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May 3, 2019

Ms. Luly Massaro, Clerk  
Rhode Island Public Utilities Commission  
89 Jefferson Boulevard  
Warwick, RI 02888

**Re: *Docket No. 4890- The Narragansett Bay Commission  
General Rate Filing***

Dear Ms. Massaro:

Enclosed please find an original and nine copies of the following:

1. The Narragansett Bay Commission's Response to the Rhode Island Division of Public Utilities and Carrier's Data Requests (Set Two).

Also, please note that an electronic copy of this document has been provided to the service list and a link will be provided for the attachments.

Thank you for your attention to this matter.

Sincerely,



Joseph A. Keough, Jr.

JAK/kf

cc: Docket 4890 Service List (*via electronic mail*)

**Div. 2-1:** Are there any other Excel files, calculations or workpapers supporting the Harold J. Smith rebuttal testimony besides [Rebuttal Schedules HJS 4-9-19 FINAL.xlsx (00239136xBDDFF).xlsx]? If so, please identify and provide them.

**Response:** See attached file DR Response Schedules.xls

**Prepared by:** Harold Smith

**Div. 2-2:** What amount of revenue increase is NBC seeking as a result of its rebuttal filing? Where is NBC's updated revenue increase request shown in NBC's rebuttal testimony and exhibits?

**Response:** The amount of the revenue increase that NBC is seeking as a result of the rebuttal filing is \$6,744,299. It is shown in the net income line item in my schedule HJSR-1 and in the schedule below as follows:

	<b>Rate Year</b>	<b>Projected Rate</b>			
	<b>Revenue Before</b>	<b>Year Revenue</b>	<b>Revenue</b>	<b>Percentage</b>	
	<b>Increase</b>	<b>Requirement</b>	<b>Increase</b>	<b>Increase</b>	
User Fee Revenue	\$ 99,291,044	\$ 105,031,774	\$ 5,740,729	5.78%	
Miscellaneous	1,539,209	2,542,779	1,003,570		
	<u>\$ 100,830,253</u>	<u>\$ 107,574,553</u>	<u>\$ 6,744,299</u>		

**Prepared by:** Harold Smith

**Div. 2-3:** Refer to the rebuttal testimony at page 2, lines 15-16. What amount of revenue requirement request, and which specific adjustments, are for the "updates on expenses and other items relevant to this Docket that have come to NBC's attention since the original application for rate relief was filed on October 10, 2018"?

**Response:** These items include:

1. Rule of Law change price increase of \$24.86/dry ton for biosolids disposal - \$153,588
2. Increase in the tipping fee for screenings and grit disposal to \$130/ton - \$38,379
3. New maintenance service contracts - \$420,962
4. Substitution of WED wind turbine project for the unpermitted solar project PPA – Increase in NMC of (\$795,911) and WED PPA \$605,859 for net expense reduction of (\$190,052)
5. New RIPDES permit requirement impact on chemical use at the WWTF's Hypochlorite - \$86,207 and Bisulfite - \$118,714

**Prepared by:** Harold Smith and Karen Giebink

**Div. 2-4:** Refer to the analysis on pages 4-7 related to residential and commercial consumption which was updated by NBC using data through December 2018. Identify and provide the additional three months of residential and commercial consumption information for January through March 2019.

**Response:** Due to the conversion to new billing cycles with the implementation of a new customer service application in January, comparable consumption information is not available for February or March. The residential and commercial consumption for January is as follows:

Billed HCF:

	<u>Residential</u>	<u>Commercial</u>
January	755,118	388,940

Prepared by: Karen Giebink

**Div. 2-5:** Identify and provide the Excel files and 12-month average information that was used to produce the graphs on pages 5, 6 and 8.

**Response:** See attached DR 2 Response Schedule – and tab 2-5 Consumption Moving Total.

**Prepared by:** Harold Smith

**Div. 2-6:** Identify and provide the amount of residential consumption that is being used in the development of the FY2020 budget.

**Response:** NBC is using the amount of residential consumption set forth in the rebuttal testimony and schedules (8,152,818 HCF) in the development of the FY 2020 budget.

**Prepared by:** Karen Giebink

**Div. 2-7:** Identify and provide the amount of commercial consumption that is being used in the development of the FY2020 budget.

**Response:** NBC is using the amount of commercial consumption set forth in the rebuttal testimony and schedules (4,667,872 HCF) in the development of the FY 2020 budget.

**Prepared by:** Karen Giebink

**Div. 2-8:** Identify and provide the amount of industrial consumption that is being used in the development of the FY2020 budget.

**Response:** NBC is using the amount of industrial consumption set forth in the rebuttal testimony and schedules (673,807 HCF) in the development of the FY 2020 budget.

**Prepared by:** Karen Giebink

**Div. 2-9:** Refer to page 9, lines 11-20. Is NBC using a similar three-year averaging process for its FY2020 budget consumption? If not, explain fully why not, and describe in detail the process that NBC is using to develop its FY2020 budget consumption.

**Response:** No. Please see responses to Div. 2-6, 2-7, and 2-8.

**Prepared by:** Karen Giebink

**Div. 2-10:** Refer to the rebuttal testimony at pages 10-11 concerning consumption revenue from a new large commercial customer. Identify the consumption for the new commercial customer by month from inception through April 2019.

**Response:** See table below:

<b>Month</b>	<b>Billed Consumption (HCF)</b>
Mar-18	2.72
Apr-18	10.32
May-18	15.44
Jun-18	18.80
Jul-18	76.67
Aug-18	-
Sep-18	2,321.23
Oct-18	1,104.45
Nov-18	1,068.35
Dec-18	519.85
Jan-19	593.05
Feb-19	659.10
Mar-19	622.10
Apr-19	645.00
<b>Total</b>	<b>7,657.08</b>

**Prepared by:** Karen Giebink

- Div. 2-11:** Refer to the rebuttal testimony at pages 10-11 concerning consumption revenue from a new large commercial customer.
- a. Identify and show in detail how NBC had originally estimated that the additional consumption from the new facility would be approximately 82,000 HCF.
  - b. Did NBC install over-sized facilities to serve that customer whose consumption was estimated by NBC to be approximately 82,000 HCF?
  - c. Explain in detail how the consumption estimate was used by NBC to determine the size of the facilities needed to serve that customer.

**Response:**

- a. This figure was based on information provided to NBC by the new customer's mechanical, electrical and plumbing engineer on the project -Bard, Rao and Athanas Consulting Engineers, LLC. See Attachment 2-11 and NBC calculations below:

Gallons per day:  $425 \text{ gpm} \times 60 \text{ min/hr} \times 24 \text{ hr/day} = 612,000 \text{ gal/day}$ .

Gallons per year:  $612,000 \text{ gpy} \times 365 \text{ days} = 223,380,000 \text{ gal/yr}$ .

Conversion to HCF/yr -  $223,380,000 \text{ g/y} \text{ divided by } 7.481 \text{ g/cf} = 30,000,000 \text{ CF/yr}$  divided by 100 = 300,000 HCF/yr.

Abatement meter reduction of 18% to 246,000 HCF.

Conversion of peak flow to average flow =  $246,000/3 = 82,000 \text{ HCF/yr}$ .

- b. No. The size of the interceptor was developed during the development of the Johnston Facilities Plan Update which was approved by the Rhode Island Department of Environmental Management (RIDEM) on September 12, 2011, well before the proposed connection of this customer. The interceptor size and location is based on flow projections from unsewered areas of the Town of Johnston and are based on 20-year land-use forecasts defined in Johnston's 2007 Comprehensive Community Plan and RIDEM's Flow Estimation Policy for Design of Sanitary Sewers. Average and peak daily flows from each sewershed are calculated for a 20 year build-out period and sewers are then sized for this projected flow.
- c. Please see answer to b above.

**Prepared by:** Rich Bernier and Kathryn Kelly



**Div. 2-12:** Refer to the rebuttal testimony at pages 11-12 concerning the number of residential dwelling units. Does NBC have information on the number of residential dwelling units for the months beyond FY2018? If so, identify and provide that information.

**Response:** Due to the conversion to new billing cycles with the implementation of a new customer service application in January, comparable dwelling unit information is not available for February or March. NBC has this information available on a monthly basis through January 2019 and is provided below:

<b>Month</b>	<b>Dwelling Units</b>
Jul-18	119,309
Aug-18	119,110
Sep-18	119,507
Oct-18	119,396
Nov-18	119,919
Dec-18	119,918
Jan-19	120,058

**Prepared by:** Karen Giebink

**Div. 2-13:** Refer to the rebuttal testimony at pages 12-13 concerning the number of non-residential meters. Does NBC have information on the number of non-residential meters units for the months beyond FY2018? If so, identify and provide that information.

**Response:** Due to the conversion to new billing cycles with the implementation of a new customer service application NBC has not yet developed the ability to summarize the data for YTD FY 2019, but will provide this information as soon as it is available.

**Prepared by:** Harold Smith and Karen Giebink

**Div. 2-14:** Refer to the rebuttal testimony at page 14. Identify and provide the information that was reviewed by NBC for water shut-off and lien sales.

**Response:** See tabs 2-14 WSO Data and 2-14 Lien Sale Data in the attached DR 2 Response Schedules.

**Prepared by:** Harold Smith

**Div. 2-15:** Refer to the rebuttal testimony at page 14. Identify and provide information on NBC's uncollectible accounts for the past three fiscal years through FY2018 and for FY2019 through March 2019 in total and broken out by the same categories listed on page 14:

- a. single family
- b. multi-family
- c. non-residential

**Response:** Uncollectible accounts for FY 2016, FY 2017, FY 2018, and FY 2019 YTD are shown in the table below:

	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>	<b>FY 2019 (YTD)</b>
Single Family	0	2	1	0
Multi-Family	7	5	2	1
Non-Residential	3	3	2	0
<b>Total</b>	<b>10</b>	<b>10</b>	<b>5</b>	<b>1</b>

**Prepared by:** Karen Giebink

**Div. 2-16:** Identify the number of multi-family accounts that NBC has in the past three fiscal years through FY2018 and for FY2019 through March 2019. For those multi-family accounts does NBC know whether its invoices are being paid by the owner, the residents, and/or whether the owner and residents are the same? If not, explain fully why not. If so, identify the approximate numbers for each of the following for the multi-family accounts (1) non-owner resident paid billings, (2) owner non-resident paid billings and (3) owner-resident paid billings.

**Response:** See table below and note that multi-family properties with more than six (6) dwelling units are classified as non-residential and NBC does not uniquely identify those properties. As a result the table below only shows those multi-family properties with six (6) dwelling units or less as follows:

NUMBER OF MULTI-FAMILY RESIDENTIAL PROPERTIES*			
FY 2016	FY 2017	FY 2018	FY 2019 YTD
24,100	24,161	24,330	24,363

\* Does not include non-residential multi-family properties > 6 Dwelling Units

NBC bills the property owners and does not track whether the source of bill payment is from a tenant or the property owner for multifamily properties.

**Prepared by:** Karen Giebink and Clara Casimiro

- Div. 2-17:** Refer to the rebuttal testimony at pages 13-14.
- a. Does NBC consider collection of delinquent revenue to be a core business function? If not, explain fully why not.
  - b. Does NBC consider identification and collection of past-due billings to be a core business function? If not, explain fully why not.

**Response:**

- a. The NBC considers the collection of delinquent revenue to be a core business function up until a certain point. The NBC recognizes that initial collection activity such as placing collection calls and sending collection letters should be considered a core business function. Accordingly, NBC is not requesting cost recovery of these general collection activities from individual customers.

NBC does not consider the costs associated with the physical posting of collection notices at selected properties a core business function. As stated in the rebuttal testimony on page 13, the NBC gives delinquent customers numerous opportunities to avoid additional collection activity. NBC Customer Service staff not only place multiple collection calls to delinquent customers, they also send letters advising customers that their account is delinquent and may be subject to water termination or lien sale. After the initial letter is received, a customer only needs to reach out to the NBC and speak with a representative to determine if a payment arrangement can be made. The NBC does not believe that the additional costs associated with collection notice posting should be borne by the majority of NBC's ratepayers that pay their bills timely or make payment arrangements with NBC.

In addition, it should be noted that NBC staff accompany staff from the various water suppliers to properties for the water shut-off. NBC passes through the water supply board water termination fee but NBC does not charge an additional fee for the staff time required to perform this function.

- b. See answer to a.

**Prepared by:** Karen Giebink and Clara Casimiro

- Div. 2-18:** Refer to the rebuttal testimony at pages 13-14. Please identify when in the time frame from billing to water shut-off to lien sale, NBC posts the Collection Notice Postings, and clarify how many months the bill is overdue prior to NBC posting a Collection Notice:
- a. billing date
  - b. 30 days after billing date
  - c. 60 days after billing date
  - d. 90 days after billing date
  - e. 120 days after billing date
  - f. water shut-off date
  - g. lien sale date

**Response:** Water shut-off:

The NBC considers an account past due once it has aged thirty (30) days. Accounts are eligible for water termination once they have a sixty (60) day past due balance greater than \$200. Once an account meets this criteria, the customer will receive a water termination letter. The letter notifies the customer of the payment due date which is seven (7) days from the date of the letter. The letter also informs the customer of their consumer rights and protected customer status exemptions. If, at the end of seven (7) days the balance remains unpaid and the customer has not contacted the NBC, a collection notice may be posted at the property and the customer will have ten (10) days to contact the NBC before the service is terminated.

If a customer has made an arrangement with NBC subsequent to receiving the water shut-off letter and fails to make the initial payment or subsequent payment (i.e. defaults), then the account will be posted for water shut-off with no additional notification.

Lien sale:

Please see response to Div. 2-20.

**Prepared by:** Clara Casimiro and Kevin Burke

**Div. 2-19:** Refer to the rebuttal testimony on page 14. Do the affected customers receive any other form of notice about water shut-off other than an NBC Collection Notice Posting? If so, identify and explain each other form of notice that a delinquent customer would receive warning about water shut off and the timing of when the customer would receive each such other form of notice.

**Response:** Yes, customers that are selected for water termination will receive a telephone call as well as a letter advising them of their account's status. NBC Customer Service staff place collection calls to customers once their account is sixty (60) days past due. At this point, a letter will also be mailed to the customer advising them that their account is eligible for water termination.

**Prepared by:** Clara Casimiro

**Div. 2-20:** Refer to the rebuttal testimony on page 14. Do the affected customers receive any other form of notice about lien sale other than an NBC Collection Notice Posting? If so, identify and explain each other form of notice that a delinquent customer would receive warning about a lien sale and the timing of when the customer would receive each such other form of notice.

**Response:** The NBC follows the lien sale procedures required by RI Gen. Laws § 44-9, *et esq.* These statutory procedures require the following forms of notice of the lien sale to the customer:

1. By first class mail at least 90 days prior to the sale date, and
2. By certified mail at least 40 days prior to the sale date, and
3. Record notice through publication of the notice of sale at least 3 weeks prior to the sale date.

The statutory procedures additionally require the following forms of notice of the lien sale:

1. Post notice of the lien sale in two or more public places in which the selected property resides, and
2. By certified mail to mortgagees and other parties in interest of record at least 20 days prior to the sale date, and
3. Notice of the lien sale by mail or electronically to Rhode Island Housing and Mortgage Finance Corporation at least 40 days prior to the sale date, and
4. For customers who have an elderly exemption, notice of the lien sale by mail or electronically to the Rhode Island Division of Elderly Affairs at least 40 days prior to the sale date.

The additional statutory procedures noted above tend to result in the customer receiving a warning of the upcoming lien sale from non-customers or parties in interest in the event that the customer was somehow unaware of the lien sale notices sent directly to the customer.

**Prepared by:** Kevin Burke

- Div. 2-21:** Refer to the rebuttal testimony at page 14.
- a. Does NBC perform the water shut-off? If not, what entity performs the water shut off?
  - b. Does NBC incur costs related to water shut-off? If so, what costs are incurred by NBC related to water shut-off?

**Response:**

- a. NBC does not own the water meters and therefore must coordinate water shut-off activity with the various water supply boards in NBC's service area. NBC staff accompanies water supply board staff to all water terminations.
- b. Yes. NBC incurs labor costs for the scheduling of water shut-offs and NBC staff accompanies staff from the water boards on the water shut-offs. In addition, NBC must pay service termination and restoration fees to certain water suppliers for services performed. The water termination and restoration fees are passed through to the customer in accordance with NBC's Terms and Conditions as approved by the RIPUC.

**Prepared by:** Harold Smith and Clara Casimiro

- Div. 2-22:** Biosolids production and cost. Refer to the rebuttal testimony at pages 16-19.
- a. Identify and provide the 12-month moving total information that was used to produce the graph at page 17 through December 2018.
  - b. Identify and provide the additional information on biosolids production through March 2019.
  - c. Identify and provide the contract relied upon for the 3% contracted price increase stated at page 19, lines 5-6.
  - d. Has NBC received invoices in March or April 2019 related to biosolids disposal? If so, identify and provide the biosolids invoices received by NBC in March and April 2019.

**Response:**

- a. See tab 2-22 Biosolids in the attached DR 2 Response Schedules spreadsheet.
- b.

Month	Dry Tons
Jan-19	872
Feb-19	918
Mar-19	833
Apr-19	966

- c. NBC's disposal cost per dry ton for calendar year 2018 was \$455.36. In accordance with the attached contract, the cost per dry ton is adjusted each January based on the consumer price index. Effective January 1, 2019, the NBC's disposal cost per dry ton increased to \$470.44, a 3.3% increase. In February 2019, NBC's biosolids disposal vendor notified NBC of a *Rule of Law* pricing change of \$24.86 per dry ton resulting in a total cost per dry ton cost of \$495.30.

NBC's cost for biosolid disposal for the first six months of FY 2020 (July 2019 – December 2019) will therefore be \$495.30 and NBC assumes a contracted CPI adjustment of 3% effective January 1, 2020 resulting in a rate per dry ton of \$510.16 for the last six months of FY 2020 (January 2020 – June 2020). The average of the two rates over the rate year is \$502.73 per dry ton.

The contract includes a contracted CPI adjustment which is provided as Attachment Div. 2-22. I used a projected 3% increase (1/1/18 increase was 3% and 1/1/19 increase was 3.3%)

- d. Yes. See page 32 of the contract included as Attachment 2-22.

**Prepared by:** Karen Giebink

**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 begins 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

(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.

(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.

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- (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.

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- (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 (30) 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.

Sharon P. D'Angelo

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 29th 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:

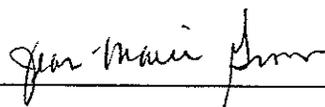
My Commission Expires: 1/30/05

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.



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.

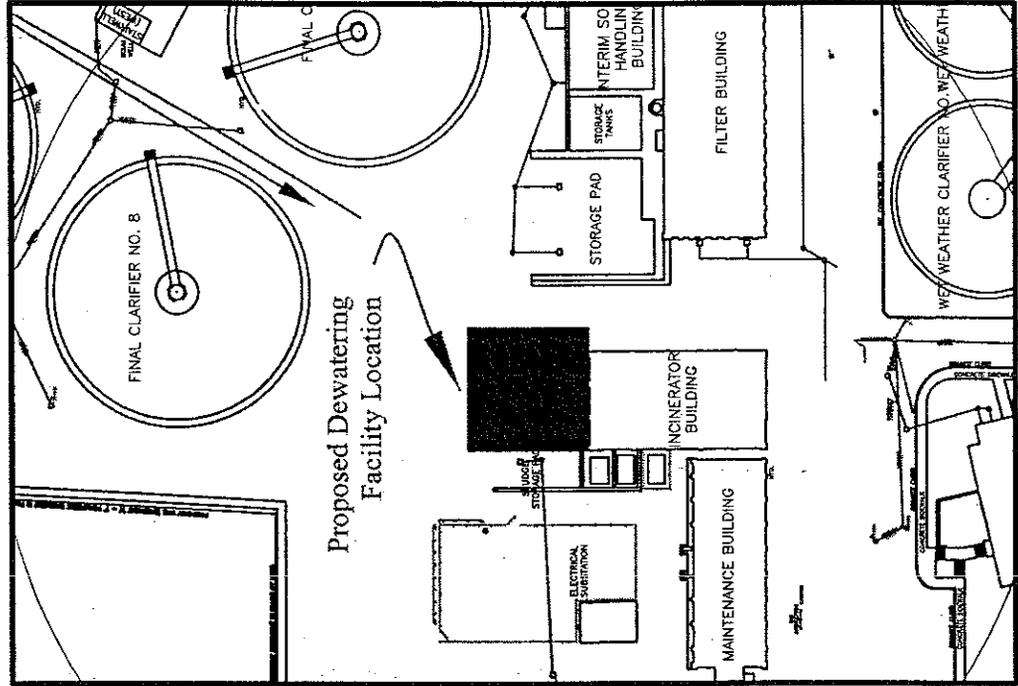
### **Operation**

- 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

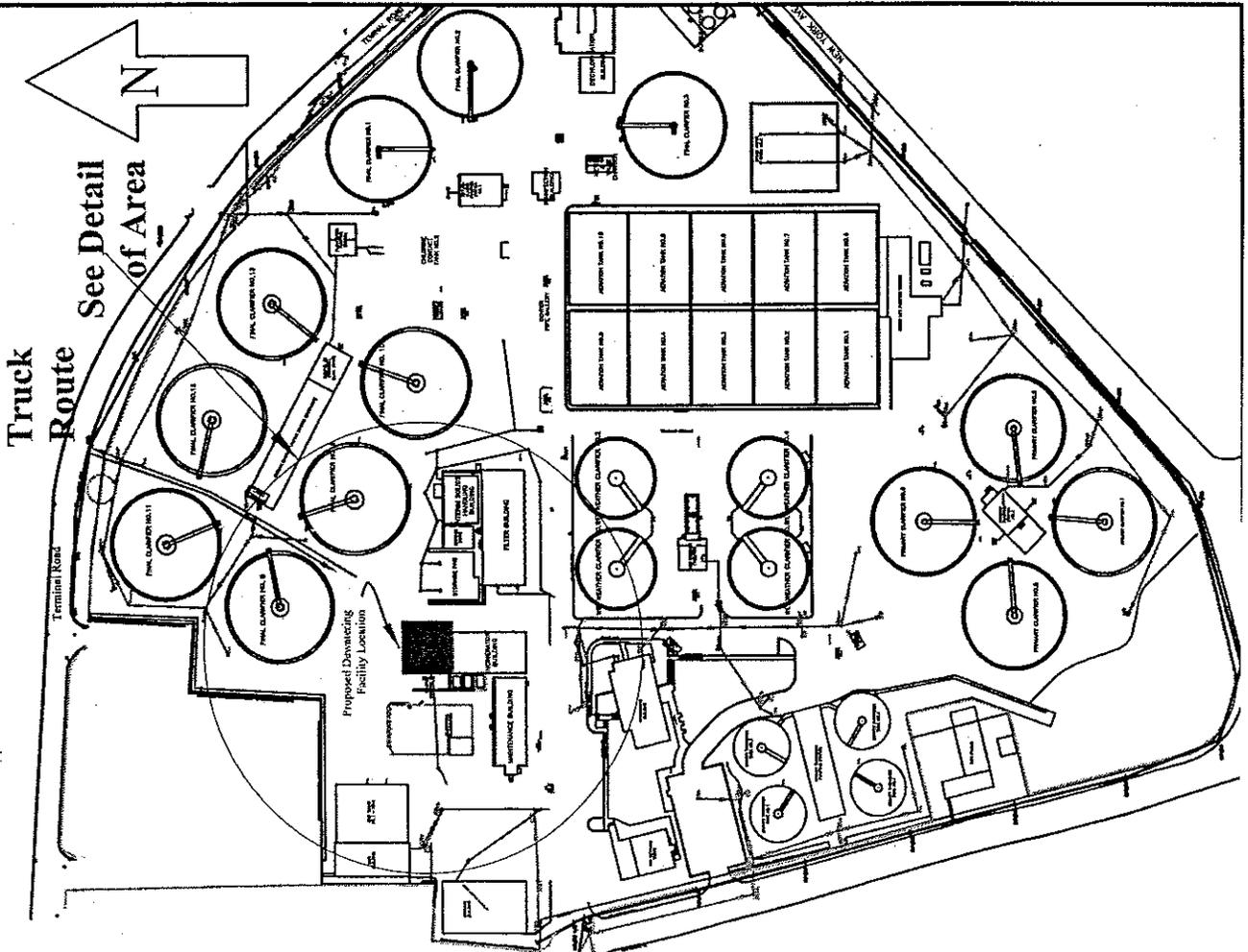
### **Process Control**

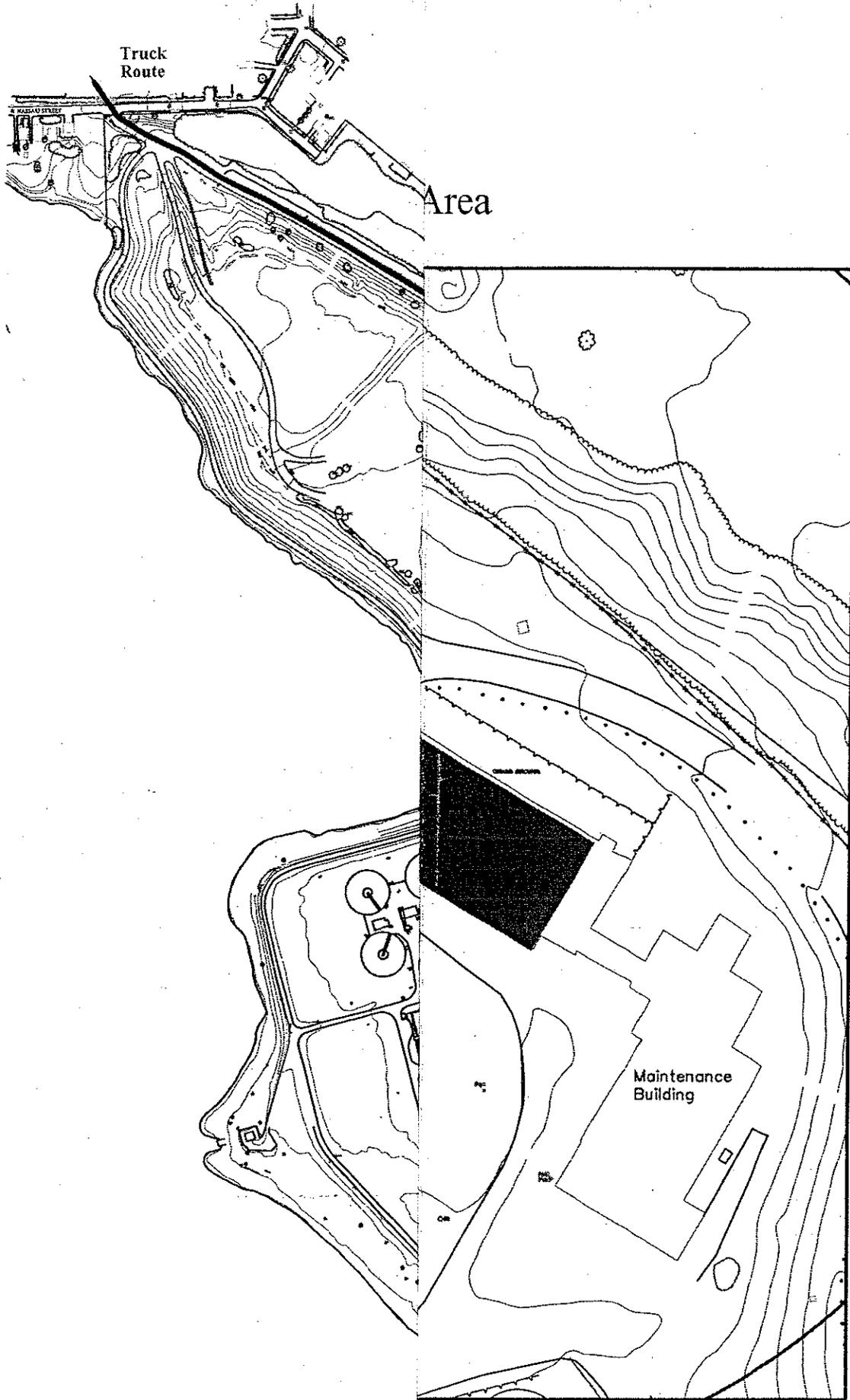
- Simple control panels with local alarms and status.
- Pump operation controlled by liquid level in tanks.
- No remote operation, signals or alarms required.

Detail of Area



**FIELD'S POINT WASTEWATER TREATMENT FACILITY  
 PROVIDENCE, RI  
 LOCATION OF PROPOSED DEWATERING FACILITY  
 APRIL 2004**





- Div. 2-23:** Refer to the rebuttal testimony at pages 20-21.
- a. Referring to the table on page 20, show how much renewable generation NBC had in each month of 2018.
  - b. Show how much renewable generation NBC had in each month - January through March of 2019.
  - c. Refer to page 20, lines 20-21. Identify and provide the two REC sales contracts.
  - d. Show in detail how NBC calculated a price of \$20.47 per REC. (The "Rebuttal REC Rate" is a typed in "value" amount on Schedule HJSR-5 Misc Rev. of \$20.4702).
  - e. Explain why NBC believes that contracting to sell RECs at \$13.25 per REC on the second contract is prudent when NBC obtained \$25 per REC on the first contract.
  - f. How did NBC determine that \$13.25 per REC was a reasonable price for the second contract? Explain fully and provide the analysis relied upon.
  - g. How many "minted" RECs does NBC have that are available for sale in FY2020?
  - h. Subsequently to NBC entering into the second REC sale contract, has NBC maintained any information on sale prices of NEPOOL RECs? If not, explain fully why not. If so, identify and provide that information.

**Response:**

- a. Please see following table showing 2018 renewable energy kWhs:

Month	kWhs
Jan-18	2,155,000
Feb-18	1,267,000
Mar-18	1,992,000
Apr-18	2,407,000
May-18	1,456,000
Jun-18	1,472,000
Jul-18	2,277,000
Aug-18	1,271,000
Sep-18	975,000
Oct-18	2,440,000
Nov-18	1,389,000
Dec-18	<u>1,203,000</u>
	20,304,000

- b. Renewable generation from all of our generation sources for Q1 2019 is not

available at this time.

- c. Please see Attachments 2-23 3Degrees and 2-23 ECANE.
- d. Please see following table:

Calculation of Avg. Rate/REC		
10,000	\$ 25.00	\$ 250,000
2,000	25.00	50,000
6,000	13.25	79,500
3,000	13.25	39,750
Total under contract	21,000	\$ 419,250

Total Estimated RECs Generated 20,485

Average REC Price (Total revenue generated under contract divided by the estimated # of RECS generated) \$ 20.47

- e. NBC negotiated the Energy Consumer Alliance of New England (ECANE) contract in April 2018 for the sale of 2019 RECs. ECANE requires a specific quantity of REC's for 2019, 2020, and 2021 (10,000 firm and 2,000 contingent). Typically the earlier the REC negotiations are relative to the generation of the RECs the higher the REC price. The second contract with 3Degrees was negotiated in December 2018 and allows the NBC to sell the balance of the RECs on a more contingent basis. This contract is for 6,000 firm REC's and 3,000 to 5,000 contingent. The price for the REC's sold on a contingent basis are less than the firm quantities.
- f. NBC works with energy consultants to negotiate pricing. The NBC also uses pricing information from Karbone Renewable Energy Brokerage which publishes bid and ask prices of RECs from various tracking systems (i.e. NEPOOL) as well as other states. See sample report Attachment 2-23 Karbone REC Pricing.
- g. NBC does not have any "minted" RECs for sale in FY 2020. For example, RECs generated in Q1 2019 will not be "minted" and available for sale until July of 2019.
- h. Please see answer to question f.

**Prepared by:** Sam Celone and Mike Cook

### Confirmation Letter #3

This Confirmation Letter describes a transaction between Buyer and Seller for the sale, purchase and Delivery of Renewable Energy Certificates (“**RECs**”) pursuant to and in accordance with the terms of the Renewable Energy Certificate Purchase and Sale Agreement between the Parties dated August 14, 2018 (the “**Agreement**”) and constitutes part of and is subject to the terms and provisions of the Agreement. Provided, that, to the extent there is a conflict between a provision of the Agreement and this Confirmation Letter, the terms of this Confirmation Letter shall control for the purposes of this transaction.

Initially capitalized terms used and not otherwise defined herein are defined in the Agreement.

#### Basic Commercial Terms:

Trade Date:	December 14, 2018
Transaction Reference:	11406
Seller:	Narragansett Bay Commission
Buyer:	3Degrees Group, Inc.
Facility:	Facility Point’s Wind, NBC COV Wind, WED Kingstown East/West, and/or Johnston Wind
Eligible Renewable Resource Type:	Wind and/or Solar (as generated by Facilities above)
Geography:	RI
Period Type [Generation, Reporting]:	Generation
Time Period:	January 01, 2019 - December 31, 2019
Product Quantity (REC):	1) 6,000 2) 3,000 estimated
Contract Price (\$/REC):	\$13.25

#### Product Specific Terms:

Applicable Standard(s):	MA Class I as defined in 225 CMR 14.00 (Class I); R.I. Gen. Laws § 39-26-1 et seq.
Environmental Attributes retained by Seller, if any:	None
Media Rights Conferred [yes, no]	No

#### Delivery Terms:

Delivery Date:	On or before June 1, 2020
Delivery Obligation [Firm, Unit Contingent, Project Contingent]:	1) Firm 2) Unit Contingent - 100% of each Facility’s output less 12,000 existing obligation up to a maximum of 5,000
Applicable Tracking System:	NEPOOL GIS
Buyer Tracking Account Name:	3Degrees Group, Inc.
Attestation Form:	None - Tracking System only
Buyer Delivery Contact [Name, Email]:	Trade Operations, Settlements@3Degrees.com
Seller Delivery Contact [Name, Email]:	Sam Celone, scelone@narrabay.com

The Parties agree to the transaction set forth herein and each Party represents that the person signing this Confirmation Letter on its behalf is authorized to execute on behalf of the Party for whom they sign.

<b>3Degrees Group, Inc.</b>		<b>Narragansett Bay Commission</b>	
Signature	<i>Darren Karopuzyc</i>	Signature	<i>[Handwritten Signature]</i>
Name		Name	<i>SAMUEL R. CELONE</i>
Title	Director, Trade operations	Title	<i>Purchasing Manager</i>
Date	12/27/2018	Date	<i>12/24/2018</i>

## AGREEMENT FOR THE PURCHASE AND SALE OF RENEWABLE ENERGY CERTIFICATE

This AGREEMENT FOR THE PURCHASE AND SALE OF RENEWABLE ENERGY CERTIFICATE (“**Agreement**”) is made as of April 10, 2018 (the “**Effective Date**”) by and between **Energy Consumers Alliance of New England, Inc.**, a Massachusetts non-profit corporation having its principal office in Boston, Massachusetts (d/b/a Mass Energy) and another office in Providence, Rhode Island (d/b/a People’s Power & Light) (“**Buyer**”), and **Narragansett Bay Commission**, a \_\_\_\_\_ company having its principal office in Providence, Rhode Island (“**Seller**”). Seller and Buyer are sometimes referred to individually as a “**Party**” and collectively as the “**Parties**”.

WHEREAS, the Parties desire to enter into this Agreement in order to set forth the terms and conditions relating to a renewable energy credit purchase and sale transaction as more particularly described below.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

### ARTICLE 1 DEFINITIONS

As used in this Agreement, the following defined terms have the meanings set forth below:

- 1.1 “**Applicable Standard**” means the renewable portfolio standards of the Commonwealth of Massachusetts set forth in Section 11F of Chapter 25A of the General Laws of Massachusetts and the associated rules and regulations promulgated by the Massachusetts Department of Energy Resources, including those regulations set forth in Sections 14.00 through 14.13 of Title 225 of the Code of Massachusetts Regulations, as in effect on the date of this Agreement.
- 1.2 “**Business Day**” means a day on which Federal Reserve member banks in Boston, Massachusetts are open for business. A Business Day will open at 8:00 a.m. and close at 5:00 p.m. Boston, Massachusetts time.
- 1.3 “**Confidential Information**” means all oral and written information exchanged between the Parties with respect to this Agreement including, without limitation, the payments to be made and the Purchased Certificates to be transferred under this Agreement, and any information that is marked or specifically identified as confidential or proprietary in nature. Notwithstanding the foregoing, the following shall not constitute Confidential Information: (a) information which was already in a Party’s possession on a non-confidential basis prior to its receipt from the other Party; (b) information which is obtained from a third person who, insofar as is known to the Party, is not prohibited from transmitting the information to the Party by a contractual, legal or fiduciary obligation to the other Party; (c) information which is or becomes publicly available through no fault of the Party; and (d) information which is at any time independently developed by employees or consultants of a Party who have not had access to Confidential Information in the possession of that Party.
- 1.4 “**Deliver**,” “**Delivered**” or “**Delivery**” means when the transfer of the RECs is properly recorded with the Tracking System.
- 1.5 “**Event of Default**” means, with respect to each Party:

- (a) The failure of such Party to make payment as required under this Agreement (which Event of Default shall not include a delay in payment that is cured within three (3) Business Days of a demand for payment) or any other failure of performance by a Party of its material obligations under this Agreement (which Event of Default shall not include a delay in performance that is cured within five (5) Business Days of a demand for cure or other corrective action deemed satisfactory by the Performing Party in its sole discretion).
  - (b) Such Party:
    - (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
    - (ii) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
    - (iii) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights; or
    - (iv) has a secured party take possession of all or substantially all of its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter.
  - (c) The making by such Party of a materially incorrect or misleading representation or warranty under this Agreement.
- 1.6 “**RECs**” means “RPS Class I Renewable Generation Attributes” (as defined or described in and eligible under the Applicable Standard) generated by a Renewable Generating Resource.
- 1.7 “**Renewable Generating Resource**” means a facility that is qualified as a “RPS Class I Renewable Generation Unit” under and as defined or described in the Applicable Standard. For the purpose of this agreement, the Renewable Generating Resource refers to two wind turbine projects, one located in Coventry, Rhode Island, and is Unit ID Number MSS49411, for the purposes of the Tracking System, and another located in Providence, Rhode Island, and is Unit ID Number NON36588 in for the purposes of the Tracking System.
- 1.8 “**Tracking System**” means the New England Power Pool Generation Information System (NEPOOL-GIS) operated by the New England Power Pool, its designee or successor entity, which includes a generation information database and certificate system and accounts for the generation attributes of electricity generated within New England.
- 1.9 “**Vintage**” means, with respect to any RECs, the applicable period during which the generation of such RECs was required to have occurred which, for purposes of this Agreement, shall be: January 1, 2019 through December 31, 2019 (“**Calendar Year 2019**”), January 1, 2020 through December 31, 2020 (“**Calendar Year 2020**”) and January 1, 2021 through December 31, 2021 (“**Calendar Year 2021**”).

**ARTICLE 2  
PURCHASE AND SALE OF RECS**

- 2.1 **Sale.** Subject to the terms and conditions of this Agreement, Seller agrees to sell and Buyer agrees to purchase the following amounts of RECs during Calendar Year 2019 (the “**2019 Contract RECs**”), Calendar Year 2020 (the “**2020 Contract RECs**”), and Calendar Year 2021 (the “**2021 Contract RECs**”) according to the schedule below. For the purpose of the table below, “Firm” delivery obligations mean that Seller agrees to sell and Buyer agrees to purchase the specified quantity. “Contingent” shall mean that Seller shall be obligated to transfer the specified quantity, unless the Renewable Generating Resource does not generate the full amount of Contingent RECs. If this occurs in a given Calendar Year, Buyer shall purchase the difference between the specified quantity and the delivered quantity as specified in the Quarterly Reports subject to Article 2.2 Reporting.

<b>Contract REC</b>	<b>Quantity</b>	<b>Delivery Obligation Type</b>
2019 Contract RECs	10,000	Firm
2019 Contract RECs	2,000 additional from Firm Delivery above	Contingent
2020 Contract RECs	10,000	Firm
2020 Contract RECs	2,000 additional from Firm Delivery above	Contingent
2021 Contract RECs	10,000	Firm
2021 Contract RECs	2,000 additional from Firm Delivery above	Contingent

- 2.2 **Reporting.** Seller will provide Buyer with quarterly reports of the generation from the Renewable Generating Resource (the “**Quarterly Reports**”). The reports should be emailed to Buyer within fifteen (15) days of the end of each quarter.
- 2.3 **Purchase.** Subject to the terms and conditions of this Agreement, Buyer shall purchase the Contract RECs at a unit price of \$25.00 per 2019 Contract REC, \$26.50 per 2020 Contract REC and \$27.00 per 2021 Contract REC for a total purchase price of Seven Hundred and Eighty Five Thousand Dollars (\$785,000.00) (the “**Purchase Price**”).

**ARTICLE 3  
TRANSFER AND TITLE**

- 3.1 **Title/Transfer/Delivery.** Seller agrees to transfer RECs to Buyer’s NEPOOL GIS trading account on a quarterly basis within the first fifteen (15) business days of the applicable NEPOOL GIS trading period.
- 3.2 **Further Assurances.** The Parties shall cooperate fully and assist each other to obtain any and all required approvals and/or forms which may be required to effectuate the transfer of the Contract RECs to the Buyer’s account with the Tracking System in accordance with this Agreement, and to comply with any and all other regulatory obligations as required by the Tracking System.

- 3.3 **Responsibility.** Each Party shall be responsible for all costs, fees, brokerage commissions, taxes, and charges of whatever kind and amount that such Party incurs in connection with the performance of its respective obligations under this Agreement.
- 3.4 **Cooperation.** Upon notification that any transfer contemplated by this Agreement will not be completed, the Parties shall promptly confer and shall cooperate in taking all reasonable actions necessary to cure any defects in the proposed transfer, so that the transfer can be completed.

#### ARTICLE 4 BILLING AND PAYMENT

- 4.1 **Invoice.** Following each Delivery by Seller of any Contract RECs in accordance with Section 2.1, Seller shall provide an invoice to Buyer reflecting the applicable portion of the Purchase Price associated with such Contract RECs so Delivered (the “**Invoice**”). Invoices may be furnished to Buyer by facsimile transmission or in any other manner permitted pursuant to Section 7.1.
- 4.2 **Payment.** Within ten (10) Business Days of the later of (x) Buyer’s receipt of the Invoice and (y) Buyer’s receipt of confirmation from the Tracking System that the applicable Contract RECs have been Delivered to the Buyer’s account with the Tracking System, Buyer shall pay the applicable portion of the Purchase Price to Seller.
- 4.3 **Netting.** If Seller and Buyer are each required to pay any amounts in respect of purchases/sales hereunder or under any other contracts between the Parties on the same day, then, upon notice from one Party to the other, such amounts with respect to each Party shall be aggregated and the Parties shall discharge their obligations to pay through netting, in which case the Party, if any, owing the greater aggregate amount shall pay to the other Party the difference between the amounts owed.

#### ARTICLE 5 REPRESENTATIONS AND WARRANTIES

- 5.1 **Mutual Representations and Warranties.** Each Party represents and warrants to the other Party, as of the date of this Agreement and as of each Delivery of the Contract RECs and payment in respect of the Purchase Price that:
- (a) It is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, in good standing;
  - (b) It has the corporate authority and power to execute, deliver and perform the Agreement and enter into any transaction contemplated hereby;
  - (c) Such execution, delivery and performance of this Agreement have been duly authorized and do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;
  - (d) There is no pending or (to its knowledge) threatened litigation, arbitration or administrative proceeding that materially adversely affects its ability to perform under this Agreement.

- (e) It is an “Eligible Contract Participant” as defined in Section 1a(18) of the Commodity Exchange Act, as amended, 7 U.S.C. § 1a(18), and it is a “forward contract merchant” and this Agreement is a “forward contract” within the meaning of the United States Bankruptcy Code.
- (f) It is not relying upon any advice, reports, analyses, or representations of the other Party other than those expressly set forth in this Agreement or any written guarantee of the obligations of such other Party, and the other Party has not given to it any assurance or guarantee as to the expected financial performance or result of this transaction, and it has entered into this transaction as principal and for its own account (and not as advisor, agent, broker or in any other capacity, fiduciary or otherwise), with a full understanding of, and the ability to assume, the material terms and risks of the same, and has made its trading and investment decisions (including regarding the suitability thereof) based upon its own judgment and any advice from such advisors as it has deemed necessary.
- (g) This Agreement constitutes a legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms, subject to bankruptcy, reorganization, and similar laws affecting creditors’ rights generally and to general principals of equity (regardless whether considered in a proceeding in equity or at law).

- 5.2 **Warranties of Title; Validity.** Seller warrants contemporaneously with each Delivery of Contract RECs made pursuant to this Agreement that (a) Buyer will have good and marketable title to such Contract RECs, (b) such Contract RECs are not subject to specific contractual restrictions on their sale or transfer, (c) such Contract RECs are of the type and Vintage as set forth in this Agreement and can be used for compliance with the Applicable Standard, (d) Seller has the power to sell such Contract RECs, (e) such Contract RECs are Delivered free from all liens, claims, security interests, encumbrances and other defects of title arising prior to Delivery and (f) such Contract RECs have not otherwise been sold, retired, claimed, represented as part of any electricity output or sales, or otherwise used to satisfy any renewable energy, greenhouse gas or other emissions or other environmental attribute obligation elsewhere under any standard, marketplace or jurisdiction.
- 5.3 **Limitation of Warranties.** EXCEPT AS SPECIFICALLY SET FORTH IN SECTION 5.2, SELLER MAKES NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED WITH RESPECT TO THE CONTRACT RECS DELIVERED PURSUANT TO THIS AGREEMENT, WHETHER AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER MATTER.
- 5.4 **Survival.** This Article 5 shall survive expiration or termination of this Agreement until the date that is the later to occur of (x) the date that is three (3) years following the expiration or termination of this Agreement and (y) the date that is six (6) months after the last date that Compliance RECs of the Vintage(s) specified in this Agreement may be used for compliance with the Applicable Standard(s).

## ARTICLE 6 EVENTS OF DEFAULT; REMEDIES

- 6.1 **Events of Default.** If an Event of Default occurs with respect to either Party (the “Defaulting Party”) at any time during the term of this Agreement, the other Party (the “Performing Party”) may (a) upon two (2) Business Days’ written notice to the Defaulting Party, terminate this Agreement, (b) suspend performance or withhold any payments or transfers of RECs due in

respect of this Agreement to the extent of its damages pursuant to this Article, (c) exercise its rights under Section 6.2 of this Agreement, and (d) exercise such other remedies as may be available at law or in equity or as otherwise provided in this Agreement including an action for damages (except as limited by Section 6.3).

- 6.2 **Termination Payment.** In the event the Performing Party terminates this Agreement in accordance with Section 6.1 above, the Performing Party shall in good faith calculate its Gains, Losses, and Costs resulting from the termination of this Agreement, aggregate such Gains, Losses and Costs with respect to all terminated transactions and any other amounts due under this Agreement into a single net amount (the “**Termination Payment**”), and then notify the Defaulting Party of the Termination Payment owed or owing. The Termination Payment shall be due to or due from the Performing Party as appropriate. Payment of the Termination Payment shall be due within three (3) Business Days after the Defaulting Party’s receipt of notice of the Termination Payment. The Performing Party may from time to time set off any or all amounts which the Defaulting Party owes to it against any or all amounts which the Performing Party owes to the Defaulting Party (in either case, under any agreement and whether or not then due), provided that any amount not then due which is included in such set-off shall be discounted to present value as determined by the Performing Party in a commercially reasonable manner.

For purposes of this Section, the following terms apply:

“**Costs**” means, with respect to the Performing Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by the Performing Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace this Agreement, and all reasonable attorneys’ fees and legal costs incurred by the Performing Party in connection with the termination of this Agreement.

“**Gains**” means, with respect to the Performing Party, an amount equal to the present value of the economic benefit, if any, (exclusive of Costs) to it resulting from the termination of this Agreement, determined in a commercially reasonable manner.

“**Losses**” means, with respect to the Performing Party, an amount equal to the present value of the economic loss, if any, (exclusive of Costs) to it resulting from the termination of this Agreement, determined in a commercially reasonable manner.

- 6.3 **Limitations of Liability.** THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. THE REMEDIES AND MEASURES OF DAMAGES SET FORTH IN THIS ARTICLE 6 SHALL BE THE SOLE AND EXCLUSIVE REMEDIES AVAILABLE TO THE PARTIES HEREUNDER. THE PARTIES CONFIRM AND AGREE THAT UNDER THIS AGREEMENT, NO PARTY SHALL BE REQUIRED TO PAY OR BE LIABLE FOR SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES, LOST PROFIT OR BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT, CONTRACT OR OTHERWISE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

- 6.4 **Survival; Term.** This Article 6 shall survive any expiration or termination of this Agreement. This Agreement shall be effective as of the date first above written and shall remain effective until the Delivery of the Contract RECs and Seller's receipt of the Purchase Price, or upon the termination of this Agreement pursuant to Article 6, except that, as set forth herein, certain terms will remain effective after expiration or termination.

## ARTICLE 7 NOTICES

- 7.1 **Methods.** All notices, invoices, other formal communications which either Party may give to the other under or in connection with this Agreement shall be in writing and shall be sent by any of the following methods: hand delivery; reputable overnight courier; certified mail, return receipt requested; or, with respect to communications other than payments, by facsimile transmission. The communications shall be sent to the following addresses, and shall be effective when received:

If to Buyer:

**Narragansett Bay Commission**  
1 Service Rd  
Providence, RI 02905  
Attn: Sam Celone  
Phone: 401-461-8848  
Email: [scelone@narrabay.com](mailto:scelone@narrabay.com)

If to Seller:

**Energy Consumers Alliance of New England**  
284 Amory Street  
Boston, MA 02130  
Attn: Larry Chretien, Cc: Yaima Roldan Casillas  
Phone: 617-524-3950  
Email: [larry@massenergy.org](mailto:larry@massenergy.org); [yaima@massenergy.org](mailto:yaima@massenergy.org)

## ARTICLE 8 GENERAL PROVISIONS

- 8.1 **Entire Agreement, Amendments and Counterparts.** The terms of this Agreement constitute the entire agreement between the Parties with respect to the matters set forth in this Agreement and may be changed only by written agreement executed after the date hereof by the Parties.
- 8.2 **No Waiver.** No waiver by either Party of any one or more defaults by the other Party in the performance of any of the provisions of this Agreement shall operate or be construed as a waiver of any other default or defaults whether of a like kind or different nature. Any delay, short of the maximum statutory period of limitation, in asserting or enforcing any right under this Agreement shall not be deemed a waiver of such right.
- 8.3 **Confidentiality.** Except as provided in this Article 8, neither Party shall publish, disclose, or otherwise divulge Confidential Information to any person at any time during or after the term of this Agreement, without the other Party's prior express written consent. Each Party shall permit knowledge of and access to Confidential Information only to those of its affiliates, attorneys,

accountants, representatives, agents and employees who have a need to know related to this Agreement and agree to keep such information confidential. This Section 8.3 shall survive for a period of one (1) year following the expiration or termination of this Agreement.

8.4 **Governmental Disclosure.** If required by any law, statute, ordinance, decision, order or regulation passed, adopted, issued or promulgated, or if requested by a court, governmental agency or authority having jurisdiction over a Party, that Party may release Confidential Information, or a portion thereof, to the court, governmental agency or authority, as required or requested, and a Party may disclose Confidential Information to accountants in connection with audits, provided that, if practicable, such Party has notified the other Party of the required disclosure, such that the other Party may attempt (if such Party so chooses) to cause that court, governmental agency, authority or accountant to treat such information in a confidential manner and to prevent such information from being disclosed or otherwise becoming part of the public domain.

8.5 **Governing Law and Dispute Resolution.**

- (a) This Agreement shall be construed under and governed by the laws of the Commonwealth of Massachusetts, without regard to its rules regarding choice of laws. The Parties agree to use their respective best efforts to resolve any dispute(s) that may arise regarding this Agreement.
- (b) Any dispute that arises under or with respect to this Agreement shall in the first instance be the subject of informal negotiations between the Executive Director of Seller and the Managing Director of Buyer or their respective delegates, who shall negotiate in good faith to resolve such dispute. The period for informal negotiations shall not exceed fourteen (14) days from the time the dispute arises, unless it is modified by written agreement of the Parties. The dispute shall be considered to have arisen when one Party sends the other a written notice that identifies the nature, and the acts(s) or omission(s) forming the basis of, the dispute.
- (c) In the event that the Parties cannot resolve a dispute by informal negotiations, the Parties agree to submit the dispute to mediation. Within fourteen (14) days following the expiration of the time period for informal negotiations, the Parties shall, unless the dispute is resolved during such period, propose and agree upon a neutral and otherwise qualified mediator. In the event that the Parties fail to agree upon a mediator, the Parties shall request that the American Arbitration Association appoint a mediator. The period for mediation shall commence upon the appointment of the mediator and shall not exceed sixty (60) days, unless such time period is modified by written agreement of the Parties. The decision to continue mediation shall be in the sole discretion of each Party. The Parties will bear their own costs of the mediation, provided, however, that neither Party shall be required in connection with the conduct of such mediation to expend any amounts or incur any costs or expenses that it determines to be commercially unreasonable. The Parties will share the cost of the mediator's fees equally.
- (d) If the Parties are unable to resolve a dispute through informal negotiations or mediation, then each Party may take any action that may be available to it under applicable law or otherwise to enforce its rights and remedies under this Agreement, which action may include the commencement of litigation or other proceedings in respect of the dispute.

- (e) In the event that a dispute relates to the calculation of a payment owed or claimed to be owed by one Party ("X") to the other Party ("Y"), X shall pay the undisputed portion of such payment in accordance with the provisions of this Agreement and may withhold payment of the portion of the payment under dispute until such time as the dispute is resolved, whether by agreement of the Parties or otherwise. If upon the resolution of the dispute it is determined that an amount is owed by X to Y, X shall pay such amount to Y within three (3) Business Days following the resolution of such dispute.
- 8.6 **Change in Law.** If, prior to the Delivery of the Contract RECs, any statutes, rules, or regulations are enacted, amended or revoked which have the effect of (a) changing the transfer and sale procedures set forth in this Agreement so that the implementation of this Agreement becomes impossible or impracticable, (b) making this Agreement illegal or unenforceable, or (c) eliminating the existence of the Contract RECs, the Parties hereto agree to negotiate in good faith to amend this Agreement to conform with such new statutes, regulations, or rules in order to maintain the original intent of the Parties under this Agreement. However, in no event will a change in law which changes in any respect the value of the Contract RECs, have any effect on the obligations of the Parties to purchase and sell the Contract RECs on the terms and at the Purchase Price set forth in this Agreement. If the Parties are unable, despite such good faith efforts, to reform this Agreement within fifteen (15) Business Days following commencement of such negotiations, either Party may terminate this Agreement with no further payment or performance obligations except for any such obligations that have accrued prior to such termination.
- 8.7 **Headings.** The Article and section titles in this Agreement are only for purposes of convenience and do not form a part of this Agreement and will not be taken to qualify, explain or affect any provision thereof.
- 8.8 **Assignment.** Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonable withheld, conditioned, or delayed; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an affiliate of such Party which affiliate's creditworthiness is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such Party; provided, however, that in each case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.
- 8.9 **Counterparts.** This Agreement may be executed in one or more counterparts and by different Parties in separate counterparts, each of which will be deemed an original, but all of which will together constitute one instrument. The delivery of an executed counterpart to this Agreement by electronic means, including via email, shall be effective as the delivery of a manually executed counterpart. The Parties agree that this Agreement may be stored in electronic format and that the reproduction in printed form of an electronically stored version this Agreement shall be deemed to be an "original" for all purposes.

ARTICLE 9  
VISITATION AND PUBLIC COMMUNICATIONS

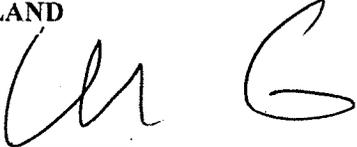
9.1 **Visitation, Use of Images, and Public Communications.** Seller will make reasonable efforts to accommodate public visits to the Renewable Generating Resource, which Buyer may from time to time arrange. Buyer is allowed to use images of the Renewable Generating Resource for its marketing and public education purposes. Seller will make explicit in any public Communications regarding the Renewable Generating Resource that the Wind Certificates are being supplied to Buyer, and Buyer will acknowledge Seller as the owner and developer of the Renewable Generating Resource in any of its public communications about the Renewable Generating Resource.

IN WITNESS WHEREOF, the Parties hereto made and executed this Agreement, signed by their duly authorized officers or individuals, as of the day and year first above written.

NARRAGANSETT BAY COMMISSION

ENERGY CONSUMERS ALLIANCE OF  
NEW ENGLAND

By:   
Name: Raymond Marshall  
Title: Executive Director  
Date: 4/10/18

By:   
Name: Larry Chretien  
Title: Executive Director  
Date: 4/10/18



**KARBONE PRICING** Brokerage Desk : 646 291 2900 | [BROKERAGE@KARBONE.COM](mailto:BROKERAGE@KARBONE.COM) April 3, 2019  
 All Prices Are Indicative Unless Otherwise Stated

PJM								
NJ SREC			NJ Class I			PJM Tier I - Tri-Qualified		
	Bid	Ask		Bid	Ask		Bid	Ask
RY 18	\$225.00	\$230.00	RY 18	\$5.55	\$5.70	RY 18	\$5.55	\$5.70
RY 19	\$230.00	\$232.50	RY 19	\$5.65	\$5.75	RY 19	\$5.65	\$5.75
RY 20	\$230.00	\$232.50	RY 20	\$5.85	\$6.00	RY 20	\$5.90	\$6.00
RY 21	\$215.00	\$220.00	RY 21	\$5.95	\$6.15	RY 21	\$6.05	\$6.15
RY 22	\$180.00	\$185.00	RY 22	\$6.05	\$6.30	RY 22	\$6.20	\$6.30
RY 19-21	\$225.00	\$230.00	PA Tier I			OH SREC		
RY 20-22	\$207.50	\$212.50		Bid	Ask		Bid	Ask
PA SREC			RY 18	\$5.45	\$5.65	Cal 18	\$15.00	\$22.00
	Bid	Ask	RY 19	\$5.50	\$5.70	Cal 19	\$17.00	\$25.00
RY 19	\$34.00	\$38.00	RY 20	\$5.70	\$5.90	OH Non-Solar		
RY 20	\$43.00	\$48.50	RY 21	\$5.75	\$6.00		Bid	Ask
RY 21	\$43.00	\$48.50	MD Tier I			Cal 18	\$5.40	\$5.65
MD SREC				Bid	Ask	Cal 19	\$5.50	\$5.75
	Bid	Ask	Cal 18	\$5.45	\$5.65	NJ Class II		
Cal 18	\$18.00	\$25.00	Cal 19	\$5.50	\$5.70		Bid	Ask
Cal 19	\$25.00	\$30.00	Cal 20	\$5.70	\$5.90	RY 19	\$3.25	\$4.25
Cal 20	\$26.00	\$32.50	Cal 21	\$5.80	\$6.00			

NEPOOL								
MA SREC-I			MA Class I			NH Class I		
	Bid	Ask		Bid	Ask		Bid	Ask
Cal 18	\$407.50	\$417.50	Cal 18	\$7.00	\$8.50	Cal 18	\$5.00	\$6.50
Cal 19	\$380.00	\$385.00	Cal 19	\$14.00	\$15.50	Cal 19	\$11.00	\$13.00
Cal 20	\$337.50	\$342.50	Cal 20	\$17.50	\$21.50	RI New		
Cal 21	\$330.00	\$337.50	Cal 21	\$22.50	\$25.00		Bid	Ask
Cal 19-21	\$347.50	\$355.00	Cal 22	\$23.00	\$27.00	Cal 18	\$5.00	\$6.50
MA SREC-II			CT Class I			Cal 19	\$11.00	\$13.00
	Bid	Ask		Bid	Ask	MA Class II (WTE)		
Cal 18	\$327.50	\$335.00	Cal 18	\$7.00	\$8.50		Bid	Ask
Cal 19	\$300.00	\$305.00	Cal 19	\$14.00	\$15.50	Cal 18	\$5.00	\$6.00
Cal 20	\$280.00	\$285.00	Cal 20	\$17.50	\$21.50	CT Class III		
Cal 21	\$260.00	\$267.50	Cal 21	\$22.50	\$25.00		Bid	Ask
Cal 19-21	\$280.00	\$285.00	Cal 22	\$23.00	\$27.00	Cal 18	\$25.50	\$27.50

WECC / ERCOT / National Green-e								
WECC Green-e Eligible REC			Green-e Eligible National REC			WA Compliant Green-e Eligible REC		
	Bid	Ask		Bid	Ask		Bid	Ask
Cal 18	\$0.80	\$1.00	BH17/FH18	\$0.56	\$0.62	Cal 18	\$2.50	\$3.00
Cal 19	\$0.95	\$1.30	BH18/FH19	\$0.58	\$0.63	Cal 19	\$3.00	\$3.50
CA RPS (PCC3) - REC			BH19/FH20	\$0.59	\$0.64	TX Green-e Eligible Wind REC		
	Bid	Ask	CA RPS (PCC1, PCC2) - Index + REC				Bid	Ask
Cal 18	\$0.90	\$1.25		Bid	Ask	Cal 18	\$0.59	\$0.64
Cal 19	\$0.95	\$1.50	Call desk			Cal 19	\$0.60	\$0.65

Carbon								
Regional Greenhouse Gas Initiative (RGGI)			California Carbon Allowance (CCA) - ICE			California Carbon Offset (CCO)		
	Bid	Ask		Bid	Ask		Bid	Ask
V19 APR 19	\$5.48	\$5.57	V19 JUN 19	\$16.48	\$16.63	Golden	\$13.90	\$14.05
V19 DEC 19	\$5.64	\$5.72	V19 DEC 19	\$16.94	\$16.98	CCO-3	\$13.60	\$13.75
AB Compliant EPCs			AB Compliant Renewables			AB Compliant Tillage		
	Bid	Ask		Bid	Ask		Bid	Ask
Serialized	\$20.50	\$23.50	Serialized	\$20.00	\$22.75	Serialized	\$15.00	\$22.00

DISCLAIMER NOTICE: This report is solely for the use of the recipient and is being provided to you for informational purposes only. These reports, and any information contained therein, do not constitute a recommendation by Karbone Inc. to buy, sell or hold any security, financial product or instrument referenced in such report. This information neither is, nor should be construed as an offer, or a solicitation of an offer, to buy or sell SRECs, RECs, Carbon Credits or any similar product. Karbone Inc. does not offer or provide any opinion regarding the nature, potential, value, suitability or profitability of any particular investment or investment strategy, and you shall be fully responsible for any investment decisions you make, and such decisions will be based solely on your evaluation of your financial circumstances, investment objectives, risk tolerance, and liquidity needs.

- Div. 2-24:** Building and Maintenance Expense. Refer to the rebuttal testimony at Page 23.
- a. Does NBC have an explanation for why its Building Repairs and Maintenance expense has been growing at a rate that is so much higher than the rate of general inflation? If so, provide the explanation.
  - b. What amounts has NBC projected for its FY 2020 budget for Building Repairs and Maintenance expense and how were those derived?

**Response:**

- a. A significant cause of the increased expense in this account is due to repairs of equipment related to nitrogen removal. Improvements were completed in 2013 at the Field's Point Wastewater Treatment Plant to meet lower total nitrogen limits. This involved the construction of an Integrated Fixed-Film Activated Sludge (IFAS) process to achieve permit compliance without having to relocate the wet weather tanks and final clarifiers. The IFAS Process required the installation of mixers in the anoxic zones of the retrofitted aeration tanks and each IFAS tank is equipped with 12 mixers used to keep mixed liquor in suspension (MLSS). Mixers are necessary to keep the process in these zones anoxic. Normally blowers supply air to keep the MLSS in suspension, but in order to keep areas anoxic, no Dissolved Oxygen (DO) addition is allowed. As the a result, Operations must keep 120 Flygt mixers in operating condition and it usually costs \$3,000 to \$5,000 any time a mixer needs service. The mixers are no longer covered under warranty and repairs have also become more frequent due to the aging of the equipment. In addition, there are many instruments in the IFAS system that need to be maintained. This includes 11 dissolved oxygen meters, 15 ammonia meters, 15 nitrate meters and 10 flow meters that all require regular maintenance and periodic repairs/replacements.

NBC also installed new blowers as part of the nitrogen removal contract. When the Field's Point WWTF was operated as an activated sludge plant, the operating target for DO was 2.0 mg/l requiring about 10,000-14,000 SCFM of air. The new IFAS system has a higher target DO of 4.0 to 4.5 mg/l and uses about 15-30,000 SCFM of air, nearly double the previous usage rate. Operation of the new turboblowers has been challenging and they require more repairs than the centrifugal blowers they replaced, so repair costs for the blowers have increased significantly. This contract also included the construction of a Carbon Building and a Fine Screenings/Caustic Building. As a result, NBC has to maintain two additional buildings along with the appurtenant equipment, including 11 carbon pumps, four caustic pumps, and three fine screenings systems.

In addition, a large component of this line item is the maintenance and repair of the various building HVAC systems. The HVAC and de-humidification system at the Tunnel Pump Station and many of the HVAC systems in our older plant buildings have become much more expensive to maintain. NBC performs preventative maintenance in house, but HVAC repairs that require expertise beyond the capability of NBC's staff must be completed by contractors and can be expensive. The deterioration of the HVAC systems has also been accelerated due to the fact that equipment is not produced as reliably and robustly as in the past, so repair technicians are needed more frequently.

Another cause of increased expense is due to the impact that low levels of hydrogen sulfide has on NBC's electrical equipment. NBC's older equipment, such as pumps, that received direct line electrical power has been retrofitted with more efficient operating technology (e.g. variable frequency drives). However, the finer wires and the microprocessors in these drives are much more susceptible to failure by exposure to even low levels of hydrogen sulfide gas.

The most recent upgrade to Bucklin Point also focused on meeting lower total nitrogen limits. NBC converted from a two-stage process to a four-stage process to convert ammonia to nitrogen gas. The first stage is anoxic, the second stage is aerobic, the third stage is anoxic and the fourth stage is aerobic. Operating this biochemical process involves the use of mixers and aeration sensors, DO (dissolved oxygen) meters, nitrate and ammonia sensors. In the past two years, Bucklin Point has also began using Oxidation-Reduction-Potential probes to measure the oxygen in the anoxic zones. These meters measure values near zero millivolts to indicate air or septicity in a sample and are also sensitive pieces of equipment that need frequent repair. Bucklin Point has also had increased HVAC repairs. In addition, electrical system components, coils and contactors at the screening and grit facilities are aging and have required frequent repair.

- b. NBC receives budget submittals from the various cost centers which are based on the projected budget year expense. The FY 2020 budget requests for this expense line item total \$962,865.

**Prepared by:** Paul Desrosiers and Marc Pariseault

- Div. 2-25:** Workers Compensation. Refer to the rebuttal testimony at pages 23-24.
- a. Explain why NBC's "experience modification" factor has gotten so much worse in FY 2019.
  - b. How is the "experience modification" factor determined?
  - c. Has NBC's worker safety deteriorated from FY2015, FY2016 and FY2017 when its experience modification factor was below 1.0? If so, explain what happened at NBC in terms of deteriorating worker safety during and after FY2017.
  - d. Does NBC management have influence or control of aspects of worker safety that affects the experience modification factor? If not, explain fully why not. If so, identify the aspects of worker safety that NBC can influence and control. Also, explain what NBC has been doing in FY 2019 to improve worker safety.
  - e. What were the circumstances in FY2015, FY2017 and FY2018 that produced a dividend for NBC?
  - f. Is the dividend related in any way to maintaining a safe work environment and/or having appropriate worker safety training programs in place?
  - g. Does NBC have information on workers compensation dividends for any years prior to FY2014? If so, please identify and provide the information.

**Response:**

- a. NBC's experience modification factor is worse due to worse claims experience. NBC's experience modification factor has deteriorated from banner years of 2012, 2013, 2014, 2015 and 2016 when it was under 1.0. Three of the most expensive claims in past year have been due to slow recovery periods.
- b. The National Council on Compensation Insurance, Inc. (NCCI) determines the experience modification. The NCCI determines the experience modification using information provided by NBC's insurer from the previous three (3) policy years. This includes payroll classifications, payroll expense, the frequency of injuries to employees, and the dollar value of those injuries.
- c. While the frequency of claims in 2018 decreased, the severity of claims has increased. Claim count is as follows: 2018 – 49 claims, 2017 – 51 claims, 2016 – 59 claims, 2015 – 60 claims, 2014 – 60 claims.
- d. The extent to which NBC management can control or influence worker safety may impact claims and therefore the experience modification factor. NBC management continuously strives to mitigate and prevent employee injuries. The safety of the NBC's employee's is of the highest priority which is documented in the NBC's comprehensive safety program. NBC management offers numerous worker safety training courses including defensive driving, preventing slips, trips, falls and back injuries, administration of CPR and first aid, and Hazardous Waste Operations and Emergency Response (HAZWOPER)

training. In the event an employee is injured, the NBC conducts an investigation into the accident, determines how the accident occurred and how it may have been prevented. NBC also identifies steps that may be taken to prevent a similar accident from occurring in the future.

NBC works with insurer on loss prevention and ergonomic consultants in efforts to reduce claim occurrence in repetitive type injuries.

A Stretch for Safety initial pilot program was scheduled in 2018 and appears to be a potential fit and logical next step in the evolution of the ergonomic programs provided to employees at NBC.

- e. Dividend checks are the result of capital gains on investments made by the NBC's Workers Compensation insurer.
- f. No.
- g. See Attachment 2-25 Workers Comp Dividends.

**Prepared by:** Karen Giebink and Jim McCaughey



**The Beacon**  
Mutual Insurance Co.

One Beacon Centre  
Warwick, RI 02886-1378

57-1/115

Check No. 0121954

CHECK DATE

11/30/2012

AMOUNT

\$10,954.11

VOID AFTER 90 DAYS

BANK OF AMERICA  
Providence, Rhode Island

PAY Ten thousand nine hundred fifty four and 11/100 Dollars

TO THE ORDER OF

Narragansett Bay Commission  
One Service Road  
Attn: Karen Giebink  
Providence RI 02905-5505

*BJT*

*Rav... Markedon*

AUTHORIZED SIGNATURES

⑈000121954⑈ ⑆011500010⑆ 10 6970016⑈

Tear Along Dotted Line    Tear Along Dotted Line



DETACH STATEMENT BEFORE DEPOSITING CHECK

One Beacon Centre  
Warwick, RI 02886  
Phone: 401.825.2667  
Fax: 401.825.2607  
www.beaconmutual.com  
Dividend Account

Check Number: 0121954  
Payee Name: Narragansett Bay Commission  
Agent: Starkweather & Shepley Insurance Brokera  
PO Box 549  
Providence RI 02901-0549

*for FY 12  
rec'd in FY 13*

Policy No.  
0000025787

Description  
Workers Compensation Dividend for 07/01/11 - 07/01/12.

Amount  
\$10,954.11

Dear Valued Beacon Policyholder,

We at Beacon Mutual are pleased to provide you with the attached dividend check.

In spite of the continuing poor economy and high unemployment levels which have significantly impacted workers' compensation premiums, Beacon was able to issue this dividend as a result of capital gains on its investments. In addition, Beacon continues its commitment to increasing efficiencies and reducing operating costs through automation and innovation, creating value for our policyholders every day.

Beacon's mission is to provide affordable workers' compensation insurance for all Rhode Island based businesses and to be a substantial instrument in the stabilization, fiscal health and proper functioning of Rhode Island workers' compensation system.

Thank you for doing business with Beacon.

Check Total:

\$10,954.11



One Beacon Centre  
Warwick, RI 02886-1378

57-1/115

Check No. 0147490

CHECK DATE  
02/14/2014

AMOUNT  
\$13,896.32  
VOID AFTER 90 DAYS

PAY Thirteen thousand eight hundred ninety six and 32/100 Dollars

TO THE ORDER OF

BANK OF AMERICA  
Providence, Rhode Island

Narragansett Bay Commission  
One Service Road  
Attn: Karen Giebink  
Providence RI 02905-5505

*[Handwritten Signature]*  
*[Handwritten Signature]*  
AUTHORIZED SIGNATURES

⑈000147490⑈ ⑆01500010⑆ 10 6970016⑈

Tear Along Dotted Line    Tear Along Dotted Line



DETACH STATEMENT BEFORE DEPOSITING CHECK

One Beacon Centre  
Warwick, RI 02886  
Phone: 401.825.2667  
Fax: 401.825.2607  
www.beaconmutual.com  
Dividend Account

Check Number: 0147490  
Payee Name: Narragansett Bay Commission  
Agent: Starkweather & Shepley Insurance Brokera  
PO Box 549  
Providence RI 02901-0549

*for FY 13  
need in FY 14*

Policy No.	Description	Amount
0000025787	Workers Compensation Dividend for 07/01/12 - 07/01/13.	\$13,896.32

Dear Valued Beacon Policyholder,

We at Beacon Mutual are pleased to provide you with the attached dividend check.

In spite of the difficult economy, Beacon is able to provide this dividend as a result of capital gains on investments. The dividend collectively will result in \$4,200,000 being returned to the Rhode Island community. Beacon also issued policyholder dividends in 2011 and 2012.

Through its dedicated employees, Beacon continues its commitment to increasing efficiencies and reducing operating costs through automation and innovation, creating value for our policyholders everyday while maintaining our hallmark, high levels of customer and claims service. We remain focused on reducing workplace injuries through safety training and treating injured workers professionally and with respect, while getting them back to work as safely and as soon as possible. Those goals have contributed to the stabilization, fiscal health and proper functioning of Rhode Island's workers' compensation system. Thank you for doing business with Beacon.

Check Total: \$13,896.32

- Div. 2-26:** Refer to the rebuttal testimony at pages 24-25, the table at page 25, and Schedule JHSR-13 concerning new additional Maintenance Contracts.
- a. For each contract listed in the table on page 25 and in Schedule JHSR-13, identify the amount that is included in NBC's FY2020 budget.
  - b. For each contract listed in the table on page 25 and in Schedule JHSR-13, identify and explain whether similar services were provided to NBC during the test year ending June 30, 2018, and if so, identify the vendors and contract amounts.

**Response:**

- a. In retrospect, the rebuttal testimony regarding the maintenance contracts is confusing and NBC would like apologize and clarify its position. Tab 2-30 Maintenance Contracts shows the test year, interim year and rate year contracts and amounts for account 53630. Column H shows the difference, by contract, between the rate year and the test year. There are both increases and decreases. The highlighted lines are new contracts in the rate year. These expenses came to the attention of NBC's finance section subsequent to the FY 2020 budget submittals and, as part of the budget preparation and review process, managers must provide documentation to support their budget requests. The table below shows how NBC arrived at the rebuttal rate year adjustment.

<b>Maintenance Contracts – Account 53630</b>	
FY 2018 Contracts	\$ 1,116,467
Audit Adjustment	8,932
FY 2018 Test Year	1,125,399
less: test year adjustment	(115,772)
Adjusted Test Year	1,009,627
Rate Year Adjustment	30,850
Projected Rate Year as Filed	1,040,477
Rebuttal Rate Year	1,461,439
Rebuttal Rate Year Adjustment	\$ 420,962

The table provided in Harold Smith's testimony on page 25 is incorrect and should be disregarded. Please refer to tab 2-30 Maintenance Contracts.

NBC's FY 2020 budget is the same as the rebuttal rate year of \$1,461,439.

- b. See column on tab 2-30 Maintenance Contracts

**Prepared by:** Karen Giebink and Leah Foster

- Div. 2-27:** The rebuttal testimony at page 24, line 23 mentions the FY 2020 budget process.
- a. Have any expense decreases for any accounts or types of cost been identified in the FY 2020 budget process? If so, identify, quantify and explain each such decrease.
  - b. Does NBC have a preliminary FY 2020 budget for any revenues or expenses? If not, explain fully why not. If so, please identify and provide it.

**Response:**

- a. NBC is preparing the draft FY 2020 budget and is reviewing the cost center budget requests as well as the large operating accounts such as electricity, biosolids, maintenance and service agreements, natural gas and chemicals. The NBC received a lower than projected healthcare insurance renewal on April 30, 2019 and as part of the review of that line item has determined that the interim year was overstated. NBC also received a lower than projected workers compensation renewal on May 1, 2019. Research indicates that this was the result of lower rates filed by NBC's insurer with the Department of Business Regulation based upon input from NCCI. NBC anticipates a lower electricity supply rate and the bid is due on May 29, 2019. NBC is not aware of any other operating budget decreases. See tab 2-27 Health and Workers Comp for the adjusted rate year health insurance expense and the updated workers compensation premium. The backup for these two items is also provided as Attachment 2-27 Workers Comp Renewal and Attachment 2-27 Health. Tab 2-32 Electricity reflects the FY 2020 budgeted electricity amount assuming an "all-in" supply rate of \$0.065/kWh.
- b. The preliminary operating budget figures are based on NBC's rebuttal position. The operating budget submittals are in excess of NBC's rebuttal position and NBC is in the process of reviewing and analyzing the budget submittals. In some cases there are additional costs. For example, the NBC must repair the wind turbine blades at a projected cost of \$37,000 and has significant electrical testing costs for equipment at the wastewater treatment plants. Staff is reviewing other accounts as well that are higher than the rebuttal rate year including carbon feed, polymer, sodium hydroxide, soda ash, screening and grit disposal, water, and fire alarm inspections. Staff is also preparing the capital sources and uses that is impacted by capital cash flows and the WIFIA funding. These amounts have not yet been finalized and the modeling is not complete.

**Prepared by:** Harold Smith and Karen Giebink



Date: May 01, 2019  
Quote Number: 6214635-01

### Workers' Compensation Premium Quotation

1

**Account Holder:** Narragansett Bay Commission

**Agent Number:** 01378

**Address:** One Service Road  
Attn: Brenda Smith  
Providence, RI 02905-5505

**Agent Name:** Capital City Insurance Agency LLC  
**Agent Address:** 870 Oaklawn Avenue

Cranston, RI 02920-2641

**Agent Phone:** (401) 946-9000

**Named Insured:** Narragansett Bay Commission **Group Affiliation:**

2

Policy Number	Quote Number	Effective Date	Expiration Date
0000025787	6214635-01	07/01/2019	07/01/2020

#### Quotation Coverage

The following quote has been prepared using the classifications, payrolls and experience provided. All information is subject to verification and change. Also included in this quote are these additional coverages:

3

- A. **Workers' Compensation Insurance:** Part one applies to the Workers' Compensation law of Rhode Island.
- B. **Employers' Liability Insurance:** Part two applies to work in Rhode Island. The limits of our liability are:

BODILY INJURY BY ACCIDENT	\$500,000	EACH ACCIDENT
BODILY INJURY BY DISEASE	\$500,000	POLICY LIMIT
BODILY INJURY BY DISEASE	\$500,000	EACH EMPLOYEE

***This is not an Invoice***

**Insured**

The Beacon Mutual Insurance Company  
One Beacon Centre, Warwick, RI 02886-1378 | beaconmutual.com  
Underwriting: 401.825.2667 | Toll Free: 1.888.886.4450

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Page 1 of 3



4

**Quotation Classifications & Rates:** The premium for this policy will be determined by our manual of rules, classifications, rates, and rating plans. All information required below is subject to verification and change by audit and premium surcharge as allowed by law.

Premium Period	Class	Description	Class Type	Estimated Payroll	Rate	Estimated Premium
07/01/19 07/01/20	7580	Sewage disposal plant operation & drivers	Standard	\$9,436,037	5.81	\$548,234
	7580	Sewage disposal plant operation & drivers	USL&H for Non-Federal Classes	\$23,620	9.35	\$2,208
	8810	Clerical office employees NOC	Standard	\$7,720,394	.32	\$24,705

**Premium Detail:**

Manual Premium	\$575,147.00
Waiver of Subrogation Charge	\$0.00
Employers' Liability Increased Limits: .008 effective 07/01/19 to 07/01/20	\$4,601.00
EL Increased Limits Balance to Minimum Premium	\$0.00
<b>Manual Premium Sub-Total</b>	<b>\$579,748.00</b>
Experience Modification: 1.51 effective 07/01/19 to 07/01/20	\$295,671.00
<b>Modified Premium Sub-Total</b>	<b>\$875,419.00</b>
Adjustments to Manual Premium	
- Scheduled Credit/Debit of -40.00%	-\$350,168.00
- Loss Free Credit of 0%	\$0.00
- Miscellaneous Credit of 0%	\$0.00
- Balance to Minimum Premium	\$0.00
<b>Standard Premium Sub-Total</b>	<b>\$525,251.00</b>
Adjustments to Standard Premium	
- Premium Discount	-\$54,043.00
- Expense Constant	\$215.00
- Miscellaneous Premium Adjustment	\$0.00
- TRIEA/TRIPRA: 0.5% of payroll effective 07/01/19 to 07/01/20	\$1,959.00
- DTEC/Catastrophe (other than certified acts of terrorism): 1% of payroll effective 07/01/19 to 07/01/20	\$3,917.00
<b>Estimated Annual Premium</b>	<b>\$477,299.00</b>

**Please Note:** Payment of the deposit premium must be received prior to the effective date of this quote or complete enrollment in the Beacon Pay As You Go Program, within 7 days of the policy effective date.

***This is not an Invoice***

**Insured**

The Beacon Mutual Insurance Company  
 One Beacon Centre, Warwick, RI 02886-1378 | beaconmutual.com  
 Underwriting: 401.825.2667 | Toll Free: 1.888.886.4450

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 Page 2 of 3



Please allow sufficient mailing time.

***This is not an Invoice***

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Page 3 of 3

Narragansett Bay Commission  
 Rate Period: July 1, 2019 - June 30, 2020



**Medical Rates by Group**

Overall Rate Increase: 3.9%

Overall Rate Increase with Broker Service Fees\*: 3.8%

\* The broker service fee is based on the Broker Service Fees Agreement, and may be an estimate if that agreement is not yet signed. The broker service fee is an amount that BCBSRI bills on behalf of your broker and is not included in the Premium Rate.

Group 01002718 - Narragansett Bay Commission

UPI: L00208

*HMateC2Coins*

HMC2C Deductible Plan 67

<i>Coinsurance</i>	100%/80%
<i>Deductible</i>	\$2000/\$4000 x Family Only Aggregate
<i>OOP Maximum</i>	\$4000/\$8000 x Family Aggregate
<i>Office Visit</i>	\$0
<i>Specialist Visit</i>	\$0
<i>Urgicenter</i>	\$0
<i>ER Copay</i>	\$0
<i>Rx</i>	\$7/\$25/\$40/\$40
<i>Wellness Works™</i>	Yes

**Present**

	<u>Individual</u>	<u>Family</u>
Total Premium Rate	-\$652.98	-\$1,784.35
Broker Service Fee*	\$32.00	\$32.00
<b>Premium Rate plus Broker Service Fee*</b>	<b>\$684.98</b>	<b>\$1,816.35</b>

**Renewal**

	<u>Individual</u>	<u>Family</u>
Premium Rate	-\$678.38	-\$1,853.76
Broker Service Fee*	\$32.00	\$32.00
<b>Premium Rate plus Broker Service Fee*</b>	<b>\$710.38</b>	<b>\$1,885.76</b>
<b>Enrollment Weighted Rate Increase with Broker Service Fee*</b>		<b>3.8%</b>

as of 7/1/19

Benefit Descriptions shown are a High Level Overview Only.  
 Blue Cross & Blue Shield of Rhode Island is an independent licensee of the Blue Cross and Blue Shield Association.

**Div. 2-28:** Refer to the rebuttal testimony at page 25, line 4: "I based my rebuttal rate year expense on actual contracts. Please see my ... Exhibit HJSR 4 for copies of the contracts." Please identify each page of Exhibit HJSR-4 that the witness believes is an actual contract.

**Response:** My use of the term contract was meant as a maintenance contract line item not a legal contract. The intention was to clarify that the "contract" costs are based on actual documents not just projections or estimates and NBC will issue a purchase order or "contract" to the vendor. These are for contracted services such as scheduled preventive maintenance and support services for equipment, software, etc.

**Prepared by:** Harold Smith

**Div. 2-29:** Refer to the testimony at pages 24-25, the table at page 25, and Schedule HJSR-13 concerning additional Maintenance Contracts.

- a. What is the FY2019 budget amount for Maintenance Contracts?
- b. What is the FY2020 budget amount for Maintenance Contracts?

**Response:**

- a. \$1,022,811.
- b. \$1,461,439.

**Prepared by:** Karen Giebink

- Div. 2-30:** Refer to HJSR Exhibit 4 and to Schedule HJSR-13. Is each amount that is listed on Schedule HJSR-13 supported by an "actual contract" for which a copy was provided in HJSR Exhibit 4?
- a. If not, explain which amounts on Schedule HJSR-13 are not supported by an actual contract in HJSR Exhibit 4.
  - b. If so, please identify each amount that is listed on Schedule HJSR-13 that is supported by an actual contract and specifically where the amount on Schedule HJSR-13 for each such contract can be found in HJSR Exhibit 4.

**Response:**

See answer to question 2-28 above and note that I have provided a tab named 2-30 Maintenance Contracts in the excel spreadsheet that indicates the source document for the figure. I have also put page numbers on the supporting documentation and reference the page numbers in the spreadsheet. Tab 2-30 shows the test year, interim year and rate year for each maintenance contract by cost center. The new contracts in the rate year are highlighted in orange and these expenses were not included in the test year in any other general ledger account.

- a. See above.
- b. The amounts listed on HJSR-13 for each vendor are for the annual cost of the service provided. Some contracts are multi-year contracts. In this case, the amount listed on HJSR-13 is for the one year expense. Refer to the period covered for each Vendor on Attachment 2-30 Maintenance Contracts.

**Prepared by:** Harold Smith and Leah Foster

- Div. 2-31:** Refer to HJSR Exhibit 4 and to Schedule HJSR-13. For each maintenance contract that is listed on Schedule HJSR-13 or contained in HJSR Exhibit 4, provide the following information:
- a. Indicate when the maintenance contract was received by NBC.
  - b. Indicate whether it had been previously provided in discovery and if so in response to which discovery request(s).
  - c. Indicate whether it is an actual contract (as opposed to being something else such as a vendor price quote or a vendor proposal).
  - d. For each item in HJSR Exhibit 4 that is not a contract, please indicate whether NBC has a contract, and if so, please identify and provide the contract.

**Response:**

- a. NBC managers receive the documents at different times throughout the year. Finance requests the documents as part of the budget preparation process, with the preliminary budget review in February 2019. NBC has inserted the date received by NBC on a cover sheet for each of the maintenance contracts provided in Attachment 2-30.
- b. All items, other than those highlighted in orange (the new contracts), were included in the list in response to Div 1-50.
- c. NBC considered all of these "contracts" since they are maintenance contracts and NBC will issue a purchase order (contract) for that amount.
- d. The cost basis is indicated on the spreadsheet and this is the amount that will be contracted in the NBC purchase order.

**Prepared by:** Harold Smith and Leah Foster

- Div. 2-32:** Refer to the rebuttal testimony at page 26-28 regarding electricity expense.
- a. Identify and provide the response to the bid for electricity supply and the reduction to the capacity fee.
  - b. Refer to page 28, line 7. What is the impact of the reduction to the capacity fee? Identify, quantify and explain fully.
  - c. Does NBC have a FY2020 budget amount for electricity expense? If so, what is it?
  - d. Show in detail how the \$135,000 amount on page 27, line 5 was calculated.

**Response:**

- a. The electricity bids were originally due on May 8, 2019 but the date was extended until May 29, 2019 because the capacity tags are not yet available. NBC will provide the accepted bid to the Division once it is final.
- b. The capacity fee is part of the supply rate so a lower capacity fee should be reflected in the supply rate.
- c. NBC's preliminary budget figure for electricity expense is \$4,230,831 based on an assumed supply rate of \$0.065/kWh. NBC will adjust the budget to reflect the bid using the schedule below which has also been provided as tab 2-32 Electricity in the spreadsheet.

Rate Year Electricity Expense Projection						
	COB/WQSB	Interceptor Maintenance	Field's Point	Tunnel Pump Station	Net Bucklin Point	Total
<b>kWh Purchased</b>	2,022,646	1,336,374	6,736,393	8,034,750	13,271,914	31,402,077
Fixed Annual Customer Charge	\$ 13,209.60	\$ 17,938.56	\$ 13,209.60	\$13,209.60	\$ 13,209.60	\$ 70,777
Supply and Delivery Composite Rate	\$ 0.1197	\$ 0.1759	\$ 0.1302	\$ 0.1291	\$ 0.1206	
Supply and Delivery	242,090	235,096	876,742	1,036,965	1,599,929	\$ 3,990,822
Subtotal	\$ 255,300	\$ 253,035	\$ 889,951	\$1,050,175	\$ 1,613,139	\$ 4,061,599
Rhode Island Gross Earnings Tax	10,637	10,543	37,081	43,757	67,213	169,231
with RIGET	\$ 265,938	\$ 263,578	\$ 927,032	\$1,093,931	\$ 1,680,352	\$ 4,230,831

Expense/MkWh Purchased \$ 134,731

31.4 Mkwh x \$ 134,731 = \$ 4,230,551

\* Assumed supply rate \$ 0.0650 /kWh

- d. See table above, the exact figure is \$134,731 or approximately \$135,000.

Prepared by: Harold Smith, Sam Celone and Karen Giebink

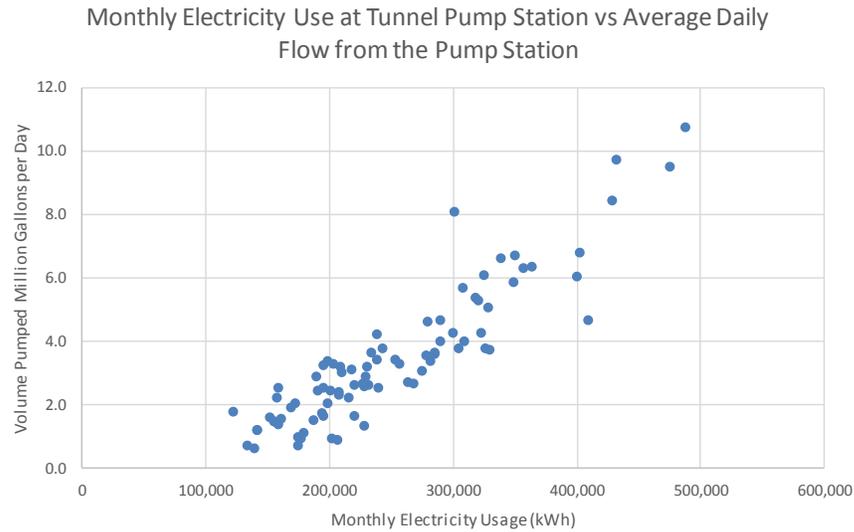
**Div. 2-33:** Electricity usage. Refer to the rebuttal testimony at pages 26-27.

- a. What steps at electricity use conservation has NBC implemented in FY 2019? Explain fully and provide related documents.
- b. Were NBC's efforts at conservation in FY2019 effective? If not, explain fully why not.
- c. Refer to page 26, line 24, and to the chart on page 27. What analysis does NBC have of why its electricity use through February has been increasing in FY2019 so much over prior years? Please identify and provide it.
- d. Refer to the chart on page 27. Does NBC have comparable information for full fiscal years 2016, 2017 and 2018 and its expected electricity use for FY2019? If so, please identify and provide that actual electricity use for FY2016, FY2017 and FY2018 and the expected electricity use for FY2019. Figures will suffice for this response. No need to provide a graph.

**Response:**

- a. Improving NBC's normalized Energy Use Intensity (EUI) is a collaborative effort across all NBC facilities. One goal of improving EUI is to implement energy efficiency programs to reduce energy consumption not necessarily in absolute terms but rather based on how much flow is treated and NBC tracks this in terms of total energy consumption per million gallons treated. NBC then works to improve this over the long run. NBC has data for Field's Point and the Tunnel Pump Station through calendar year 2018 and it shows that the total source energy/amount treated has improved relatively consistently from year to year and 2018 was no exception. The Bucklin Point data should be available by the end of the week.
- b. See the answer to a above.
- c. There has been more rainfall and therefore more flow at the treatment plants. The majority of NBC's electricity use is related to pumping, aeration and disinfection of flow (Bucklin Point uses an ultraviolet disinfection system as opposed to a chemical disinfection method) and NBC is seeing an increase in flow volumes. The chart below shows that there is a linear relationship between flow and electricity use at NBC's Tunnel Pump Station (TPS). The TPS is part of the Combined Sewer Overflow facilities in the Field's Point service area. Flows that are captured during wet weather events are held in the deep rock tunnel. Once there is sufficient capacity in the treatment plant, the flows are pumped from the tunnel, located approximately 300 feet below ground to the Field's Point wastewater treatment plant for treatment. In addition, NBC

is now operating CSO odor control facilities year round.



d. See below:

Fiscal Year	Use kWh
<b>2016</b>	37,259,673
<b>2017</b>	36,032,966
<b>2018</b>	36,179,889
<b>2019</b>	39,015,314

**Prepared by:** Paul Desrosiers and Karen Giebink

**Div. 2-34:** Refer to page 27, line 19 through page 28, line 2. Show exactly where and in what amount the adjustment to the NMC production and NMC rates was made "so the electricity expense in the cost of service would not be sufficient to absorb the expense of additional electricity supply purchases."

**Response:**

The table below shows the difference between the FY 2019 budget and NBC's rebuttal position in terms of NMC kWh, the NMC assumed rate, the projected NMC in dollars, and the projected PPA expense. The table shows that the NMC rate and the kWh are significantly higher than the budgeted level, which has resulted in a rebuttal rate year electricity expense reduction that is \$404,337 more than what was budgeted last year. My testimony was meant to explain that NBC is concerned that if the rate year electricity kWh use is understated and only the supply rate is adjusted, then the rate year expense in the cost of service will be too low. Further, given that the assumed NMC production and NMC rates have both been increased, NBC's rates would not generate enough revenue to meet electricity expense in the rate year.

	<b>FY 2019 Budget</b>	<b>Rebuttal Position</b>	<b>Difference</b>
NMC - WED Turbines	8,520,487	8,508,726	(11,761)
NMC kWh	6,562,430	9,842,397	3,279,967
	<u>15,082,917</u>	<u>18,351,123</u>	<u>3,268,206</u>
NMC Rate	\$ 0.119	\$ 0.147	\$ 0.028
Account 54091 - NMC	\$ (1,793,359)	\$ (2,697,615)	\$ (904,256)
Account 54095 - PPA	\$ 585,205	\$ 1,085,124	\$ 499,920
Net Expense Reduction	<u>\$ (1,208,154)</u>	<u>\$ (1,612,491)</u>	<u>\$ (404,337)</u>

**Prepared by:** Harold Smith and Karen Giebink

**Div. 2-35:** Electricity expense. Refer to page 28, line 7.

- a. Identify each "moving part" associated with determining NBC's electricity expense.
- b. For each "moving part" that is identified in response to part (a), please indicate whether NBC has, or expects to have, updated information prior to the Division's surrebuttal/settlement filing date of May 9.
- c. If the response to (b) is "yes" please provide the updated information for each such moving part that NBC currently has available.
- d. Please also identify and explain the "moving part" information that NBC currently does not have available but expects to have available and when NBC expects to have it available.
- e. What is the likelihood that the electricity expense proposed in NBC's rebuttal filing for FY2020 will be overstated? Explain fully.
- f. What is the likelihood that the electricity expense proposed in NBC's rebuttal filing for FY2020 will be understated? Explain fully.

Response:

- a. The moving parts of electricity expense includes:
  1. Amount of electricity that NBC will **use** in the rate year – specifically impacted by flow and rainfall for pumping, dehumidification, odor control and advanced wastewater treatment
  2. The amount of electricity that NBC must **purchase** which is impacted by any electricity generated “behind the meter”
  3. The amount of electricity that the FP turbines will generate
  4. When the Bucklin Point biogas facility will become operational and how much electricity it will produce and how much natural gas must be purchased to supplement the biogas.
  5. National Grid delivery charges including: customer charge, distribution energy charge, renewable energy distribution charge, distribution demand charge, transmission demand charge, transmission adjustment, transition charge, energy efficiency programs, RE growth program, high voltage metering.

6. Gross earnings tax rates
  7. The electricity supply rate
  8. The capacity fee
  9. Pending change in law – fuel security cost component and Mystic COS uplift
- b. NBC has made projections for all of the items listed in the rate year. The electricity supply bid is due on May 29, 2019. NBC will use this rate to update the projected electricity expense using the schedule set forth in response to 2-32 to determine rate year electricity expense and this is the same figure that NBC will include in its FY 2020 budget.
- c.
1. Total use of 39,015,314 kWh
  2. Total purchases of 31,402,077 kWh
  3. FP wind turbine production of 7,613,237 kWh
  4. Bucklin Point is assumed to not be operational in the rate year
  5. Based on composite rates from actual bills
  6. Based on current rate
  7. Bids are due May 3, 2019
  8. Included in supply price of bids submitted on May 29, 2019
  9. NBC will allow bids with pass-throughs for the fuel security cost component and Mystic COS uplift
- d. see answer to item c above.
- e. The rebuttal year electricity expense may be overstated if the actual supply rate is lower than the projected supply rate. However, the kWh in NBC's rebuttal position must be adjusted to reflect higher actual use in terms of purchased kWh.

**Prepared by:** Harold Smith, Sam Celone and Karen Giebink

**Div. 2-36:** Refer to Schedule HJSR-14.

- a. Does NBC have any information with which to update the NMC rate of \$0.147 per kWh? If not, explain fully why not. If so, please identify and provide the updated NMC rate information.
- b. If the estimated production on Schedule HJSR-14 cells G18 and G19 were used, how would that affect the estimate of FY2020 electricity expense?
- c. How was the estimated production in Schedule HJSR-14 cells G18 and G19 determined? Explain fully and provide supporting calculations.
- d. Is the 85% minimum guarantee specified in a contract? If so, please identify and provide the related contract provisions.

**Response:**

- a. The NMC is set by the PUC and fluctuates month to month. NBC made a projection based on prior months.
- b. It would result in a net reduction in FY 2020 electricity expense of \$63,830. This is the combined impact from an increased credit in account 54091 – Net Metering Credits of (\$255,323) and increased expense in account 54095 – WED PPA of \$191,493.
- c. These figures are based on the contracted capacity values of the facilities.
- d. The contracts specify a 90% minimum guarantee and see attached contracts. NBC reduced this by an additional amount because the definition of “Deemed Generation” in the contract includes additional reductions in the output for a variety of reasons including but not limited to Force Majeure Events listed in the definitions section of the contract.

**Prepared by:** Jim McCaughey and Barry Wenskowicz

**CERTIFICATION**

I hereby certify that on May 3, 2019, I sent a copy of the within to all parties set forth on the attached Service List by electronic mail and copies to Luly Massaro, Commission Clerk, by electronic mail and hand delivery.

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