include the plural number and vice versa;

(c) any headings preceding the text of the several Articles and Sections of this Agreement, and any table of contents hereto, shall be solely for convenience of reference, shall not constitute a part of this Agreement, and shall not affect its meaning, construction or effect;

(d) all Exhibits attached to this Agreement shall be considered to be incorporated within any Section or Article hereof solely by reference thereto;

(e) all references to the term of this Agreement, without further specification, shall include all extensions and renewals hereof (if any);

(f) all references to Exhibits, Schedules, Articles or Sections, without further identification of the document in which they are located, are references to Exhibits to, Schedules to, Articles of or Sections of this Agreement, as the case may be;

(g) the term "hereafter" means after the Contract Date of this Agreement; and

(h) the terms "day" or "days" refer to calendar day(s).

## ARTICLE II

### TERM OF AGREEMENT

**Section 2.1 Term.** The term of this Agreement (the "Term") shall be for a period commencing on the Commencement Date and ending on the earlier of (i) the date which is twenty (20) years after the Commencement Date; or (ii) the date of termination of this Agreement as provided in Section 8.4 hereof.

## ARTICLE III

### THE FACILITY AND THE WWTFs IMPROVEMENTS SERVICES

**Section 3.1**      **Notice to Proceed.** NBC shall issue to RIRRC a written Notice to Proceed with the Services contemplated herein within ten days of receipt of approval from the DPUC and/or PUC, if applicable, as contemplated by Section 10.2(b).

**Section 3.2**      **Facility.** (a) RIRRC shall cause PSLLC to design, permit, construct, start-up and shakedown a Facility to be located on a specific site owned or controlled and operated by PSLLC. The Facility Site shall not be located in Johnston, RI at the Central Landfill or in the field's point area of Providence, RI, however nothing in this paragraph shall, in any way, limit or restrict the NBC's ability to process biosolids or any other activity within the site boundary of the Fields Point WWTF. With respect to permitting of the Facility, RIRRC's obligation under this Section 3.2 is to cause PSLLC to make all commercially reasonable efforts to obtain the necessary Governmental Approvals for the Facility. PSLLC shall make a good faith effort to provide an acceptable Facility Site in the State of Rhode for location of the Facility and PSLLC shall be the applicant for the permitting and construction of the Facility. If through no fault of RIRRC, RIRRC is unable to obtain the necessary Governmental Approvals for the Facility, RIRRC may terminate this Agreement pursuant to Section 8.4 herein.

(b)      Subject to Section 3.2(a), RIRRC's design, permitting, construction, startup and shakedown, compliance testing, operation and maintenance of the Facility shall be done in compliance with Applicable Laws.

(c)      **Facility Performance Testing.** Upon completion of the construction of the Facility, RIRRC shall demonstrate that the Facility meets all capacity requirements and operates as designed and can process NBC Biosolids such that (i) the Processed Biosolids produced at the Facility meet the regulatory standards for Class A Biosolids set forth in 40 C.F.R. Part 503; and

*w/la  
pl  
legal  
op  
p/04*

(ii) the Processed Biosolids meet requirements set forth by the regulatory agencies with jurisdiction for beneficial use.

(d) After receipt of all necessary permits and approvals in accordance with Section 11.1, the Facility shall be ready to accept and Process Biosolids in accordance with the schedule as set forth on Exhibit 1 (the "Project Schedule"), and subject to any amendment or waivers agreed to pursuant to Section 12.10 hereof.

(e) RIRRC shall accept Biosolids from NBC at the Facility at least 8 hours per day, Monday through Friday and a ½ day on Saturday, 52 weeks per year.

(f) By this Agreement, other than as specifically set forth herein, the NBC shall have no responsibility, obligation or liability relative to the design, permitting, construction, startup and shakedown, compliance testing, operation and/or maintenance of the Facility.

(g) NBC shall grant to RIRRC any easements on its property determined by the Parties to be reasonably necessary for completion and operation of the Project.

**Section 3.3 WWTFs Improvements Services.**

Except as otherwise expressly set forth herein, and subject to the specific requirements of the WWTFs Improvements Preliminary Plans as set forth on Exhibit 2, RIRRC shall perform the WWTFs Improvements Services, including, without limitation, any and all work and services required or appropriate in connection with the design, construction, permitting, startup and shakedown, and compliance testing of the WWTFs Improvements, and shall provide all materials, labor, equipment, tools, supplies, transportation, administration, insurance, incidentals and other services and items required for the full performance and completion of the requirements of this Section 3.3. Without limiting the foregoing, RIRRC shall perform the following as part of the WWTFs Improvements Services:

(a) **Scheduling.** The initial project schedule for the WWTFs Improvements Services is included as part of the Project Schedule as set forth on Exhibit 1. RIRRC shall be responsible for using all reasonable efforts to cause the performance of the WWTFs Improvements Services to proceed in accordance with the Project Schedule, and for coordinating and incorporating the schedules of all Subcontractors into the Project Schedule.

GL  
BPTP

(b) **Design.** RIRRC shall prepare plans and specifications for the construction of the WWTFs Improvements (the "WWTFs Improvements Design Documents"). Said WWTFs Improvements Design Documents shall be consistent with the requirements of the WWTFs Improvements Preliminary Plans. NBC shall provide RIRRC direction and guidelines for the spacing and location of the WWTFs Improvements at the WWTFs. RIRRC shall submit the WWTFs Improvements Design Documents to the NBC for review and comment. Without limiting the foregoing, the WWTFs Improvements Preliminary Plans and the WWTFs Improvements Design Documents shall provide in detail for the installation and operation of dewatering and cake load-out facilities (the "Dewatering Facilities") which shall be located as more particularly described on Exhibit 3 and Exhibit 4 attached hereto. The WWTFs Improvements Design Documents shall be suitable for submission to RIDEM for approval .

(c) **Procurement.** RIRRC shall procure and pay for, as an independent contractor and not as agent for NBC, all materials, labor, equipment, tools, supplies, transportation, administration, insurance, incidentals and other services and items (whether on or off the Facility Site or the WWTFs) required for the full performance and completion by RIRRC of the WWTFs Improvements Services.

(d) **Construction.** RIRRC shall construct the WWTFs Improvements, or cause the WWTFs Improvements to be constructed, and complete the WWTFs Improvements Services, or cause the WWTFs Improvements Services to be completed, in accordance with the terms and conditions of this Agreement. RIRRC shall complete construction of each of the WWTFs Improvements as set forth in the Project Schedule. RIRRC's construction plans shall include

procedures for environmental protection, security at the WWTFs, and physical protection of property adjacent to the areas of the WWTFs where the WWTFs Improvements Services are performed during the Construction Period. RIRRC shall inspect or cause to be inspected all materials and equipment to be incorporated in the WWTFs Improvements, and shall reject or revise those items or procedures determined not to be in compliance with the WWTFs Improvements Preliminary Plans, the WWTFs Improvements Design Documents or this Agreement. RIRRC shall (i) require all Subcontractors to perform their portions of the WWTFs Improvements Services in accordance with the WWTFs Improvements Preliminary Plans, the WWTFs Improvements Design Documents and this Agreement, (ii) in performing the duties incident to such responsibility, RIRRC shall issue to the Subcontractors such directives and impose such restrictions as may be required to obtain compliance by the Subcontractors with the relevant terms thereof, and (iii) shall indemnify NBC with respect to the acts and omissions of the Subcontractors in accordance with Section 9.2 hereof.

(e) Operation and Maintenance. RIRRC shall not interfere with the NBC's operation and maintenance of the WWTFs Improvements, including but not limited to equipment and pumps, located at the WWTFs, relative to the NBC's compliance with existing NBC commitments, obligations, restrictions and union and labor contracts.

(f) Plant Water. NBC shall provide plant effluent water to RIRRC needed for the proper operation of the WWTFs Improvements at no cost to RIRRC.

(g) Labor and Personnel. RIRRC shall provide, or cause to be provided all labor and personnel required in connection with the WWTFs Improvements Services, including, without limitation: (i) professional engineers licensed to perform engineering services in the State of Rhode Island; (ii) a WWTFs Improvements Services engineer and lead structural, mechanical, electrical, instrumentation and control, civil, cost and schedule engineers, and procurement, construction, startup and shakedown, and compliance testing supervisors; (iii) a project manager or other representative who shall be fully acquainted with the WWTFs

Improvements Services and shall have the authority to administer this Agreement on behalf of RIRRC; and (iv) quality assurance personnel.

(h) Permitting. RIRRC shall prepare applications, apply in a timely manner, and use all commercially reasonable efforts to obtain and maintain in effect those Applicable Permits which RIRRC may hereafter determine are required for the undertaking and completion of the WWTFs Improvements Services and the rendering of the Processing Services, Dewatering Services and Transportation Services.

(i) Facility Plans. NBC shall be responsible for updating its Facility Plan(s) on file with DEM for both Field's Point and Bucklin Point, as deemed necessary by DEM. RIRRC shall cooperate, as needed, with the NBC in this regard.

(j) Royalties and License Fees. RIRRC shall pay all required royalties and license fees and shall procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems incorporated into the WWTFs Improvements. In performing the WWTFs Improvements Services hereunder, RIRRC shall not incorporate into the WWTFs Improvements any materials, methods, processes or systems that involve the use of any confidential information, intellectual property or proprietary rights that, to RIRRC's knowledge, RIRRC does not have the right to use.

(k) Labor Relations. RIRRC shall be responsible for all labor relations matters relating to the WWTFs Improvements Services (other than with respect to Representatives of NBC) and shall at all times use all reasonable commercial efforts to maintain harmony among personnel employed in connection with the WWTFs Improvements Services. RIRRC shall at all times use all reasonable commercial efforts and its judgment as an experienced contractor to adopt and implement policies and practices designed to avoid work stoppages, slowdowns, disputes and strikes.

(l) Inspection and Expediting. RIRRC shall perform all inspection, expediting, quality control and traffic services as are reasonably required for performance of the WWTFs Improvements on a timely basis. RIRRC's responsibilities under this Section 3.2(l) shall include, without limitation, inspecting all materials and equipment both on and off the WWTFs that comprise or will comprise part of the WWTFs Improvements, or that are to be used in performance of the WWTFs Improvements Services hereunder.

(m) Access to WWTFs. During the Construction Period and at all times during the Term of this Agreement, NBC shall control the WWTFs. For construction activities, NBC shall provide RIRRC, its Subcontractors and their respective Representatives with access to the WWTFs, as follows: (i) to Bucklin Point from Monday through Friday between the hours of 7:00 a.m. and 5:00 p.m. and on Saturday between the hours of 7:00 a.m. and noon, (ii) to Field's Point from Monday through Saturday between the hours of 7:00 a.m. and 5:00 p.m. RIRRC acknowledges that NBC is responsible for safety and security at the WWTFs and agrees that RIRRC will, and will require its Subcontractors and Representatives to, comply with all rules and regulations of NBC regarding access to and activities at the WWTFs.

(n) Clean-Up and Waste Disposal. RIRRC shall keep those areas of the WWTFs in which RIRRC performs the WWTFs Improvements Services reasonably free from accumulation of waste materials, rubbish and other debris resulting from construction of the WWTFs Improvements and shall employ spill containment consistent with NBC's stormwater permit and spill control program.

(o) Startup and Shakedown. The WWTFs Improvements Services shall include the startup and shakedown of all components of the WWTFs Improvements in accordance with the manufacturers' recommendations, calibration of controls, and all other startup and shakedown functions customarily performed in accordance with standard industry practice.

(p) WWTFs Improvement Performance Testing. Upon completion of the construction of the WWTFs Improvements, RIRRC will conduct performance testing on the WWTFs Improvements in accordance with standard industry practice to determine whether the WWTFs Improvements meet the WWTFs Improvements Preliminary Plans.

**Section 3.4 Beneficial Reuse Permit**. RIRRC shall make all reasonable commercial efforts to obtain the necessary permits to beneficially reuse the Processed Biosolids.

**Section 3.5 Noncompliance with Project Schedule**. (a) The Parties have mutually agreed to the Project Schedule referenced in Sections 3.2 and 3.3 hereof to effectuate the commencement, execution and completion of the Project. If RIRRC fails to commence the Dewatering Services contemplated in Sections 4.2(a)(i) and 4.2(b)(i) hereof by the Commencement Date, NBC may terminate this Agreement in accordance with Section 8.4. If RIRRC fails to provide the services contemplated in Section 4.2(a)(ii), if applicable, NBC may terminate this Agreement in accordance with Section 8.4. If RIRRC fails to provide the services contemplated in Section 4.2(b)(ii), if applicable, NBC may terminate this Agreement in accordance with Section 8.4. If RIRRC fails to make application for the Pre-Construction Permits for the WWTFs Improvements within 180 days of the Notice to Proceed, NBC may terminate this Agreement in accordance with Section 8.4. If, through no fault of NBC, Construction of the WWTFs Improvements is not completed by March 1, 2006, as modified by Force Majeure, NBC may terminate this Agreement in accordance with Section 8.4. If RIRRC fails to commence construction of the Facility by September 1, 2006, NBC may terminate this Agreement in accordance with Section 8.4. If, through no fault of NBC, Construction of the Facility is not completed by September 1, 2007, as modified by Force Majeure, NBC may terminate this Agreement in accordance with Section 8.4, subject to Section 8.6 herein.

(b) The failure of NBC to exercise its termination rights under this Section shall in no way constitute a waiver of NBC to exercise its existing or subsequent termination rights.

**Section 3.6 Compliance with Applicable Laws.** RIRRC shall comply with and shall perform the WWTFs Improvements Services, including, without limitation, the design and construction of the WWTFs Improvements, in compliance with all Applicable Laws. Notwithstanding the foregoing, the effect of any Change in Law enacted after the Contract Date on the Service Fee calculated in accordance with Section 5.1 hereof shall be determined in accordance with said Section.

## ARTICLE IV

### BIOSOLIDS TRANSPORTATION AND PROCESSING SERVICES

**Section 4.1 Commitment to Tender NBC Biosolids.** Commencing on the Commencement Date, NBC shall make available all NBC Biosolids to RIRRC at the WWTFs on the terms set forth in Sections 4.2 and 4.3 hereof and RIRRC shall accept all NBC Biosolids made available to RIRRC by the NBC.

**Section 4.2 Commitment to Provide Dewatering Services.** Subject to Section 4.13, on and after the Commencement Date, RIRRC shall provide the following Dewatering Services to NBC:

(a) Bucklin Point.

- (i) RIRRC shall accept all NBC Biosolids made available to RIRRC at Bucklin Point and provide Dewatering Services for such NBC's Biosolids generated at Bucklin Point as contemplated by the WWTFs Improvements Preliminary Plans and WWTFs Design Documents. NBC shall provide RIRRC access to Bucklin Point's dewatering building 24 hours per day, seven days per week to perform the Dewatering Services, subject to Section 3.3(m) hereof.

- (ii) In the event that those WWTFs Improvements to be constructed at Bucklin Point have not been completed by December 31, 2004, RIRRC shall accept and dispose of all NBC Biosolids made available to RIRRC commencing on January 1, 2005. In the event that RIRRC utilizes temporary mobile dewatering equipment, adequate odor control as specified by NBC, shall be used. NBC shall use its best efforts to maintain the solids content of its Biosolids as currently exists.
- (iii) No Other Biosolids may be dewatered at Bucklin Point other than NBC Biosolids which are generated at Bucklin Point.

**(b) Field's Point**

- (i) RIRRC shall accept all NBC Biosolids made available to RIRRC at Field's Point and provide Dewatering Services for such NBC's Biosolids generated at Field's Point as contemplated by the WWTFs Improvement Preliminary Plans and WWTFs Design Documents. NBC shall provide RIRRC access to Field's Point 24 hours per day, seven days per week to perform the Dewatering Services, subject to Section 3.3(m) hereof.
- (ii) In the event that those WWTFs Improvements to be constructed at Field's Point have not been completed within 18 months from the Notice to Proceed, RIRRC shall accept and dispose of all NBC Biosolids made available to RIRRC. In the event that RIRRC utilizes temporary mobile dewatering equipment, adequate odor control, as specified by NBC, shall be used.

- (iii) Prior to the Commencement Date and with at least 90 days written notice to NBC, RIRRC may elect to begin to accept and dispose of all NBC Biosolids made available to RIRRC from Field's Point at a date earlier than the 18 month anniversary from the Notice to Proceed but not earlier than January 1, 2005.
- (iv) No Other Biosolids may be dewatered at Field's Point other than NBC Biosolids which are generated at Field's Point.

**Section 4.3 Commitment to Provide Transportation and Processing Services.** On and after the Commencement Date, RIRRC shall provide the following Transportation Services and Processing Services to NBC:

(a) Bucklin Point. Upon performance of the Dewatering Services contemplated in Section 4.2(a) hereof, RIRRC shall transport such NBC Biosolids for Processing and shall Process and Dispose of all such NBC Biosolids. NBC shall provide RIRRC access to Bucklin Point from Monday through Friday between the hours of 7:00 a.m. and 5:00 p.m. and on Saturday between the hours of 7:00 a.m. and noon to perform such Transportation Services.

(b) Field's Point. Upon performance of the Dewatering Services contemplated in Section 4.2(b) hereof, RIRRC shall transport such NBC Biosolids for Processing and shall Process and Dispose of all such NBC Biosolids.

**Section 4.4 Commitment to Process NBC Biosolids.** On and after the Processing Services Date, RIRRC shall accept a minimum of 50% of all NBC Biosolids for Processing at the Facility and shall Process said percentage of NBC Biosolids at the Facility.

**Section 4.5 Commitment to Accept Processed Biosolids.** On and after the Processing Services Date, RIRRC shall utilize NBC Processed Biosolids from the Facility in a

beneficial re-use program so that a minimum of 50% of all NBC Biosolids are used in a beneficial re-use manner.

**Section 4.6 Backup Services.** On and after the Processing Services Date, in the event that RIRRC is unable to provide Processing Services at the Facility for any reason, RIRRC shall accept all NBC Biosolids that would otherwise be Processed by RIRRC at the Facility and arrange for their transportation, Processing and Disposal at a suitable alternative location in accordance with all Federal, State and local laws and regulations ("Backup Services").

**Section 4.7 Return Water - Facility.** (a) If applicable, based on the Facility Site, RIRRC shall transport via truck to NBC and NBC shall accept from RIRRC the Return Water generated at the Facility during Processing so long as the Return Water is derived from the Processing of NBC Biosolids, and is of an amount and characteristics which are mutually agreeable to RIRRC and NBC, such agreement not to be unreasonably withheld. Prior to the Processing Services Date NBC shall notify RIRRC as to which of the WWTFs the Return Water is to be returned. Upon 24 hours notice to RIRRC, NBC may change the specified WWTF.

(b) RIRRC shall be responsible for obtaining, complying with and paying for all necessary Governmental Approvals required for the discharge of Return Water from the Facility, including, if applicable, a Sewer Connection Permit and an Industrial Wastewater Discharge Permit, and for paying NBC the standard fees imposed by NBC on industrial users (the "NBC Fees"), subject to Section 5.3(a)(ii). With respect to Return Water not attributable to the Processing of NBC Biosolids from the Facility, RIRRC shall be responsible for paying NBC the standard fees imposed by NBC on similar industrial users (the "NBC Fees"). NBC shall use best efforts to cooperate with and assist RIRRC in obtaining the applicable permits.

(c) RIRRC shall maintain such records as are reasonably necessary to allocate among Return Water attributable to NBC Biosolids, and any Other Biosolids Processed at the Facility.

**Section 4.8      Procurement.** RIRRC shall provide and pay for all materials, labor, tools, equipment, containers, utilities, supplies, transportation, administration, insurance, incidentals and other services and items necessary for the rendering of the Dewatering Services, Transportation Services, and Processing Services.

**Section 4.9      Weighing of Deliveries**

(a) RIRRC shall maintain or cause to be maintained appropriate measurement equipment at the Facility for the purpose of determining the total tonnage of NBC Biosolids entering and leaving the Facility. RIRRC shall use certified scales to weigh and determine the tonnage of NBC Biosolids being transported from the WWTF Improvements to locations other than the Facility.

(b) If at any time testing of the measurement equipment used by RIRRC indicates that such equipment does not meet applicable accuracy requirements, the records actually recorded during the preceding thirty (30) days shall be adjusted by mutual agreement of RIRRC and NBC. If such measurement equipment is incapacitated or is being tested, RIRRC shall estimate as accurately as practicable the quantities required to be determined pursuant to this Section 4.9 on the basis of truck volumes and estimated data obtained from historical information. These estimates shall take the place of actual measurement records during the measurement equipment outage. If NBC shall disagree with RIRRC's estimate and the Parties fail to resolve such disagreement, the Dispute shall be resolved in accordance with Section 12.12 hereof, and historical quantities shall be utilized pending the resolution of such Dispute.

**Section 4.10      Service Coordination: Personnel.**

(a) RIRRC shall on the Contract Date and from time to time thereafter, designate in writing one person to act as its service coordinator, with respect to the day-to-day matters which may arise during the performance of this Agreement, and such person shall have

authority pursuant to such written designation to transmit instructions and receive information and confer with NBC's service coordinator.

(b) NBC shall, on the Contract Date and from time to time thereafter, designate in writing a person to act as its service coordinator, with respect to the day-to-day matters which may arise during the performance of this Agreement, and such person shall have authority pursuant to such written designation to transmit instructions and receive information and confer with RIRRC's service coordinator.

(c) A representative of RIRRC shall be designated to respond to emergencies twenty-four (24) hours a day during the performance of this Agreement.

(d) All RIRRC personnel and its agents shall be qualified for their positions and shall have all necessary licenses required by Applicable Laws.

**Section 4.11 Record Keeping and Reporting.**

(a) RIRRC shall establish and maintain an information system to provide storage and ready retrieval of data regarding its performance of the Dewatering Services, Transportation Services and Processing Services, including, but not limited to, all information reasonably necessary to verify calculations made pursuant to this Agreement. NBC may with full cooperation of RIRRC, inspect the Dewatering Facilities and the Facility and the information system and data to determine whether RIRRC is accurately recording the information reasonably necessary to make the calculations required by this Agreement. RIRRC shall maintain written daily records of the identity of each vehicle delivering NBC Biosolids to the Facility and the amount of such NBC Biosolids delivered. RIRRC shall maintain all daily measurement records for the longer of (x) a period of five (5) years, or (y) such period as is required by applicable law, and shall provide copies of such records to NBC upon request.

(b) RIRRC shall provide NBC in writing, by the tenth (10th) Business Day of each Billing Period, the following operating data for the prior Billing Period: (1) the quantity of NBC Biosolids accepted by RIRRC at the WWTFs; (2) the quantity of NBC Biosolids accepted for Backup Services pursuant to Section 4.6 hereof; (3) the quantity of Return Water delivered to Field's Point and Bucklin Point if applicable and a reasonable allocation of such Return Water among NBC Biosolids, and Other Biosolids; and (4) an accounting for each Annual Cycle pursuant to Section 5.1.

**Section 4.12 Unacceptable Biosolids.**

(a) RIRRC shall at all times have the right but not the obligation to test and analyze, at its own cost, NBC Biosolids to determine whether the NBC Biosolids are Acceptable Biosolids. All such testing and analysis shall be conducted and performed by Rhode Island or federal certified laboratories and other qualified personnel. RIRRC shall promptly give NBC copies of any test results that indicate that NBC Biosolids are Unacceptable Biosolids and shall provide NBC with a split sample of any such NBC Biosolids.

(b) If NBC knows or determines that the NBC Biosolids to be delivered to RIRRC during a specified period of time will be Unacceptable Biosolids, NBC shall promptly notify RIRRC in writing, describing in detail why such NBC Biosolids are Unacceptable Biosolids.

(c) RIRRC shall arrange for the Processing or Disposal, at NBC's cost pursuant to 5.3(a)(i), of all NBC Biosolids made available to RIRRC that RIRRC determines are Unacceptable Biosolids in the most cost effective manner, utilizing entities and methods that are fully licensed and permitted for such Processing or Disposal.

(d) RIRRC shall not knowingly accept any Biosolids at the Facility the acceptance, Processing or Disposal of which would cause a violation of any Applicable Laws.

**Section 4.13 Processing Services Prior to the Processing Services Date.**

Notwithstanding anything to the contrary contained in the Article IV, RIRRC shall provide the following Prior Processing Services prior to the Processing Service Date:

(a) Commencing on the Notice to Proceed and ceasing on the Commencement Date, in the event of a Field's Point Emergency, RIRRC shall accept, Process and Dispose of all NBC Biosolids generated at Field's Point and tendered to RIRRC.

(b) Commencing on the Commencement Date and ceasing on the Processing Services Date, in the event that RIRRC is unable to provide the Dewatering Services at the WWTFs contemplated in Section 4.2 hereof for any reason, RIRRC shall accept and dispose of all NBC Biosolids made available to RIRRC in accordance with all Federal, State and local laws and regulations.

**Section 4.14 Operating Procedures and Scheduled Maintenance.** RIRRC shall develop written operating procedures and a written maintenance schedule for the WWTF Improvements and the Facility that comply with all Applicable Laws, including Environmental Laws, and Applicable Permits, and shall use its best efforts to operate and maintain the Facility in accordance therewith. RIRRC shall update such operating procedures and maintenance schedule from time to time to ensure that they remain consistent with the standard industry practice.

**ARTICLE V**

**FEES**

**Section 5.1 Service Fee.**

(a) As more specifically set forth in this Article V, in consideration of the Dewatering Services, Transportation Services, and Processing Services provided by RIRRC

under this Agreement, commencing on the Commencement Date, NBC shall pay a Service Fee for each Billing Period calculated in accordance with the following formula:

$$\text{Service Fee} = \text{VSF} + \text{PC}$$

where:

VSF = Variable Service Fee, which shall be the product of (i) times (ii); where (i) equals \$325 multiplied by the EF, in accordance with Section 5.2, and (ii) equals the number of Dry Tons of NBC Biosolids accepted, dewatered, Processed and/or Disposed by RIRRC during the billing period.

PC = Pass-through Costs, which shall be determined in accordance with Section 5.3 hereof;

(b) In the event that RIRRC renders any Dewatering Services, Transportation Services, and Processing Services to NBC prior to the Processing Services Date during a performance testing schedule mutually agreed to by RIRRC and NBC and conducted pursuant to Section 3.2 (c), 3.3(o) and/or 3.3(p) and so long as NBC Biosolids are fully Processed and Disposed by RIRRC without returning any portion of said NBC Biosolids to either Field's Point or Bucklin Point for treatment, NBC shall pay a Testing Services Fee to RIRRC for each Billing Period equal to \$325 times the number of dry Tons of NBC Biosolids accepted, Dewatered, Processed and Disposed by RIRRC during such Billing Period.

(c) In the event that RIRRC renders any Prior Processing Services to NBC pursuant to Section 4.13, NBC shall pay a services fee to RIRRC for each Billing Period equal to \$325 times the number of dry Tons of NBC Biosolids accepted by RIRRC during such Billing Period ("Prior Processing Services Fee").

(d) Notwithstanding anything contained herein to the contrary, in the event, following the Contract Date, a Change in Law occurs that imposes significantly more stringent obligations upon RIRRC and specifically materially adversely affects RIRRC's ability to perform its obligations hereunder, the Parties agree to negotiate in good faith an adjustment to the Service Fee to reasonably compensate RIRRC to perform its obligations hereunder in compliance with said Change in Law. If the Parties are unable to agree to such adjustment, the Parties shall proceed with the Dispute Procedures set forth in Section 12.12 hereof.

(e) Notwithstanding Sections 5.1(a), 5.1(b), 5.1(c), and 5.1(d) hereof, nothing in this Agreement shall be construed to obligate the NBC to pay a Service Fee unless RIRRC provides the Dewatering Services, Transportation Services, Processing Services, Backup Services, or Prior Processing Services contemplated herein this Agreement, or unless RIRRC is ready, willing and able to provide the Dewatering Services, Transportation Services, Processing Services, Backup Services, or Prior Processing Services and the NBC fails to make its Biosolids available for such services.

**Section 5.2 Escalation Factor.** The Escalation Factor (EF) shall be the CPIU divided by the CPIU Base, and the application of the Escalation Factor may result in an increase but not a decrease of the components of the Service Fee to which the Escalation Factor is applicable. In each year, the Escalation Factor shall be calculated using CPIU for the month of November in the year immediately preceding the year in which the Escalation Factor is calculated, and shall be effective as of January 1st of such year through December 31st of such year. Notwithstanding the above, the Escalation Factor from (i) the Commencement Date until a period of twelve (12) months after the Commencement Date or (ii) the Processing Services Date, whichever is later shall be 1.0. Notwithstanding anything contained in this Article 5 hereof, calculation of the Escalation Factor shall not become applicable until the Processing Services Date and shall not be calculated or applied to any Testing Services Fee invoiced pursuant to Section 5.1(b) or any Prior Processing Services Fee invoiced pursuant to Section 5.1(c).

However, the Escalation Factor shall be calculated and applied to all Service Fees invoiced pursuant to Section 5.1(a), including those which arise out of the performance of Backup Services pursuant to Section 4.6.

**Section 5.3 Pass-through Costs.**

- (a) The Pass-through Costs shall consist of:
  - (i) the incremental cost of loading, transporting and Disposal of Unacceptable Biosolids and Hazardous Waste over the cost of loading, transporting and Disposal of NBC Biosolids as described in Section 4.12 hereof;
  - (ii) the actual cost of the NBC Fees attributable to NBC Biosolids;
  - (iii) any adjustment to the Service Fee pursuant to Section 5.1(d) hereof;
  - (iv) the incremental costs of insurance incurred as a result of NBC's adjustment of required insurance policies or amount in accordance with Section 7.5.
- (b) All costs referred to in Section 5.3(a) shall be allocated to each Billing Period in accordance with generally accepted accounting principles.
- (c) RIRRC shall provide NBC with Cost Substantiation for any costs incurred by RIRRC for which RIRRC seeks compensation as a Pass-through Cost in accordance with this Section 5.3.

**Section 5.4 Payment.** NBC shall pay all Service Fees, Prior Processing Service Fees and Testing Services Fee to RIRRC or its designee as submitted in writing to NBC. Said payment arrangements to a designee shall be at the request and for the accommodation of

RIRRC. The Service Fee shall be paid within 30 days of NBC's receipt of an invoice in form and substance reasonably satisfactory to NBC.

**Section 5.5** **Force Majeure Costs**. Except as provided for in Section 5.1(d), in the event of a Force Majeure Event, excepting a Force Majeure Event caused by a labor dispute or union strike, RIRRC shall bear any and all incremental increased costs associated with the continuation of providing the Dewatering Services, Transportation Services and Processing Services hereunder due to conditions caused by the Force Majeure Event. NBC shall not be responsible for any increased costs associated with said continuation of providing the Dewatering Services, Transportation Services and Processing Services.

## ARTICLE VI

### SUBCONTRACTORS

**Section 6.1** **Subcontractors**. RIRRC shall select only those vendors, suppliers, materialmen, consultants and other subcontractors (the "Subcontractors") as have, in the reasonable opinion of RIRRC, attained a standard of reliability and performance comparable to RIRRC's. NBC shall have the right to approve all Subcontractors that are retained by RIRRC to perform any material part of the WWTFs Improvements Services, Dewatering Services, Transportation Services and Processing Services hereunder, which approval shall not be unreasonably withheld, conditioned or delayed.

**Section 6.2** **Payment to Subcontractors**. RIRRC shall be solely responsible for paying each Subcontractor and any other Person to whom any amount is due for services, labor, equipment, materials or supplies in connection with the services to be performed by RIRRC hereunder with respect to the Facility and the rendering of the WWTFs Improvements Services, Dewatering Services, Transportation Services and Processing Services hereunder. RIRRC shall indemnify and hold harmless NBC with respect to the acts and omissions of the

Subcontractors, and for all amounts due to such Subcontractors and other persons, in accordance with Section 9.2 hereof.

**Section 6.3 No Privity.** Excepting the third party beneficiary rights contemplated in Section 12.18 herein, NBC shall not be deemed by virtue of this Agreement to have any contractual obligation to or relationship with any Subcontractor or any other person who has rendered services, labor, equipment, materials or supplies in connection with the services to be performed by RIRRC with respect to the Facility and the WWTFs Improvements Services, Dewatering Services, Transportation Services and Processing Services hereunder

## ARTICLE VII

### INSURANCE OBLIGATIONS

**Section 7.1 General.**

(a) RIRRC shall provide proof of insurance in the form provided for in Sections 7.2 and 7.3 hereof, and keep such insurance in full force and effect during the Term of this Agreement.

(b) Insurance coverage shall be evidenced by a Certificate of Insurance submitted in a form reasonably acceptable to NBC.

(c) Insurance coverage shall be provided by (i) an insurance company licensed to provide insurance in the State of Rhode Island and that has an A.M. Best or S&P Insurance Rating minimum of "A" or (ii) a surplus line carrier authorized to write business in the State of Rhode Island that has an A.M. Best or S&P Insurance Rating minimum of "A".

(d) Each policy shall provide that NBC will receive thirty (60) days' advance notice of cancellation, non-renewal, or reduction, except that ten (10) days notice will be provided in the event of cancellation for non-payment. Each policy shall provide that the

insuring company shall not be released of its obligations if it fails to satisfy such notice requirements.

**Section 7.2 Required Coverage.** Prior to the commencement of any construction activities and through the Term of this Agreement, RIRRC shall obtain and keep or shall cause its Subcontractors or independent contractors and their respective Representatives to obtain and keep in force during the Term of this Agreement the following insurance:

(a) Commercial general liability on an occurrence basis to include all operations and premises coverages, protective liability, products liability, and broad form general liability for limits of not less than \$1,000,000 each occurrence and \$3,000,000 aggregate limits. A per location aggregate shall apply. RIRRC and its subcontractor shall include NBC as an additional insured on a primary non-contributing basis.

(b) Comprehensive Automobile Liability to include all owned, hired, leased and non-owned vehicles for a combined single limit (CSL) of liability of \$1,000,000 each accident. RIRRC and its subcontractor shall include NBC as an additional insured on a primary non-contributing basis

(c) Statutory workers compensation for all of RIRRC's employees and its Subcontractors' or independent contractors' and their respective Representatives and employees, at the Project, complying with the statutes of the State of Rhode Island, to include an Employers Liability B coverage limit of \$500,000/\$500,000/\$500,000.

(d) Pollution Liability with limits of \$5,000,000 each occurrence, \$5,000,000 each pollution condition to include damages due to claims for "bodily injury", "property damage" or "cleanup costs" that result from "pollution conditions" at, on or emanating from the Project. The policy shall include coverage for pollution conditions from transported cargo. RIRRC and its subcontractor shall include NBC as an additional insured on a primary non-contributing basis

(e) Umbrella Liability Policy for limits of \$15,000,000 Bodily Injury and Property Damage limit each occurrence with a self-retention not to exceed \$100,000. All limits of the general liability, automobile liability and workers compensation conforming to the minimum underlying requirements of the umbrella liability policy. RIRRC and its subcontractor shall include NBC as an additional insured on a primary non-contributing basis.

**Section 7.3 Waiver.** RIRRC and its subcontractors and independent subcontractors shall waive all rights against NBC and their agents, officers, directors and employees for recovery of damages to the extent these damages are covered by commercial general liability, commercial auto liability, pollution liability, workers compensation and employers liability and commercial umbrella liability insurance maintained pursuant to this Section 7.

**Section 7.4 Inquiries of Insurance Carriers.** NBC reserves the right to request that RIRRC make direct inquiries to any of RIRRC's insurance carriers and RIRRC agrees to promptly make such inquiries to any of RIRRC's insurance carriers and obtaining any reasonably desired information.

**Section 7.5 Adjustments.** NBC may, subject to the approval of RIRRC, adjust the requirements herein for policies and amounts of insurance required under this Article VII to reflect inflation and changes in insurance market conditions, and any increase in insurance costs resulting from such adjustment shall be included as a Pass-through Cost hereunder.

**Section 7.6 Maintenance Reserve.** From and after the Commencement Date, RIRRC shall cause its Subcontractor, PSLLC/Synagro, to maintain a maintenance letter of credit, payment bond or similar instrument in favor of, and in form and substance reasonably satisfactory to NBC in the amount of \$200,000 less the amount of any maintenance or similar reserve established under the terms of its financing for the Project. The terms of such maintenance letter of credit, payment bond or other instrument shall permit NBC to draw down

up to \$100,000 upon a) an early termination of RIRRC's agreement with its Subcontractor, PSLLC/Synagro, and b) upon certification by NBC that the amount so drawn is necessary to remedy RIRRC's failure to maintain the WWTFs Improvements in accordance with the terms of this Agreement or to place the WWTFs in a condition that permits for the continued operation for the intended purpose of receiving and dewatering Biosolids.

## ARTICLE VIII

### DEFAULT AND TERMINATION

**Section 8.1** **Events of Default by RIRRC.** Each of the following shall constitute an Event of Default on the part of RIRRC:

(a) The failure or refusal by RIRRC to fulfill any of its material obligations under this Agreement (except those matters covered by Sections 8.1 (b), 8.1(c), and 8.1(d)) which shall be Events of Default as described in said Sections) provided, however, that no such failure or refusal shall constitute an Event of Default giving NBC the rights set forth in Section 8.3 of this Agreement unless and until:

(i) NBC shall have given written notice to RIRRC stating that an Event of Default (to be described in reasonable detail in such notice) has occurred or exists which will, unless corrected, give rise to the rights set forth in Section 8.3 of this Agreement; and

(ii) RIRRC shall not have commenced reasonable action to correct such default within thirty (30) days or corrected such default within one hundred twenty (120) days from the date of the notice given pursuant to Section 8.1(a)(i) hereof, unless a longer period is otherwise agreed.

(b) The failure on the part of RIRRC to pay any amount required to be paid under this Agreement within thirty (30) days after receipt of written demand from NBC stating in such notice that the failure to pay shall constitute an Event of Default giving rise to a right to terminate this Agreement.

(c) Any material misrepresentation by RIRRC in this Agreement with respect to the representations contained herein or a breach of the warranties contained herein.

(d) A material change in the existence of RIRRC due to repeal or modification of Rhode Island General Laws, § 23-19-1, et seq.

**Section 8.2 Events of Default by NBC.** Each of the following shall constitute an Event of Default on the part of NBC:

(a) The failure or refusal by NBC to fulfill any of its material obligations under this Agreement (except those matters covered by Sections 8.2 (b), 8.2(c) and 8.2(d) which shall be Events of Default as described in said Sections) provided, however, that no such failure or refusal shall constitute an Event of Default giving RIRRC the rights set forth in Section 8.3 of this Agreement unless and until:

(i) RIRRC shall have given written notice to NBC stating that an Event of Default (to be described in reasonable detail in such notice) has occurred or exists which will, unless corrected, give rise to the rights set forth in Section 8.3 of this Agreement; and

(ii) NBC shall not have commenced reasonable action to correct such default within thirty (30) days or corrected such default within one hundred twenty (120) days from the date of the notice given pursuant to Section 8.2(a)(i) hereof, unless a longer period is otherwise agreed.

(b) The failure on the part of NBC to pay any amount required to be paid to RIRRC under this Agreement within thirty (30) days after receipt of written demand from RIRRC stating in such notice that the failure to pay shall constitute an Event of Default giving rise to the rights set forth in Section 8.3 of this Agreement.

(c) Any material misrepresentation by NBC in this Agreement with respect to the representations contained herein or a breach of the warranties contained herein.

(d) A material change in the existence of NBC due to repeal or modification of Rhode Island General Laws, § 46-25-1, et seq.

**Section 8.3 Remedies for Default.**

(a) Upon the occurrence of an Event of Default by a Party hereto and subject to the Dispute resolution procedures set forth in Section 12.12 hereof, the non-defaulting Party shall have the right to: (i) seek damages, as may be limited by this Agreement, including without limitation Section 12.13 of this Agreement, and pursue any other rights at law or in equity; or (ii) seek damages, as may be limited by this Agreement, and terminate this Agreement. A Party's right to seek damages in the event of an Event of Default by the other Party and a termination of this Agreement shall survive such termination.

(b) The failure of either Party to exercise any rights available upon the occurrence of an Event of Default shall in no way constitute a waiver of that Party's rights to exercise its remedies for the existing or a subsequent Event of Default.

(c) Neither the exercise of, nor the failure to exercise, any remedy provided for in this Article VIII will constitute an election of remedies or limit any Party in any manner in the enforcement of any other remedies that may be available to it.

**Section 8.4      Termination.**

(a)      NBC's Right to Terminate. NBC may terminate this Agreement (i) for the reasons specified in Section 3.5 and Section 11.3 hereof, or (ii) upon the occurrence of an Event of Default by RIRRC as provided in Section 8.3(a), or (iii) upon the occurrence of a Force Majeure Event for which NBC bears all costs, in the event that the act, event or condition constituting the Force Majeure Event has not been cured or otherwise ceased to exist and is not reasonably likely to be capable of being cured, in the opinion of NBC, within 120 days thereafter.

(b)      RIRRC's Right to Terminate. RIRRC may terminate this Agreement (i) for the reasons specified in Section 11.3 hereof, or (ii) upon the occurrence of an Event of Default by NBC as provided in Section 8.3(a) or (iii) upon the occurrence of a Force Majeure Event for which RIRRC bears the cost, in the event that the act, event or condition constituting the Force Majeure Event has not been cured or otherwise ceased to exist and is not reasonably likely to be capable of being cured, in the opinion of RIRRC, within 120 days thereafter.

(c)      Procedure for Termination. If either Party has a right of termination in accordance with this Section 8.4, the same may be exercised by written notice of termination given to the other Party at least thirty (30) days prior to the date of termination. Except as expressly provided in this Agreement, the exercise of the right of termination shall not relieve the defaulting Party of any obligations or liabilities required by or incurred as a result of this Agreement prior to the effective date of termination.

(d)      Reimbursement for Subcontractor Development Costs. If, pursuant to its Agreement with PSLLC/Synagro, RIRRC terminates the Agreement due to a failure of PSLLC/Synagro to obtain permits necessary for construction, despite good faith efforts to obtain such permits by PSLLC/Synagro, and if RIRRC pays \$150,000 to PSLLC/Synagro in

consideration of development costs put into the project by PSLLC/Synagro, RIRRC may seek reimbursement from NBC and NBC shall reimburse RIRRC in the amount of \$75,000.

**Section 8.5 Rights and Obligations upon Termination.** In the event of a termination in accordance with this Article VIII, the parties shall remain liable for any and all obligations accruing prior to the date of termination, but any rights, obligations and liabilities on the part of either Party arising under this Agreement after the effective date of termination shall be terminated; provided, however, that any liabilities that may arise pursuant to any Section hereof that provides that it shall survive the termination of this Agreement shall survive such termination. Notwithstanding the foregoing, neither party shall be liable to the other party for consequential, incidental or special damages, and neither party shall have a right to damages which would include cover or lost profits. In addition, any right, obligation or liability arising hereunder prior to the effective date of termination or relating to actions or omissions prior to the effective date of termination shall survive such termination.

**Section 8.6 Obligation as to WWTFs Improvements.** If after commencement of the Construction Period for the WWTFs Improvements, it is determined that, due to no fault of RIRRC, RIRRC will not be issued the Applicable Permits and or necessary Governmental Approvals for the construction and/or operation of the Facility, notwithstanding anything stated to the contrary, all rights and obligations of the Parties relating to the Facility shall cease. In such event, the Processing Services Date, for purposes of Section 5.2, shall be deemed to be the Commencement Date. RIRRC shall complete construction of the WWTFs Improvements and thereafter provide the Dewatering, Transportation, Processing and Disposal Services contemplated in Section 4.2 and 4.3 herein for a period of 6½ years. Thereafter, this Agreement shall terminate and NBC shall retain ownership of the WWTFs Improvements. This Section shall survive termination of this Agreement.

## ARTICLE IX

### LIABILITY AND INDEMNIFICATION

**Section 9.1 Liability.** Except as expressly provided in this Agreement, neither Party shall be responsible for any liability, indebtedness or other obligation of the other Party, its Representatives or Subcontractors.

**Section 9.2 RIRRC Indemnification.**

(a) Notwithstanding any other provisions of this Agreement to the contrary, to the fullest extent permitted by law, and except to the extent caused by the negligent or intentional act or omission of NBC or its Representatives, RIRRC agrees to defend, indemnify, protect and hold harmless NBC and its Representatives, from and against any and all claims (including third-party claims), suits, losses, liabilities, penalties, damages, detriment, costs and expenses, however designated and including reasonable attorneys' fees, for injuries (including death) to persons, or damage to property, or violations of federal, state or local laws, including, but not limited to, violations of Environmental Laws:

(i) arising out of or in connection with a breach of RIRRC's obligations hereunder or the negligent (including grossly negligent), willful or intentional acts, errors or omissions of RIRRC, its Representatives or any Subcontractor or independent contractor engaged by RIRRC pursuant to this Agreement; or

(ii) imposed pursuant to or arising out of any Applicable Laws relating to or arising from RIRRC's performance of or failure to perform this Agreement, including, but not limited to, under any Environmental Laws regulating the loading, Transportation,

Processing and Disposal of NBC Biosolids, Unacceptable Biosolids, Hazardous Waste, Final Products or any other materials.

(b) Anything to the contrary in Section 9.2(a) notwithstanding, RIRRC's obligations under Section 9.2(a) shall in all events be limited to the extent of any money damages or injunctive relief obtained by RIRRC under and pursuant to RIRRC's contract with PSLLC/Synagro referenced in Section 11.1(a)(v) of this Agreement; and provided further that RIRRC does hereby covenant to take all reasonable actions to seek money damages or injunctive relief as may be available to RIRRC for the breach of the aforementioned contract with PSLLC/Synagro.

**Section 9.3 NBC Indemnification.**

(a) Notwithstanding any other provisions of this Agreement to the contrary, to the fullest extent permitted by law, and except to the extent caused by the negligent or intentional act or omission of RIRRC, its Subcontractors or their respective Representatives, NBC agrees to defend, indemnify, protect and hold harmless RIRRC, its Subcontractors and their respective Representatives, from and against any and all claims (including third-party claims), suits, losses, liabilities, penalties, damages, detriment, costs and expenses, however designated and including reasonable attorneys' fees, for injuries (including death) to persons, or damage to property, or violations of federal, state or local laws, including, but not limited to, violations of Environmental Laws:

(i) arising out of or in connection with a breach of NBC's obligations hereunder or the negligent (including grossly negligent), willful or intentional acts, errors or omissions of NBC or its Representatives; or

(ii) imposed pursuant to or arising out of any Applicable Laws relating to or arising from NBC's performance of or failure to perform this Agreement, including, but

not limited to, under any Environmental Laws regulating the loading, Transportation, Processing and Disposal of NBC Biosolids, Unacceptable Biosolids, Hazardous Waste, Final Products or any other materials.

**Section 9.4 Survival.** The indemnities contained in this Article IX shall survive cancellation, expiration or termination of this Agreement provided that the indemnified Party seeks indemnity from the indemnifying Party prior to the expiration of any applicable statute of limitations period.

**Section 9.5 Matters Involving Third Parties.**

(a) If any third party shall notify any Party (the "Indemnified Party") with respect to any matter (a "Third Party Claim") which may give rise to a claim for indemnification against the other Party (the "Indemnifying Party") under this Article IX, then the Indemnified Party shall promptly notify the Indemnifying Party thereof in writing.

(b) The Indemnifying Party will have the right at any time to assume and thereafter conduct the defense of the Third Party Claim with counsel reasonably satisfactory to the Indemnified Party; provided, however, that the Indemnifying Party will not consent to the entry of any judgment or enter into any settlement with respect to the Third Party Claim without the prior written consent of the Indemnified Party (not to be unreasonably withheld, conditioned or delayed) unless the judgment or proposed settlement involves only the payment of money damages and does not impose an injunction or other equitable relief upon the Indemnified Party.

(c) Unless and until an Indemnifying Party assumes the defense of the Third Party Claim as provided in Section 9.5(b) hereof, the Indemnified Party may defend against the Third Party Claim in any manner the Indemnified Party reasonably may deem appropriate.

(d) In no event will the Indemnified Party consent to the entry of any judgment or enter into any settlement with respect to the Third Party Claim without the prior

written consent of the Indemnifying Party (not to be unreasonably withheld, conditioned or delayed).

## ARTICLE X

### REPRESENTATIONS AND WARRANTIES

**Section 10.1 Representations of RIRRC.** RIRRC makes the following representations and warranties to NBC:

(a) **Existence and Power, Authorization.** RIRRC is a public corporation validly existing under the laws of the State of Rhode Island with the power under and pursuant to Rhode Island law to enter into and perform this Agreement. RIRRC has taken all necessary action and has complied with all provisions of Rhode Island law required to make this Agreement the valid and enforceable obligation of RIRRC. When executed and delivered by RIRRC, this Agreement will constitute the valid and binding obligation of RIRRC, enforceable in accordance with the terms hereof and the Resolution passed by the RIRRC Board of Commissioners on June 20, 2000 and amended and reinstated by the Resolution passed by the RIRRC Board of Commissioners on April 20, 2004 authorizing the execution and performance of this Agreement.

(b) **Approvals.** No approval, authorization, order or consent of, or declarations, registration of, or filing with, any Governmental Authority is required for the valid execution and delivery by RIRRC of this Agreement except those that have been duly obtained or made.

(c) **No Conflicts.** Neither the execution or delivery by RIRRC of this Agreement, nor the performance of its obligations in connection with the transactions contemplated hereby nor the fulfillment of the terms or conditions hereof (i) conflicts with, violates or results in a breach of any applicable law; or (ii) conflicts with, violates or results in a

breach of any form or condition of any judgment or decree, or any agreement or instrument, to which RIRRC is a party or by which RIRRC or any of its properties or assets are bound, or constitutes a default thereunder.

**Section 10.2 Representations of NBC.** NBC makes the following representations and warranties to RIRRC:

(a) **Existence and Power.** NBC is a public corporation validly existing under the laws of the State of Rhode Island with the power under and pursuant to Rhode Island law to enter into and perform this Agreement. NBC has taken all necessary action and has complied with all provisions of Rhode Island law required to make this Agreement the valid and enforceable obligation of NBC. When executed and delivered by NBC, this Agreement will constitute the valid and binding obligation of NBC, subject to Section 10.2(b) hereof, enforceable in accordance with the terms hereof and Resolution No. 2000:15 passed by the NBC Board of Commissioners on June 21, 2000 and amended and reinstated by Resolution No. 2004:05 passed by the NBC Board of Commissioners on January 21, 2004 authorizing the execution and performance of this Agreement.

(b) **Approvals.** Approval from the PUC and/or DPUC may be necessary for the valid execution and delivery by NBC of this Agreement. No other approval, authorization, order or consent of, or declarations, registration of, or filing with, any Governmental Authority is required for the valid execution and delivery by NBC of this Agreement except those that have been duly obtained or made.

(c) **No Conflicts.** Neither the execution or delivery by NBC of this Agreement, nor the performance of its obligations in connection with the transactions contemplated hereby nor the fulfillment of the terms or conditions hereof (i) conflicts with, violates or results in a breach of any applicable law; or (ii) conflicts with, violates or results in a breach of any form or condition of any judgment or decree, or any agreement or instrument, to

which NBC is a party or by which NBC or any of its properties or assets are bound, or constitutes a default thereunder.

## ARTICLE XI

### CONDITIONS PRECEDENT

#### Section 11.1 Conditions to Construction Period.

(a) RIRRC's obligation to begin the construction of the WWTFs Improvements and the Facility shall be subject to the satisfaction or occurrence of the following conditions precedent:

(i) the Pre-Construction Permits and or approvals that must be obtained by the Parties prior to the construction of the Facility or the WWTFs Improvements (whichever relevant) shall have been obtained and shall be in full force and effect.

(ii) RIRRC shall have obtained certificates of insurance sufficient, in the reasonable opinion of NBC, to meet RIRRC's obligations under Article VII hereof; and

(iii) no action, suit or proceeding shall have been commenced or threatened in any federal, state or local court or administrative agency which, if the outcome is adverse to any party against whom relief is sought, would materially and adversely affect the performance by any Party to this Agreement of its obligations pursuant to this Agreement; and

(iv) RIRRC shall have received written notice from the NBC that each of the conditions set forth in Section 11.1(b) hereof has been satisfied or waived; and

(v) RIRRC shall have entered into an agreement with PSLLC/Synagro or other such Subcontractor as approved by NBC in accordance with Section 6.1 hereof, to effectuate its obligations under this Biosolids Processing Services Agreement.

(b) NBC's obligations hereunder relating to the start of the Construction Period shall be subject to the satisfaction or occurrence of the following conditions precedent:

(i) all Pre-Construction Permits and approvals that must be obtained by the Parties prior to the construction of the Facility or the WWTFs Improvements (whichever relevant) shall have been obtained and shall be in full force and effect; and

(ii) NBC shall have received approval of its revised Facility Plan(s) for Field's Point and Bucklin Point on file with DEM, if required by DEM; and

(iii) NBC shall have obtained DPUC and/or PUC approval, if applicable, as to this Agreement; and

(iv) no action, suit or proceeding shall have been commenced or threatened in any federal, state or local court or administrative agency which, if the outcome is adverse to any party against whom relief is sought, would materially and adversely affect the performance by any Party to this Agreement of its obligations pursuant to this Agreement; and

(v) NBC shall have received written notice from RIRRC that each of the conditions set forth in Section 11.1(a) hereof has been satisfied or waived.

(vi) RIRRC shall have entered into an agreement with PSLLC/Synagro or other such Subcontractor as approved by NBC in accordance

with Section 6.1 hereof, to effectuate its obligations under this Biosolids Processing Services Agreement.

**Section 11.2 Conditions to Processing Services Date.** RIRRC's obligation to begin accepting Processed Biosolids at the Facility and the occurrence of the Processing Services Date, are subject to the satisfaction or occurrence of the following conditions precedent:

- (a) all Applicable Permits necessary for the performance of RIRRC's obligations under this Agreement on the Processing Services Date shall have been obtained and shall be in full force and effect; and
- (b) satisfactory completion of the performance testing on the Facility pursuant to 3.2(c) and the WWTFs Improvements pursuant to Section 3.3(p) hereof; and
- (c) RIRRC shall have fulfilled its obligations under Section 7.6 hereof; and
- (d) no action, suit or proceeding shall have been commenced or threatened in any federal, state or local court or administrative agency which, if the outcome is adverse to any party against whom relief is sought, would materially and adversely affect the performance by any Party to this Agreement of its obligations pursuant to this Agreement.

**Section 11.3 Failure of Occurrence or Satisfaction of Conditions Precedent.** The Parties shall proceed in good faith and shall use all of their respective reasonable commercial efforts to cause the satisfaction of all conditions precedent stated in this Article 11. If a party elects to terminate this Agreement in accordance with Section 8.4 on the basis that the other party has not proceeded in good faith nor used its reasonable efforts to satisfy all conditions precedent, such termination shall not negate nor effect RIRRC's obligation to perform any Processing Services for NBC pursuant to Section 4.13 hereof and this section. In the event of a termination pursuant to this Section 11.3 hereof, this Agreement shall remain in effect

for the limited purpose of, and only until, completion of such Processing Services pursuant to Section 4.13 hereof as are ongoing at the time of termination and for a period of 12 months after termination pursuant to this section.

## ARTICLE XII

### GENERAL PROVISIONS

**Section 12.1 Relationship of the Parties.** Except as otherwise explicitly provided herein, no Party to this Agreement will have any responsibility whatsoever with respect to services provided or contractual obligations of or assumed by the other Party and nothing in this Agreement will be deemed to constitute either Party a Representative of the other Party or to create any fiduciary relationship between the Parties. At all times throughout the term of this Agreement, RIRRC shall be an independent contractor to NBC, and shall not, in any manner whatsoever, by any action or deed, or the omission thereof, commit or be deemed to have committed NBC to any obligation irrespective of the nature thereof.

**Section 12.2 Access to the Facility.**

(a) NBC and their respective agents and representatives shall have, at any reasonable time during the term of this Agreement and upon prior reasonable notice to RIRRC, the right to visit and to have RIRRC take other visitors through the Facility in order to observe and to permit others to observe the various services which RIRRC performs, and to cause to be conducted at NBC's cost and expense reviews of the Facility to determine in general whether RIRRC is in compliance with its obligations under this Agreement; provided, however, that such visitations and reviews shall not interfere with RIRRC's rights and obligations under this Agreement.

(b) In connection with such visitations and reviews, NBC shall comply, and shall cause its Representatives to comply, with all reasonable rules and regulations adopted by RIRRC, including reasonable safety-related restrictions on access to portions of the Facility.

**Section 12.3 Assignment.** This Agreement shall not be assigned or transferred by any Party without the written consent of the other Party, which consent shall not be unreasonably withheld; provided that assignment or pledge of this Agreement or any part hereof to a lender by RIRRC or any of its subcontractors in order to secure lending to complete the Project shall not be considered an assignment and shall not require NBC's consent.

**Section 12.4 Binding Effect.** This Agreement shall be binding upon, and inure to the benefit of, the Parties to this Agreement and any successors or assigns acquiring an interest hereunder consistent with Section 12.3 hereof.

**Section 12.5 Notices.**

(a) All notices, consents, invoices and other communications required, permitted or otherwise delivered under this Agreement shall be in writing and may be faxed, or delivered by hand or mailed by first class registered or certified mail, return receipt requested, postage prepaid, or by nationally recognized express delivery service, charges prepaid, and shall be addressed as follows:

To RIRRC:                      Rhode Island Resource Recovery Corporation  
   65 Shun Pike  
   Johnston, Rhode Island 02919  
   Attention:    Executive Director

with a copy to: Providence Soils, LLC.  
c/o Synagro Northeast, Inc.  
199 Municipal Road  
Waterbury, CT 06708  
Attention: Region Vice President

PSLLC/Synagro Technologies, Inc.  
1800 Bering Drive  
Houston, TX 77057  
Attention: General Counsel

To NBC: Narragansett Bay Commission  
One Service Road  
Providence, RI 02905  
Attention: Executive Director

with a copy to: Narragansett Bay Commission  
One Service Road  
Providence, RI 02905  
Attention: Deputy Director

(b) Changes in the respective addresses to which such notices, consents, invoices or other communications may be directed may be made from time to time by either Party by notice to the other Party in accordance with this Section 12.5. Notices and consents given by mail shall be deemed to have been given three (3) Business Days after the date of dispatch; notices and consents given by any other means shall be deemed to have been given when received.

**Section 12.6 Entire Agreement.** This Agreement constitutes the entire and complete agreement between the Parties with respect to the subject matter hereof, and supersedes all other agreements, understandings, arrangements, commitments and representations.

**Section 12.7 Other Documents; Further Assurances.** Each Party promises and agrees to execute and deliver any instruments and to perform any acts that may be reasonably requested by the other Party in order to give full effect to this Agreement.

**Section 12.8 Applicable Law.** The laws of the State of Rhode Island shall govern the validity, interpretation, construction and performance of this Agreement, as such laws apply to agreements executed and performed in the State of Rhode Island.

**Section 12.9 Headings.** Captions and headings in this Agreement are for ease of reference only and do not constitute an enforceable part of this Agreement.

**Section 12.10 Amendment; Waiver.** The Parties to this Agreement may agree from time to time to change, modify, amend or waive this Agreement or any provisions hereof. Such change, modification, amendment or waiver may occur only pursuant to a written instrument signed by both Parties.

**Section 12.11 Severability.** In the event that any provision of this Agreement shall, for any reason, be determined to be invalid, illegal or unenforceable in any respect, the Parties hereto shall negotiate in good faith and agree as to such amendments, modifications or supplements of or to this Agreement or such other appropriate actions as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the Parties as reflected herein, and the other provisions of this Agreement shall, as so amended, modified or supplemented, or otherwise affected by such action, remain in full force and effect.

**Section 12.12 Dispute Procedures.**

(a) It is acknowledged by the Parties that a quick and efficient resolution of all claims, disputes and other matters in question arising out of this Agreement ("Disputes") is critical to the implementation of the terms of this Agreement. In order to effectuate such intent, the Parties hereby establish this Dispute procedure for use during the term of this Agreement. All Disputes shall be subject to this Section 12.12 (excepting only such Disputes which are of an emergency nature wherein immediate action is required) it being the intention of the Parties that all such Disputes be subject hereto regardless of any specific reference or absence of reference to

this Section 12.12 in this Agreement. Failure of RIRRC to accept, Dewater, Process and Dispose of all NBC Biosolids made available to RIRRC pursuant to Section 4.2, Section 4.3, Section 4.4, Section 4.5, 4.6 and/or Section 4.13 for an unscheduled period of two days or greater shall be deemed to be a Dispute of an emergency nature wherein immediate action is required and to which the Dispute Procedures set forth in Section 12.12 shall not be required.

(b) Prior to commencing any lawsuit or statutory arbitration proceedings with respect to any Dispute, the Parties will negotiate in good faith to resolve such Dispute for a period of at least sixty (60) days. Each party further agrees that within the sixty day period, either Party may submit each Dispute to a nonbinding mediation and in such event shall provide notice thereof to the other Party, and if reasonably requested to do so the other Party must participate in the mediation, provided that the mediation proceedings are completed within the sixty (60) day period, and the costs and expenses of any mediator shall be borne by the Party requesting such mediation.

(c) RIRRC and NBC shall continue to perform their respective obligations under this Agreement, including payment, during any Dispute proceeding, unless otherwise agreed in writing by RIRRC and NBC. All grace periods, notice periods and cure periods provided for in this Agreement that relate to any Dispute shall be tolled from the date of the notice delivered by a Party pursuant to this Section 12.12 that such Dispute exists until the end of the sixty day period provided for in Section 12.12(b) hereof.

(d) This Section 12.12 shall survive the termination of this Agreement.

**Section 12.13 Obligations of RIRRC.** Whenever this Agreement imposes an obligation on RIRRC's Subcontractor(s), RIRRC shall be obligated to exercise such legal and equitable rights and remedies as RIRRC may have against such Subcontractor(s), pursuant to contract or otherwise available to RIRRC against the Subcontractor(s), to require such Subcontractor(s) to perform said Subcontractor's duties consistent with the duties imposed upon

such Subcontractor(s) under this Agreement. Should RIRRC exhaust its legal rights and remedies against RIRRC's Subcontractor(s), RIRRC shall be deemed to have fulfilled its obligations under this Agreement with respect to the performance of the obligations by RIRRC's Subcontractor(s).

**Section 12.14 Division of Public Utilities & Carriers/Public Utilities**

**Commission Approval.** Pursuant to Section 10.2(b) hereof and Section 11.1(b) hereof, this Agreement is not effective nor binding on the Parties until approval from the DPUC and/or the PUC, if applicable is received.

**Section 12.15 Counterparts.** This Agreement may be executed in any number of counterparts and by the different Parties hereto on separate counterparts, all of which when so executed and delivered will together constitute one and the same instrument.

**Section 12.16 Lender Requirements.** The Parties agree to cooperate in agreeing to reasonable modifications to this agreement requested by a lender proposing to finance the construction of the Facility, including but not limited to the payment of a fixed minimum service fee, provided that NBC is not obligated to agree to any provision which materially and adversely affects its rights and benefits as set forth in this Agreement.

**Section 12.17 No Consequential or Punitive Damages.** Except as otherwise provided by law, in no event shall either party hereto be liable to the other or obligated in any manner to pay to the other any special, incidental, consequential, punitive or similar damages based upon claims arising out of or in connection with the performance or non-performance of its obligations or otherwise under this Agreement, whether such claims are based upon contract, tort, negligence, warranty or other legal theory.

**Section 12.18 Third Party Beneficiary.** Notwithstanding anything contained herein to the contrary, Providence Soils, LLC, subcontractor to RIRRC for the services, and

ultimate recipient of the fees described herein, shall have the rights of a third-party beneficiary to this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

RHODE ISLAND RESOURCE  
RECOVERY CORPORATION

By: Sherry G. Mulhearn  
Sherry Giarrusso-Mulhearn  
*Executive Director*

By: \_\_\_\_\_  
Austin Ferland  
*Chairman*

NARRAGANSETT BAY COMMISSION

By: Paul Pinault  
Paul Pinault, P.E.  
*Executive Director*

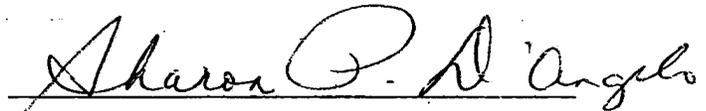
By: Vincent J. Mesolella  
Vincent J. Mesolella  
*Chairman*

STATE OF RHODE ISLAND )

: ss.:

COUNTY OF PROVIDENCE )

On this 30 day of April, 2004, before me personally appeared Sherry Giarusso-Mulhearn, Executive Director of Rhode Island Resource Recovery Corporation, the municipal corporation described herein, and who executed the foregoing instrument, to me known and she being by me duly sworn, did depose and say: that she is the Executive Director of Rhode Island Resource Recovery Corporation; and that she executed the same on behalf of Rhode Island Resource Recovery Corporation for the purposes therein mentioned.



Notary Public:

My Commission Expires: 4/8/06

STATE OF RHODE ISLAND )

: ss.:

COUNTY OF PROVIDENCE )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2004, before me personally appeared Austin Ferland, Chairman of Rhode Island Resource Recovery Corporation, the municipal corporation described herein, and who executed the foregoing instrument, to me known and he being by me duly sworn, did depose and say: that he is the Chairman of Rhode Island Resource Recovery Corporation; and that he executed the same on behalf of Rhode Island Resource Recovery Corporation for the purposes therein mentioned.

---

Notary Public:

My Commission Expires:

STATE OF RHODE ISLAND )

: ss.:

COUNTY OF PROVIDENCE )

On this 29<sup>th</sup> day of April, 2004, before me personally appeared Paul Pinault, P.E., Executive Director of Narragansett Bay Commission, the municipal corporation described herein, and who executed the foregoing instrument, to me known and he being by me duly sworn, did depose and say: that he is the Executive Director of Narragansett Bay Commission; and that he executed the same on behalf of Narragansett Bay Commission for the purposes therein mentioned.

Jean-Marie Proulx

Notary Public:

My Commission Expires: 1/30/05

STATE OF RHODE ISLAND )

: ss.:

COUNTY OF PROVIDENCE )

On this 29<sup>th</sup> day of April, 2004, before me personally appeared Vincent J. Mesolella, Chairman of Narragansett Bay Commission, the municipal corporation described herein, and who executed the foregoing instrument, to me known and he being by me duly sworn, did depose and say: that he is the Chairman of Narragansett Bay Commission; and that he executed the same on behalf of Narragansett Bay Commission for the purposes therein mentioned.

*Jean Marie Proulx*

Notary Public:

My Commission Expires: 1/30/05

**LIST OF EXHIBITS**

Exhibit 1	<b>Project Schedule:</b> Attached hereto.	E-1
Exhibit 2	<b>WWTFs Improvements Preliminary Plans: A</b> description of the Biosolids thickening and/or dewatering equipment to be located at Bucklin Point, the Biosolids thickening and/or dewatering equipment to be located at Fields Point, and the pumping station and pipeline for transferring Biosolids from Fields Point to the Field's Point Dewatering Facility.	E-2
Exhibit 3	<b>Field's Point Dewatering Facilities Site Locations:</b> Attached hereto.	E-3
Exhibit 4	<b>Bucklin Point Dewatering Facility Site Location:</b> Attached hereto.	& E-4

## **Exhibit 1 PROJECT SCHEDULE**

- May 1, 2004- **Notice to Proceed (NTP)** [\*estimated]
- May 1, 2004 – Emergency Biosolids dewatering/disposal available at Field's Point
- September 1, 2004 – Facility Plan update for Field's Point and Bucklin Point submitted by NBC to DEM
- October 27, 2004 \* [180 days from NTP]- Make application for the Pre-Construction Permits for the WWTFs Improvements
- January 1, 2005 – Commence acceptance and disposal of Bucklin Point Biosolids
- November 1, 2005- Commence acceptance and disposal of Field's Point Biosolids [may commence service earlier than 11/1/05, but no earlier than 1/1/05]
- November 1, 2005- anticipated **Commencement Date**- Commence Dewatering, Processing and Disposal of all NBC Biosolids
- September 1, 2006- Commence Construction of the Biosolids Processing Facility (BFP)
- September 1, 2007- **Processing Services Date**- BFP Operational

\* Assumes a May 1, 2004 NTP

## Exhibit 2

# WASTEWATER TREATMENT FACILITIES IMPROVEMENTS PRELIMINARY PLANS

### FIELD'S POINT DEWATERING FACILITY

Construct new dewatering facility adjacent to existing incinerator facility.

#### Equipment

- 2 Belt Filter Presses
- Polymer System
- Belt Filter Press feed pumps (3)
- Thickened sludge transfer pumps (2)
- Odor Control – Air Scrubbers

#### Structures

- 2-story dewatering building with office and bathroom (50' X 60')
- Sludge Holding Tank (~500,000 gals)
- Architecture consistent with surrounding buildings

#### Miscellaneous

- Existing gravity thickener tank will be converted into a thickened sludge storage tank
- Demo of two existing plunger pumps in existing gravity thickener pumping station
- Piping and valve modifications in existing gravity thickener pumping station
- Yard Piping

#### Operation

- Thickened sludge transfer pumps (in existing gravity thickener pumping station) will convey thickened sludge to a new thickened sludge storage tank adjacent to new dewatering building.
- Belt Filter Press feed pumps will feed belt filter presses from thickened sludge storage tank
- Dewatered sludge will be conveyed directly into trucks for hauling

#### Process Control

- Simple control panels with local alarms and status
- Pump operation controlled by liquid level in tanks
- No remote operation, signals or alarms required

## **BUCKLIN POINT DEWATERING FACILITY**

Install (2) new Belt Filter Presses in location of existing Plate and Frame Structures to be demolished.

### **Equipment**

- 2 Belt Filter Presses
- Polymer System
- Belt Filter Press feed pumps (3)

### **Structures**

- NA

### **Miscellaneous**

Demo of existing dewatering equipment.

### **Operation**

- Belt Filter Press feed pumps will feed belt filter presses from existing sludge storage tank
- Dewatered sludge will be conveyed directly into trucks for hauling

### **Process Control**

- Simple control panels with local alarms and status.
- Pump operation controlled by liquid level in tanks.
- No remote operation, signals or alarms required.

Comm.1-3 Describe the amounts / percentages that union and non-union employees co-pay towards their health insurance plan. Provide the information for fiscal years 2005 and 2006.

Answer: Employees hired after July 1, 2004 who elect PPO coverage pay the following co-pays:

Individual Coverage – 1.2% of base wage not to exceed ten percent (10%) of the premium.

Family Coverage – 2.7% of base wage not to exceed ten percent (10%) of the premium.

Prepared by WEE

Comm.1-4: How much does NBC request in its proposed rate year for union and non-union health insurance. Furthermore, indicate how much of non-union health insurance is for a family plan and how much is for an individual plan. Lastly, how much would the rate year expense be reduced if non-union employees paid 10%, or 20%, of their health care premiums?

Answer: The rate year health insurance was calculated based on the total number of employees in each category per the test year. The amount for the family plan in the rate year totaled \$2,696,992, for the single plan totaled \$320,816 and for waivers totaled \$55,330. The table below shows how the rates were calculated.

<u>PPO Plan:</u>		<u>FY 2003</u>	<u>FY 2004</u>	<u>FY 2005</u>	<u>FY 2006</u>	Projected <u>FY 2007</u>	<u>3 Year Average</u>
	Family	339.97	427.41	457.69	491.92	557.98	
			25.72%	7.08%	7.48%	113.43%	13.43%
	Single	124.46	156.42	167.5	180.02	204.20	
			25.68%	7.08%	7.47%	113.43%	13.41%
<u>HMO Plan:</u>							
	Family	279.8	363.3	395.05	427.38	484.78	
			29.84%	8.74%	8.18%	113.43%	15.59%
	Single	102.43	132.96	144.58	156.41	177.42	
			29.81%	8.74%	8.18%	113.43%	15.58%

NBC's health insurance invoices are not broken down between Union and Non-union. However 123 of the 243 (50.6%) employees are non-union. Based on the assumption that 50.6% of the premium would result from non-union employees the approximate 10% and 20% would be \$139,869 and \$279,738 respectfully.

Prepared by WEE

Comm.1-5 Please indicate the actual level of employees, union and non-union, during each of the last 18 months. Provide the union and non-union salary/ wages paid by NBC for each of the last 18 months.

Answer: See following tables.

Number of Employees by Month

	<b>Union Employees</b>	<b>Non-Union Employees</b>	<b>Total Employees</b>
May-04	126	123	249
Jun-04	124	123	247
Jul-04	124	125	249
Aug-04	124	124	248
Sep-04	126	124	250
Oct-04	125	124	249
Nov-04	124	124	248
Dec-04	120	124	244
Jan-05	119	123	242
Feb-05	121	122	243
Mar-05	120	123	243
Apr-05	119	123	242
May-05	121	123	244
Jun-05	122	123	245
Jul-05	121	124	245
Aug-05	121	124	245
Sep-05	122	123	245
Oct-05	120	123	243

Union and Non-Union Salaries by Month

	<u>Union Total</u>	<u>Non-Union Total</u>
May-04	370,439.45	504,287.11
Jun-04	399,850.77	565,092.61
Jul-04	567,247.25	790,206.02
Aug-04	380,153.07	532,164.40
Sep-04	395,379.40	527,466.92
Oct-04	412,076.54	525,841.97
Nov-04	398,943.06	541,812.26
Dec-04	549,136.72	793,171.97
Jan-05	470,103.07	527,892.68
Feb-05	372,491.64	522,702.66
Mar-05	370,022.90	515,258.08
Apr-05	383,511.70	521,597.89
May-05	373,766.66	514,367.79
Jun-05	376,730.24	515,890.49
Jul-05	562,278.65	802,714.97
Aug-05	378,378.31	536,550.88
Sep-05	395,169.09	530,189.28
Oct-05	421,743.05	522,541.34

Prepared by WEE

Comm. 1-6: Provide a fiscal year 2005 income statement based on the audited statements of NBC adjusted to reflect the regulatory basis for revenue requirements. [Generally, the adjustments would be to eliminate depreciation and amortization, and add the full cost of debt service. Also, capital expenditures would be treated as 'period expenditures' if funded from annual revenue sources.]

Answer: See Attached Schedule.

Prepared by WEE

**Narragansett Bay Commission  
FY 2005**

Acct. #	Account Description	Actual Fy 2005	Adjustments	Regulatory Basis FY 2005
<i>Revenue</i>				
41000	FLAT FEES RESIDENTIAL	\$9,463,539		\$9,463,539
41100	MEASURED FEE - RESIDENTIAL	17,973,116		17,973,116
41501	FLAT FEES COMMERCIAL	5,466,415		5,466,415
41502	FLAT FEES INDUSTRIAL	496,683		496,683
41510	MEASURED FEE - COMMERCIAL	16,248,740		16,248,740
41511	MEASURED FEE - INDUSTRIAL	1,538,329		1,538,329
42000	PRETREATMENT FEES	1,209,418		1,209,418
42500	CONNECTION PERMIT FEES	197,595		197,595
43000	BOD/TSS SURCHARGE	194,215		194,215
43500	SEPTAGE INCOME	435,145		435,145
44502	MISCELLANEOUS OPERATING INCOME	23,503		23,503
45100	INTEREST INCOME	914,079	(540,030)	374,049
45500	LATE CHARGE PENALTY	458,176		458,176
46500	ENVIRONMENTAL ENFORCEMENT	69,536	(69,536)	0
47000	REIMBURSED COLLECTION COSTS	0		0
47500	GRANT	35,530	(35,530)	0
42600	ABATEMENT FEE	3,492		3,492
	ARBITRAGE REBATE	0		0
49005	CAPITAL CONTRIBUTIONS	2,941,693	(2,941,693)	0
49002	MISCELLANEOUS INCOME	0		0
	<b>TOTAL REVENUE</b>	<b>57,669,204</b>	<b>(3,586,789)</b>	<b>54,082,415</b>
<b>EXPENSES</b>				
<b>PERSONNEL SERVICES</b>				
	SALARIES & WAGES	11,392,538	(35,530)	11,357,008
	OVERTIME	624,352		624,352
	EMPLOYEE RET. BEN. - PENSION	1,198,235		1,198,235
52810	EMPLOYEE RET.BEN.-FICA	891,983		891,983
52820	EMPLOYEE BENEFITS-UI	23,416		23,416
52940	RETIREMENT HEALTH - STATE	67,203		67,203
52950	EMPLOYEE BEN.-HEALTH INS.	2,508,172		2,508,172
52990	EMPLOYEE BEN-DISABILITY INS.	30,900		30,900
54950	HEALTH INSURANCE-RETIREEES	1,015		1,015
55700	WORKERS COMP-OLD CLAIMS	87,117		87,117
	<i>Total Personnel Services</i>	<u>16,824,931</u>		<u>16,824,931</u>
59000	SALARY REIMBURSEMENT	(944,363.00)		(944,363.00)
59001	FRINGE REIMBURSEMENT	(512,798.00)		(512,798.00)
	<i>Net Personnel Services</i>	<u>15,367,770</u>	<u>0</u>	<u>15,367,770</u>
<b>Operating Supplies &amp; Expense</b>				
52610	MEDICAL SVCS.	7,519		7,519
52640	BLDG. & GRND. MAINT.	100,162		100,162
52641	SLUDGE LOADING/DISPOSAL	1,195,968		1,195,968
52642	SCREENINGS & GRIT DISPOSAL	124,095		124,095
53200	BAD DEBT EXPENSE	110,701		110,701
53210	POSTAGE	131,954		131,954
54000	TELEPHONE	141,956		141,956
54500	OFFICE EXPENSE	55,388		55,388

**Narragansett Bay Commission  
FY 2005**

Acct. #	Account Description	Actual Fy 2005	Adjustments	Regulatory Basis FY 2005
53240	DUES & SUBSCRIPTIONS	52,118		52,118
53250	FREIGHT, CART. & EXP.	30,620		30,620
53260	INSURANCE	641,558		641,558
53900	CENTRAL PHONE SVCS.	2,541		2,541
53310	PRINTING & BINDING	84,191		84,191
53320	ADVERTISING	8,001		8,001
53410	MILEAGE ALLOWANCE	2,872		2,872
53420	OUT-OF-STATE TRAVEL	55,895		55,895
53510	AUTOMOTIVE MAINTENANCE	173,489		173,489
53610	REPAIR-BLDG & STRUCTURE	456,825		456,825
53611	SOLIDS HANDLING REPAIRS	155,923		155,923
53620	REPAIR-HIGHWAY & WALKS	5,690		5,690
53630	EQUIPMENT MAINTENANCE AGREE	493,658		493,658
53640	GENERAL REPAIRS	139,370		139,370
53350	RENTAL-OUTSIDE PROPERTY	7,803		7,803
53330	RENTAL- EQUIPMENT	47,233		47,233
53340	RENTAL- CLOTHING	56,991		56,991
54010	FUEL OIL - KEROSENE	3,017		3,017
54020	DIESEL FOR EQUIPMENT	1,540		1,540
54021	OIL FOR SOLIDS HANDLING	25,040		25,040
54060	FUEL-GAS	445,191		445,191
54061	FUEL- GAS - INCINERATOR	679,611		679,611
54090	ELECTRICITY	2,464,191		2,464,191
54110	WATER	46,885		46,885
54200	CLOTHING	23,302		23,302
54210	SAFETY EQUIPMENT	25,842		25,842
53370	PUBLIC OUTREACH EDUCATION	15,917	(9,000)	6,917
54330	CHEMICALS, HOUSE & LAUNDRY SUPPLY	28,715		28,715
54332	CHEM-CHLORINE/HYPOCHLORITE	401,642		401,642
54334	CHEM-LIME	9,975		9,975
54335	CHEM-POLYMER	90,741		90,741
54337	CHEM-SODIUM BISULFITE	115,895		115,895
54338	CHEM-SODA ASH	0		0
54340	MEDICAL, SURG. AND LAB.	144,452		144,452
53650	HIGHWAY & LANDSCAPE	9,349		9,349
54370	SUPPLIES BLDG & MAINTENANCE	139,029		139,029
54371	SUPPLIES FOR SOLIDS HANDLING	6,166		6,166
54410	EDUCATIONAL SUPP. & EXP.	67,645		67,645
54420	COMPUTER SUPPLIES & EXPENSE	92,559		92,559
54330	OTHER OPERATING EXPENSE	12,662		12,662
53360	MISCELLANEOUS EXPENSE	17,269		17,269
55820	EDUCATION SCHOOL AIDE	0		0
57600	EQUIP LOSSES-CASUALTY THEFT	3,436		3,436
	<i>Total Operating Supplies &amp; Expense</i>	<u>9,152,592</u>	<u>(9,000)</u>	<u>9,143,592</u>

**Special Services**

57800	BOND AND NOTE FEES	5,000		5,000
52600	REGULATORY EXPENSE	159,688		159,688
52620	ARCHITECT/ENG. SERVICES	0		0
52630	LECTURES/ED./PROF. SVCS.	0		0
52650	SECURITY SERVICES	29,476		29,476
52660	LEGAL SERVICES	178,635		178,635
52670	MGMT/AUDIT SERVICES	1,338,454		1,338,454
52680	CLERICAL SERVICES	22,338		22,338
52690	OTHER SERVICES	170,306	(47,094)	123,212
	<i>Total Special Services</i>	<u>1,903,897</u>	<u>(47,094)</u>	<u>1,856,803</u>

**Narragansett Bay Commission  
FY 2005**

Acct. #	Account Description	Actual FY 2005	Adjustments	Regulatory Basis FY 2005
<b>Capital Outlays</b>				
16200	LANDFILL	0	0	0
16510	AUTOMOTIVE EQUIP.	0	73,747	73,747
16520	BLDG. & PLANT EQUIP.	0	143,461	143,461
16530	CONSTRUCTION EQUIP.	0	12,852	12,852
16540	ED. AND REC. EQUIP.	0	0	0
16570	LABORATORY EQUIP.	0	0	0
16580	OFFICE FURNITURE AND EQUIP.	0	62,190	62,190
16583	COMPUTER SOFTWARE	0	150,095	150,095
16585	COMPUTER HARDWARE	0	314,286	314,286
16590	OTHER EQUIP.	0	26,331	26,331
16610	BUILDING & OTHER STRUCT.	0	156,774	156,774
16630	IMP.-NOT BLDG OR STRUCT.	0	4,875	4,875
16600	REPLACEMENT RESERVE	0	752,073	752,073
	TOTAL CAPITAL OUTLAYS	0	(1,696,684)	(1,696,684)
	<i>Total Capital Outlays</i>	0	0	0
<b>Depreciation &amp; Amortization</b>				
57010	AMORTIZATION	185,789	(176,099)	9,690
57500	DEPRECIATION	6,211,621	(6,211,621)	0
	<i>Total Depreciation &amp; Amortization</i>	6,397,410	(6,387,720)	9,690
<b>Debt Service</b>				
	DEBT COVERAGE		4,354,332	4,354,332
57910	INTEREST	8,381,979	0	8,381,979
	PRINCIPAL	0	18,945,221	18,945,221
	<i>Total Debt Service</i>	8,381,979	23,299,553	31,681,532
	<i>Total Expenses</i>	41,203,648	16,855,739	58,059,387
	<i>Net Operating Reserve</i>	41,203,648	16,855,739	58,059,387
	<i>Net Income</i>	\$16,465,556	(20,442,528)	(\$3,976,972)

Comm. 1-7: What is the amount of wages and the number of employees budgeted for fiscal years 2006 and 2007? Provide the amounts and employee counts for union and non-union employees separately.

Answer: The FY 2007 Operating Budget has not been compiled. The FY 2006 budget reflects a staffing level of 253 employees, of which 128 are union and 125 are non-union. The salary budgeted for union employees is \$5,217,267 and the salary budgeted for non-union employees is \$7,125,208.

Prepared by WEE

Comm. 1-8: For those employees whose wages are funded by / capitalized to CIP project funding, indicate the number of employees and the wages allocated to CIP funding for fiscal years 2005 and 2006 (provide estimate for 2006). [If a portion of an employee's cost is allocated, provide the approximate number of full-time positions allocated to CIP costs for fiscal year.] Also, indicate if these employee counts/ wages are included in the response to question #7 above or are incremental to the information provided in #7.

Answer: There are nine full-time NBC employees in the Construction and Grants section who are charged to the CIP projects full-time and a number of employees who charge intermittently. The total wages capitalized in FY 2005 was \$944,363. In FY 2006 it is estimated that the total wages to be capitalized will be \$961,373. These wages are included in the response to question #7. If the average salary of the nine Construction and Grants employees is used as a base and divided into the total FY 2005 \$944,363, there would be approximately 13.9 FTEs charging the CIP projects.

Prepared by WEE

**Comm. 1-9: For employees who wages are capitalized / charged to CIP projects, are the fringe benefit costs also capitalized?**

**Answer: Yes.**

**Prepared by WEE**

Comm. 1-10: If the answer to question #9 above is yes, please state if the contribution for the non-union defined benefit plan associated with capitalized wages is also capitalized.

Answer: Yes.

Prepared by WEE

Comm. 1-11 If the answer to #10 above is yes, would the total non-union defined benefit contributions then provide for a contribution in excess of the 5% that NBC has stated would be the level of the contributions to the non-union defined benefit plan?

Answer: No.

Prepared by WEE

Comm. 1-12: What are the amounts budgeted for fiscal years 2006 and 2007 (provide an estimate for 2007 if budget is not completed) for each of the following:

- a) Union pension contributions.
- b) Non-union defined benefit pension contributions.
- c) Non-union defined contribution plan amounts.

Answer: See table below.

	<b>FY 2006 Budget</b>	<b>FY 2007 Estimate</b>
<b>Union Pension</b>	\$815,079	928,686 *
<b>Non-Union Pension ***</b>	\$712,521	\$737,459 **
* Based on the current retirement rate of 18.4%. See response to Comm. DR 1-13.		
** FY 2007 Non-Union Pension incremented by 3.5% over FY 2006 budget		
*** Non-Union defined benefit and defined contribution plans not budgeted separately		

Prepared by WEE

Comm. 1-13: Please provide all supporting documentation indicating why union pension expense needs to be increased by \$291,797. Will any of the legislative changes enacted in the summer of 2005 to the state pension system affect NBC's union pension contributions?

Answer: The union pension rate used in the filing was based on information provided by the Rhode Island State Budget Office (see attached.) Subsequent to the filing, the Employees' Retirement System of Rhode Island notified NBC that the actual rate effective July 1, 2006 will be 18.4%, which is 7.2% higher than filed. Based on the revised pension rate, union pension expense will be higher in the rate year by an additional \$62,081 (see attached memo).

Prepared by WEE



# Employees' Retirement System of Rhode Island

*ERSRI Board*

Paul J. Tavares  
*General Treasurer  
Chairman*

William B. Finelli  
*Vice Chairman*

Sen. Stephen D. Alves

Ponzi A. Angelone

Daniel L. Beardsley

Rosemary Booth Gallogly

Michael R. Boyce

Rep. Steven M. Costantino

John P. Maguire

John A. Marginson

John J. Meehan

Michael O'Keefe

Louis M. Prata

Linda C. Riendeau

Jerome F. Williams

Frank J. Karpinski  
*Executive Director*

## Rates Memo

**TO: Leah Foster,  
Narragansett Bay Commission  
One Service Road  
Providence, RI 02905**

**FROM: FRANK J KARPINSKI, Executive Director**

**DATE: November 10, 2005**

**RE: AGENCY# 2300, Narragansett Bay Commission**

---

The following rates will be effective July 01 2006, for agency# 2300

Employee	8.75%
Employer:	18.4%
Federally Funded:	0%
Dept of Education:	0%

The following benefits exist for Agency# 2300

### Compounded COLA

Please note these rates are based on the assumption that the same retirement benefit package will be offered for the entire period as was in place when the corresponding actuarial valuation was performed. If this will not be the case, these rates should not be used for budgeting purposes and you should contact our office as soon as possible so we can work with you to provide appropriate contribution rates.

Please contact me if you have any questions.

Table 1  
 Planning Values for the FY 2006 Revised and FY 2007 Budgets

	RL-SAIL Natural Account	Former BOC	FY 2006 Enacted Budget	FY 2006 Revised Budget	FY 2007 Estimates	Notes
<b>Retirement</b>						
State Employees Regular	621000	280	14.84%	14.84%	17.17%	Applied to salaries of permanent employees.
Judges	621200	276	35.51%	35.51%	35.51%	Applied to salaries of judges hired after 12/31/89.
State Police	621100	277	31.35%	31.35%	31.35%	Applied to salaries of State Police hired after 7/1/87.
Teachers State Share Local Share	655300	472	16.47% 6.75% 9.72%	16.47% 6.75% 9.72%	18.90% 7.75% 11.15%	
Retiree Health Insurance	628300	294	2.04%	2.25%	2.41%	Applied to salaries of permanent employees.
<b>FICA</b>						
Social Security Rate	621700	281	6.20%	6.20%	6.20%	This portion of FICA is calculated on salaries and overtime up to an established level on a calendar year basis. The estimated salary limits for affected calendar years are: 2005 \$90,000 2006 \$93,300 (prelim.) 2007 \$96,700 (prelim.)
Medicare Tax		281	1.45%	1.45%	1.45%	This portion of FICA is applied to 100% of salaries and OT.
Assessed Fringe Benefit	628100	283	4.20%	3.80%	3.52%	Applies to direct salaries (excluding OT) (BOC 210,220,230,240,250,251,255)
Unemployment Compensation	628500	282	0	0	0	Budgeted under assessed fringe benefit
Worker's Compensation	various	570-579	0	0	0	Budgeted under assessed fringe benefit
WC - Discharge of Leave WC - Assault Cases	617100 617200	270 273				Expenditures for these are still part of agency payroll and should be budgeted as required.
<b>Cost of Living Adjustment</b>			0.00%	4.00%	3.00%	
Holiday	611500 613500 615500	205 246 256				Applied to BOC's 205, 246 and 256 from the FY 2005 enacted budget. FY 2007 has an additional holiday for Election Day 2006. Targets have been adjusted accordingly.

Comm. 1-14: Provide the following in regard to current non-union staff:

- a) What is the current total of non-union employees?
- b) What is the number of non-union employees enrolled in the defined benefit plan?

Answer: Total current non-union employees are 123. The plan document sets forth the criteria for plan participation. The number of participants will be determined by NBC's Third Party Administrator upon the completion of the plan year (12/31/05). This information will be forwarded to the PUC once it is available.

Prepared by WEE

Comm. 1-15: For the last three fiscal years, indicate how much NBC has budgeted and how much NBC has actually expended in the non-capital / non-debt service portion of its budget.

Answer: See table below.

	<b>FY 2005</b>	<b>FY 2004</b>	<b>FY 2003</b>
O & M Budget	28,643,173	26,537,840	25,919,165
O & M Actual	26,249,029	25,279,353	23,878,473

It should be noted that underruns are due in general to program changes, positions funded in the budget but not subsequently approved by the PUC and uncertainties in both biosolids disposal and utility usage, due to outsourcing and the Bucklin Point construction.

Prepared by WEE

**Comm. 1-16:** NBC had land available for sale near their Fields Point facility that may have been sold within the past year. (The Inge Property) Please provide information on this or any other land / property sales during the past year, noting the description of the property, location, purchaser, sale amount, and any other pertinent information.

**Answer:** The only property was the southern portion of Plat 56, Lot 341 and Lot 342 on Field's Point Drive and purchased by Earth Reclamation LLC for \$900,458.52.

Prepared by WEE

Comm. 1-17: The rate year debt service schedule reflects total interest and principal payments of \$23,114,927. [This schedule is presented before the Restricted Account Reporting at the end of the rate filing.] The cost of service schedule (WEE 4, page 3) reflects total debt service of \$25,872,877. Why is the debt service funding request approximately \$2.8 million higher than the detail debt service schedule?

Answer: NBC has requested no change in its debt service expense for the rate year. The test year level was established before NBC defeased its state debt. The reorganization of NBC's debt has resulted in a lower debt service requirement for the rate year, and, in fact, made it possible to issue \$30,000,000 more debt without a rate increase. However, NBC's debt is structured in such a way that the required coverage amounts are different from year to year. NBC cannot reduce its debt service allowance in the rate year because NBC would not be able to meet its required coverage in subsequent years.

Prepared by WEE

Comm. 1-18: Provide a summary of the purchases that will be made from the Automobile Equipment allowance of \$128,000 requested in the rate year. Indicate if the purchased vehicle(s) will be a replacement vehicles or an addition to the vehicle fleet.

Answer: Schedule WEE-4 shows that in test year there was estimated capital spending of \$1,892,350 (see attached schedule). WEE-4 also shows that regardless of the amount identified as capital outlays in the test year or the rate year, the impact on rates is zero. NBC funds all of its capital outlays out of the prior year debt coverage allowance. Please see response to Division Data Requests Set I, question 17, which provides the budgeted capital outlays expected for the FY 2006.

Prepared by WEE

Narragansett Bay Commission  
Expense Analysis - Capital Outlays For Rate Year 2004

Schedule WEE-23

	Rate Year
<b>Administration and Finance</b>	
<i>Information Technology</i>	
Average of 3 year plan	\$ 598,700
<i>Subtotal IT</i>	598,700
<b>Operations and Engineering</b>	
<i>Interceptor Maintenance and Construction</i>	
Replace sewer bucket machine	60,000
Replacement of Unit 7	70,000
Replacement of Unit 31	30,000
Replacement of Unit 9	35,000
<i>Sub-total Interceptor Maintenance</i>	195,000
<i>Field's Point WWTF</i>	
Repairs to roofs, tanks	25,000
PSPS I Sludge pump and motor assembly	25,000
Scum pump and motor	25,000
Replacement of Screwlift flights with Marathon Drives at screwlift building	30,000
RSPS II WAS pump cartridge	11,000
RSPS II RAS pump cartridge	25,000
Replace mammoth unit chiller COB	25,000
GT motor & gearbox for drives	45,000
PSPS II Turntable assem. Tanks	50,000
RSPS II turntables assem. Clarif.	100,000
Repair of ash crane	30,000
Replace autocar w/ dumpsters	100,000
Replace PM truck	25,000
Replace 3 old cushmans	20,000
Replace unit 444 chevy pickup	23,000
ESPS Repairs and Improvements	100,000
Replace roof Gravity Thickner building	30,000
Screwlift pads for pumps - repair cracks	25,000
Aeration tanks - repair cracks in expansion joints	38,000
<i>Sub-total Field's Point</i>	752,000
<i>Bucklin Point WWTF</i>	
Chlorine bldg. Roof rehab.	12,000
Digester #1 handrails	24,000
Digester #2 handrails	24,000
Digester contl.bldg. Roof rehab.	10,000
Replace electrician's truck	30,000
<i>Subtotal Bucklin Point</i>	100,000
<b>Planning, Policy and Regulation</b>	
<i>Laboratory</i>	
GC/MS	80,000
Purge and Trap	15,000
Replacement of Water Purifier	6,000
<i>Subtotal Laboratory</i>	101,000

**Narragansett Bay Commission**  
**Expense Analysis - Capital Outlays For Rate Year 2004**

Schedule WEE-23

**EMDA**

Replacement of 1996 Ford Ranger	25,000
Replacement of 1996 Chevy Astro	25,000
Replace 1986 Bronco with electric cart	6,000
2 Replacement samplers for WWTFs	11,000
Real-time BOD Analyzer for Field's Point	35,000
YSI sonde with logger for WWTFs	10,000
Dishwasher for BP Lab	5,000
2 Samplers for Pump Stations	11,000
2 Replacement portable samplers for SIU monitoring	6,000
PH Triggered module for sampler	3,500
2 Replacement gas meters	2,650
1 new sampler for septage station	5,500
<b>Subtotal EMDA</b>	<b>145,650</b>

---

<b>TOTALS</b>	<b>\$ 1,892,350</b>
---------------	---------------------

---

**Comm. 1-19: Provide a summary of the purchases that will be made from the Office Furniture and Equipment allowance of \$598,700 in the rate year. Are all purchases from this allowance related specifically to “Office Expenditures”?**

**Answer:** See answer to Commission Data Request #18 above.

Prepared by WEE

Comm. 1-20: NBC funds a replacement reserve in the amount of \$370,000. What is this reserve intended to fund that is not funded through the Automobile Equipment allowance, Office Furniture and Equipment allowance and other capital allowances (Laboratory Equipment, Building & Other Structures)? Provide examples of expenditures made with these funds.

Answer: See response to Commission Data Request #18 above.  
This is a general capital outlay account for asset replacement. For example, the replacement of a pickup truck, lab equipment or WWTF equipment.

Prepared by: WEE