

**TIER 1 LONG-TERM
MUNICIPAL SOLID WASTE MANAGEMENT
SERVICES AGREEMENT
FOR THE PROVISION OF
ACCEPTABLE SOLID WASTE AND
ACCEPTABLE RECYCLABLES SERVICES**

BETWEEN

**MATERIALS INNOVATION AND RECYCLING
AUTHORITY**

AND

THE [CITY/TOWN OF ??????]

**TIER 1 LONG-TERM
MUNICIPAL SOLID WASTE MANAGEMENT SERVICES AGREEMENT
FOR THE PROVISION OF
ACCEPTABLE SOLID WASTE AND ACCEPTABLE RECYCLABLES SERVICES**

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PREAMBLE

This Agreement is made and dated as of the _____ day of _____, _____ (the "Effective Date"), by and between the **MATERIALS INNOVATION AND RECYCLING AUTHORITY** f/k/a Connecticut Resources Recovery Authority ("MIRA"), a body politic and corporate, constituting a public instrumentality and political subdivision of the State of Connecticut (the "State"), and the [**Town/City of -----**] in the State, a municipality and political subdivision of the State (the "Municipality"). MIRA and the Municipality are sometimes hereinafter referred to individually as a "Party" and collectively as the "Parties."

WITNESSETH:

WHEREAS, MIRA was established pursuant to the Connecticut Solid Waste Management Services Act (the "Act"), Chapter 446e of the Connecticut General Statutes (the "General Statutes"), as a body politic and corporate, constituting a public instrumentality and political subdivision of the State, for the performance of an essential public and governmental function; and

WHEREAS, under the Act, MIRA has the responsibility and authority to provide Solid Waste disposal and resource recovery systems and facilities, and Solid Waste management services, where necessary and desirable throughout the State; and

WHEREAS, the Municipality has an obligation under Section 22a-220 of the General Statutes to make provision for the safe and sanitary disposal of Solid Waste generated within its corporate boundaries; and

WHEREAS, the Municipality is authorized by Sections 22a-275 and 22a-221 of the General Statutes, inter alia: (i) to enter into a contract with MIRA for Solid Waste processing and disposal services; and (ii) to pay reasonable fees and charges for such services; and

WHEREAS, MIRA owns the Facility, and owns or operates the Transfer Stations; and

WHEREAS, the Parties agree that it is in their mutual interest that MIRA (i) process and dispose of all of the Municipality's Acceptable Solid Waste generated within its corporate boundaries, and (ii) recycle certain Acceptable Recyclables generated within its corporate boundaries, and the Parties desire to enter into this Agreement to set forth their understandings and agreements in connection therewith; and

WHEREAS, in order to provide the Municipality with options for MIRA's provision of the foregoing services, MIRA created short-term and long-term Tier 1 services, Tier 2 services, Tier 3 services and Tier 4 services; and

WHEREAS, under either Tier 1 services option the Municipality would be required to provide all Acceptable Solid Waste generated within its borders to MIRA; and

WHEREAS, under the Tier 2 services option the Municipality would be subject to both minimum and maximum tonnage requirements with respect to Acceptable Solid Waste provided to MIRA; and

WHEREAS, under the Tier 3 services option, the Municipality would be subject to only a minimum tonnage requirement with respect to Acceptable Solid Waste provided to MIRA; and

WHEREAS, under the Tier 4 services option, the Municipality would be subject to both minimum and maximum tonnage requirements with respect to Acceptable Solid Waste provided to MIRA, and would provide both Acceptable Solid Waste and Acceptable Recyclables to MIRA; and

WHEREAS, the Municipality and each other Participating Municipality shall pay a uniform Base Disposal Fee, and pay certain other fees and charges and receive certain discounts, based on the service option and length of term selected; and

WHEREAS, the Municipality, having reviewed the aforesaid service options and length of terms, has elected to receive long-term Tier 1 services from MIRA;

NOW, THEREFORE, in consideration of the undertakings and agreements hereinafter set forth and in reliance upon the preceding representations, the Parties agree as follows:

1. DEFINITIONS

1.1. Incorporation of Recitals

The recitals to this Agreement are incorporated into the body of this Agreement as a part hereof.

1.2. Specific Definitions

Capitalized terms herein have the meanings ascribed to such terms herein or in **Exhibit A** hereto and a part hereof.

1.3. General Definitions and Construction

As used in this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

- (a) the terms defined in this Agreement include the plural as well as the singular;
- (b) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles;
- (c) the words “herein,” “hereof” and “hereunder” and words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision; and

- (d) the words “include” and “including” shall be deemed to be followed by the words “without limitation.”

1.4. Incorporation of Procedures

The Procedures attached hereto as **Exhibit B** are incorporated herein by reference.

2. RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO ACCEPTABLE SOLID WASTE AND ACCEPTABLE RECYCLABLES; TERM

2.1. Disposal Services to be Provided by MIRA

- (a) Subject to the terms of this Agreement, on and after July 1, 2017 (the “Commencement Date”), and continuing during the Term, MIRA shall (i) accept for processing and disposal all Acceptable Solid Waste delivered or caused to be delivered by the Municipality to the Designated Waste Facility, and (ii) recycle all Acceptable Recyclables delivered or caused to be delivered by the Municipality to the Designated Recycling Facility.
- (b) MIRA at its option may process and dispose of Solid Waste delivered to the Designated Waste Facility and the Designated Recycling Facility at such Waste Facilities, or MIRA may transport any such Solid Waste to an Alternate Facility for processing and disposal. Prior to any such transport, MIRA shall verify that such Alternate Facility is properly permitted and acceptable to MIRA. All requirements in this Agreement concerning Solid Waste processed and disposed of at the Designated Facilities shall also apply to Solid Waste transported to, and processed and disposed of by MIRA at an Alternate Facility. To avoid doubt, Solid Waste transported to, and processed and disposed of at an Alternate Facility pursuant to this Section 2.1(b), is not Emergency Bypass Waste.

2.2. Municipality to Supply Acceptable Solid Waste and Acceptable Recyclables; Delivery Obligations; MIRA and Municipality Actions With Respect to Delivery Obligations; Requirements Regarding Deliveries

- (a) On and after the Commencement Date and continuing during the Term, the Municipality shall deliver or cause to be delivered to the Designated Waste Facility all Acceptable Solid Waste generated within its corporate boundaries.
- (b) On and after the Commencement Date and continuing during the Term, the Municipality shall deliver or cause to be delivered to the Designated Recycling Facility all Acceptable Recyclables under its control and collected from residential and municipal generators within its corporate boundaries; including, if applicable, public schools and other locations under the supervision of a Board of Education. Notwithstanding the preceding sentence, the requirements of the preceding sentence shall not apply to any Acceptable Recyclables which are the subject of a written agreement in effect as of July 1, 2017, between the Municipality or the Board of

Education on the one hand, and any Person other than MIRA on the other hand, including any renewal or extension of such written agreement during the Term.

- (c) The Municipality shall take reasonable enforcement steps to satisfy its obligations under Section 2.2(a) and Section 2.2(b) (collectively, the “Delivery Obligations”). Notwithstanding the preceding sentence, MIRA shall enforce the Delivery Obligations in the first instance. Such MIRA enforcement shall include the identification of Persons engaging in activities inconsistent with the Delivery Obligations, and the initial response to such activities. If such activities continue, notwithstanding MIRA’s enforcement efforts, MIRA shall provide written notice to the Municipality of such activities, together with (i) MIRA’s evidence of such activities and (ii) a written summary of MIRA’s efforts with respect to such activities. Upon receipt of such notice from MIRA, the Municipality shall take the following enforcement steps (i) verbal direction from the Municipality to the appropriate Person or Persons to cease such activities (with follow-up documentation to MIRA as to such verbal direction), (ii) written direction from the Municipality to the appropriate Person or Persons to cease such activities (with a copy to MIRA), (iii) if not previously implemented by the Municipality, the franchising/permitting of Waste Haulers or the enactment of a flow control ordinance (an “Ordinance”), or both, and (iv) the invocation of the penalty provisions of such franchise/permit system or Ordinance, or both, with written notice to MIRA as to such invocation.

The Municipality shall reasonably defend its franchise/permit system or Ordinance, or both, in any legal, administrative or other adjudicative proceeding filed by any Person with respect to the same, and MIRA shall (i) reasonably cooperate with the Municipality in such defense and (ii) reimburse the Municipality for its reasonable costs with respect thereto.

MIRA may verify the Municipality’s enforcement of and compliance with the Delivery Obligations. If at any time MIRA reasonably determines that the Municipality is not enforcing or complying with the Delivery Obligations in a manner consistent with this Section 2.2(c), then MIRA may provide the Municipality with written notice of the same (a “Notice of Non-Compliance with Delivery Obligations”), and the provisions of Article 4 shall be invoked.

- (d) Subject to Section 5.1, the Municipality shall pay the Tier 1 Long-Term Disposal Fees and all other amounts payable hereunder, in accordance with the terms hereof.

2.3. Requirements Regarding Acceptable Solid Waste and Acceptable Recyclables

- (a) The Municipality agrees that the Acceptable Solid Waste and Acceptable Recyclables delivered by it or on its behalf hereunder:
 - (i) shall be generated within the Municipality’s corporate boundaries, provided that nothing herein shall preclude the Municipality from arranging with any

other Participating Municipality or Participating Municipalities, either through Municipal Collection or Contract Collection as defined in Sections 22a-207(16) and (17) of the General Statutes, for the combined delivery of Acceptable Solid Waste and Acceptable Recyclables generated within such Participating Municipalities, so long as MIRA has received reasonable prior written notice of such arrangement, which written notice shall set forth in form and substance reasonably satisfactory to MIRA, the method of allocation of such combined Acceptable Solid Waste and Acceptable Recyclables among such Participating Municipalities, and MIRA has approved such arrangement in writing; and

- (ii) shall otherwise comply with the requirements of this Agreement, the Procedures and all applicable law. To the extent that technical or scientific analyses or determinations are involved, MIRA shall have final authority as to the methods, standards, criteria, evaluation, interpretation and significance of such analyses and determinations.
- (b) The Municipality will permit no new deliveries, and will discontinue or cause to be discontinued current deliveries of Solid Waste that do not comply with the provisions of this Section 2.3. Notwithstanding the foregoing, if any Solid Waste not in compliance with the provisions of this Section 2.3, including any Unacceptable Waste, is delivered by or on behalf of the Municipality to any Waste Facility, the same shall be deemed not accepted by MIRA and if discovered at such Waste Facility, may be transported to and disposed of by MIRA at a suitable location inside or outside the State selected by MIRA. MIRA shall make reasonable efforts to identify and promptly obtain reimbursement from the generator or other Person delivering such nonconforming Solid Waste on behalf of such generator, for all costs incurred by MIRA, including fines or penalties, in connection with the transportation, handling or disposal of such nonconforming Solid Waste.
- (c) The Municipality shall separate (and shall direct each Waste Hauler that the Municipality has the ability to so direct, to separate) all Nonprocessable Waste from other Acceptable Solid Waste, prior to delivery.

2.4. Compliance with Requirements

MIRA shall determine in its sole but reasonable discretion whether the Solid Waste delivered by or on behalf of the Municipality complies with all requirements of this Agreement. Notice of and a copy of such determination, together with any supporting documentation, shall be provided to the Municipality, and shall be deemed to have been made in accordance with this Section 2.4 and to be correct at the expiration of sixty (60) days after such notice, unless within such sixty (60) day period the Municipality shall have filed with MIRA a written objection, stating that such determination is incorrect and stating the changes therein which should be made to correct such determination. MIRA shall accept or reject the Municipality's objection in whole or in part within forty-five (45) days of MIRA's receipt of such objection. Notice and a copy of MIRA's decision with respect to such objection will be provided to the Municipality within three (3) days

of the date of decision. Where MIRA has rejected all or any part of the Municipality's objection, then MIRA, acting by its designated hearing officer, who shall be a municipal official member of the MIRA Board of Directors, shall so notify the Municipality and shall thereafter conduct a hearing on the matter. Such hearing shall take place within forty-five (45) days following the date on which notice of MIRA's decision has been mailed to the Municipality. The Municipality shall be accorded a full and meaningful opportunity to participate in the hearing and to present such evidence and testimony as may be material. Following such hearing, the hearing officer shall draft a memorandum of decision which shall include findings of fact and a statement of conclusion. The memorandum of decision shall be provided to the Municipality within three (3) days of the date of such decision. The memorandum of decision shall be considered a final adjudication of the issues unless, within thirty (30) days from the date of such memorandum of decision, a Party commences an action in the Superior Court of the State.

2.5. Requirements Regarding Deliveries; Title to Acceptable Solid Waste and Acceptable Recyclables

- (a) All deliveries of Acceptable Solid Waste and Acceptable Recyclables hereunder, shall conform to the requirements of this Agreement and the Procedures, and shall be delivered in vehicles conforming to the requirements of this Agreement and the Procedures.
- (b) The Municipality shall take no action that would result in a misidentification as to the source of Solid Waste delivered to any Waste Facility.
- (c) The Municipality shall make or cause to be made regular deliveries of Acceptable Solid Waste and Acceptable Recyclables to the Designated Facilities, during the regular operating hours thereof.
- (d) Title to Acceptable Solid Waste and Acceptable Recyclables delivered by or on behalf of the Municipality, shall pass to MIRA at the time that MIRA accepts such Acceptable Solid Waste and Acceptable Recyclables, upon MIRA's determination that such Acceptable Solid Waste and Acceptable Recyclables meet all requirements of this Agreement and the Procedures.

2.6. Designated Facilities; MIRA Selection of New Designated Facilities

The Municipality's Designated Waste Facility and Designated Recycling Facility as of the Effective Date (collectively, the "Original Designated Facilities") are listed on **Exhibit C** hereto and a part hereof. Subject to this Section 2.6 and after reasonable prior written notice to the Municipality, MIRA may from time to time and after consultation with the Municipality, select a new Designated Facility or Designated Facilities, and the Municipality shall thereafter deliver or cause to be delivered to such new Designated Facility or Designated Facilities, all Acceptable Solid Waste or Acceptable Recyclables (or both) hereunder. Prior to any such selection, MIRA shall verify that any such new Designated Facility or Designated Facilities is/are properly permitted and acceptable to

MIRA. MIRA shall credit or reimburse the Municipality for any additional delivery costs incurred by the Municipality for the delivery of Acceptable Solid Waste or Acceptable Recyclables to such new Designated Facility or Designated Facilities (not to exceed the actual costs thereof), as compared to the Municipality's delivery costs to the Original Designated Facilities, as demonstrated by the Municipality and agreed to by MIRA, both in a commercially reasonable manner. To avoid doubt, Solid Waste transported to, and processed and disposed of at a new Designated Facility or Designated Facilities pursuant to this Section 2.6, is not Emergency Bypass Waste.

MIRA shall continue operating the Torrington Transfer Station and the Watertown Transfer Station for the receipt of Acceptable Solid Waste and Acceptable Recyclables during the Term, and shall not select a new Designated Facility in substitution for the Torrington Transfer Station or the Watertown Transfer Station during the Term, without the consent of the Municipality. Notwithstanding the preceding sentence, the MIRA obligations in such sentence shall be void and without further force and effect (i) with respect to the Torrington Transfer Station, if the Torrington Transfer Station does not process during each Contract Year at least 38,500 Tons of Acceptable Solid Waste, and (ii) with respect to the Watertown Transfer Station, if the Watertown Transfer Station does not process during each Contract Year at least 99,000 Tons of Acceptable Solid Waste.

2.7. Emergency Bypass Waste; Force Majeure

- (a) To the extent MIRA determines that it cannot accept the Municipality's Acceptable Solid Waste at the Designated Facility, MIRA shall first redirect Spot Waste, Contract Waste and other Solid Waste not covered by any Municipal Solid Waste Management Services Agreement, which in each case MIRA has the right to so redirect without penalty or incurring any cost, to an Alternate Facility. After such redirection(s), if MIRA still cannot accept the Municipality's Acceptable Solid Waste at the Designated Facility, then such Acceptable Solid Waste ("Emergency Bypass Waste") shall be disposed of pursuant to the applicable provisions of this Section 2.7. MIRA may redirect such "Emergency Bypass Waste" to an Alternate Facility or Alternate Facilities selected by MIRA. Prior to any such redirection of Emergency Bypass Waste, MIRA shall verify that such Alternate Facility is properly permitted and acceptable to MIRA.
- (b) With respect to Emergency Bypass Waste not caused by a Force Majeure Event the Municipality shall pay the Authority: (i) the Tier 1 Long-Term Disposal Fees; (ii) all amounts assessed pursuant to Section 3.2(b); and (iii) all other amounts payable hereunder in the normal course. Any costs not included in clauses (i), (ii) or (iii) incurred by the Authority in connection with its redirection of such Emergency Bypass Waste ("Additional Costs") shall be paid by the Authority.
- (c) With respect to Emergency Bypass Waste caused by a Force Majeure Event and subject to Sections 2.7(d), the Municipality may in its discretion and with prior written notice to MIRA, elect alternate arrangements ("Alternate Arrangements"), for the disposal of the Municipality's Acceptable Solid Waste necessitated by, and for the duration of such Force Majeure Event. For all such Emergency Bypass Waste

with respect to which the Municipality does not elect Alternate Arrangements the Municipality shall pay the Authority (i) the Tier 1 Long-Term Disposal Fees; (ii) all amounts assessed pursuant to Section 3.2(b); and (iii) all other amounts payable hereunder in the normal course. Subject to Section 2.7(d), any Additional Costs incurred by MIRA in connection with its redirection of such Emergency Bypass Waste shall be paid by MIRA.

- (d) MIRA's obligation to pay Additional Costs with respect to certain Emergency Bypass Waste described in Section 2.7(c), is subject to the following conditions precedent: (i) MIRA has obtained insurance ("Additional Costs Insurance"), with reasonable terms and conditions, and at reasonable cost (all as determined by MIRA in its sole discretion), requiring the reimbursement of MIRA for such Additional Costs, and such Additional Costs Insurance is in effect; and (ii) MIRA has received reimbursement under such Additional Cost Insurance for such Additional Costs. The Municipality shall reimburse MIRA for any and all Additional Costs incurred by MIRA with respect to the Municipality's Emergency Bypass Waste described in Section 2.7(c), for which MIRA has not received full reimbursement under Additional Costs Insurance pursuant to this Section 2.7(d). Such payment obligation by the Municipality shall not be conditioned on a requirement that MIRA appeal or otherwise adjudicate a full or partial denial by its insurer of coverage for the subject Additional Costs in any forum and for any reason, and shall not be discharged for any reason other than full payment to MIRA of such Additional Costs by the Municipality.
- (e) If a Force Majeure Event results in MIRA's inability to accept the Municipality's Solid Waste for a continuous period of eighteen (18) months, either Party may terminate this Agreement, upon 30 days prior written notice to the other Party.

2.8. Effective Date; Duration of Contract

This Agreement shall be effective as of the Effective Date; however, the obligations of the Parties shall begin on the Commencement Date and shall continue for ten (10) Contract Years (the "Term"). This Agreement shall expire at 11:59 p.m., on June 30, 2027.

3. ANNUAL BUDGET; TIER 1 LONG-TERM DISPOSAL FEE; OTHER CHARGES; MOST FAVORED NATION

3.1. Budget

MIRA shall adopt a budget (the "Budget") for each Contract Year. Each Budget shall include MIRA's estimates of the following for the subject Contract Year: the Cost of Operation and the Net Cost of Operation, the Aggregate Tons, Non-Disposal Fee Revenues, any deposits or withdrawals (or both) to and from Reserves, and the Service Payments. In determining the Budget, MIRA shall assume for the subject Contract Year: (i) that the Municipality will deliver or cause to be delivered to the Designated Waste Facility a specific quantity of Acceptable Solid Waste; (ii) that the Connecticut Solid

Waste System will receive the Aggregate Tons; (iii) that Persons obligated to deliver Contract Waste will deliver the full amount of the said Contract Waste; and (iv) a specific quantity of delivered Spot Waste.

3.2. Tier 1 Long-Term Disposal Fee; Other Charges; Opt-Out Disposal Fee

- (a) As part of its determination of the Budget, MIRA shall calculate a disposal fee (the “Base Disposal Fee”) to be charged with respect to each Ton of Acceptable Solid Waste delivered by or on behalf of the Municipality and each other Participating Municipality during the subject Contract Year. The Base Disposal Fee shall be uniform as to all Participating Municipalities and shall be calculated without regard to the location of any Participating Municipality’s Designated Waste Facility. MIRA shall set the Base Disposal Fee such that the product of the Base Disposal Fee and the Aggregate Tons, shall produce funds estimated as sufficient to pay the estimated Net Cost of Operation for the subject Contract Year. The amount calculated pursuant to the preceding sentence constitutes the estimated Service Payments.

As a Tier 1 Long-Term Municipality, the Municipality shall receive the Service Discount off the Base Disposal Fee. The Base Disposal Fee, net of the Service Discount, is the “Tier 1 Long-Term Disposal Fee.”

- (b) In addition to the Tier 1 Long-Term Disposal Fee, the Municipality shall pay (i) any Transfer Station Fuel Surcharge assessed by MIRA and calculated pursuant to **Exhibit D** hereto and a part hereof, for each Ton of Acceptable Solid Waste delivered to a Transfer Station, and (ii) any additional fees or surcharges set by MIRA during the Budget Process for particular categories of Solid Waste; provided, however, that MIRA shall not charge and the Municipality shall not pay any tip fee for Acceptable Recyclables delivered to the Designated Recycling Facility.
- (c) MIRA has adopted the Budget for the first Contract Year and provided a copy thereof, together with the level of the Tier 1 Long-Term Disposal Fee and of any additional amounts payable pursuant to Section 3.2(b), for the first Contract Year, to the Authorized Representative of the Municipality, and the Municipality acknowledges receipt of the same. The Tier 1 Long-Term Disposal fee for the first Contract Year is \$68.00.

On or before the last day of February preceding Contract Year 2 and each subsequent Contract Year, MIRA shall adopt the Budget for such Contract Year and provide a copy thereof, together with (i) the level of the Tier 1 Long-Term Disposal Fee, (ii) the level of the Transfer Station Fuel Surcharge (if assessed), together with any additional fees and/or surcharges pursuant to Section 3.2(b), and (iii) the level of the Opt-Out Disposal Fee, including any Additional Opt-Out Costs, pursuant to Section 3.2(e), all for such Contract Year, to the Authorized Representative of the Municipality.

- (d) Based on the Budget, the Municipality shall make all budgetary and other provisions or appropriations necessary to provide for and to authorize the timely payment by the Municipality of the Tier 1 Long-Term Disposal Fees and the other amounts calculated pursuant to this Section 3.2, as the same become due and payable.
- (e) If the Tier 1 Long-Term Disposal Fee for any Contract Year set by MIRA pursuant to Section 3.2(a) exceeds the amount determined pursuant to this Section 3.2(e) for such Contract Year (the “Opt-Out Disposal Fee”), then the Municipality may terminate this Agreement within thirty (30) days after its receipt of the notice pursuant to Section 3.2(c). In order to exercise the foregoing right of termination, the Municipality shall send written notice of such termination to MIRA by certified return receipt mail, within thirty (30) days after the Municipality’s receipt of the notice required pursuant to Section 3.202(c). If the Municipality exercises this right of termination, the effective date of such termination shall be June 30th of the Contract Year in which such written notice of termination is given to MIRA, except that such termination with respect to the first Contract Year shall be effective as of the date of MIRA’s receipt of such notice from the Municipality. If MIRA does not receive the foregoing notice of termination from the Municipality within the thirty (30) day period specified above, the Municipality shall forfeit its right to terminate this Agreement for the pertinent Contract Year.

Opt-Out Disposal Fees

Contract Year	Opt-Out Disposal Fee
2 and each subsequent Contract Year	The amount calculated pursuant to <u>Exhibit E</u> hereto + any Additional Opt-Out Costs

As indicated above and commencing with the second Contract Year, the Opt-Out Disposal Fee shall include the per-Ton amount (calculated on the basis of all Acceptable Solid Waste delivered to the Connecticut Solid Waste System) of any Connecticut Solid Waste System costs or expenses required of MIRA and resulting from (i) any Change in Law, or (ii) year-over-year increases to the PILOT. Any amounts so added to the Opt-Out Disposal Fee pursuant to the foregoing clause (i) or clause (ii), or both, are the “Additional Opt-Out Costs”).

3.3. Most Favored Nation

- (a) With respect to Acceptable Solid Waste, and provided that no Notice of Non-Compliance with Delivery Obligations has been issued by MIRA or any other Municipality event of default exists hereunder, the Municipality shall pay with respect to Acceptable Solid Waste the lower of (i) the sum of the Tier 1 Long-Term Disposal Fee and all amounts assessed pursuant to Section 3.2(b), or (ii) the per-Ton MIRA tip fee, inclusive of all additional fees or surcharges (collectively, the

“Other Tip Fee”) charged under any other contract (an “MFN Waste Contract”) with the same or substantially the same terms and conditions, including the same length of term, executed by MIRA after the Commencement Date with a Connecticut municipality other than a Participating Municipality, for the delivery of Acceptable Solid Waste, other than Spot Waste, to the Designated Waste Facility.

- (b) With respect to Acceptable Recyclables, and provided that no Notice of Non-Compliance with Delivery Obligations has been issued by MIRA or any other Municipality event of default exists hereunder, the Municipality shall be entitled to the more favorable of the rights provided (i) hereunder, or (ii) under any other contract (an “MFN Recycling Contract”) with the same or substantially the same terms and conditions other than such rights (the “MFN Recycling Rights”) but including the same length of term, executed by MIRA after the Commencement Date with a Connecticut municipality other than a Participating Municipality, for the delivery of Acceptable Recyclables to the Designated Recycling Facility.
- (c) After the Commencement Date, MIRA shall, within fifteen (15) Days after the execution of any MFN Waste Contract or any MFN Recycling Contract, as applicable, provide notice of such execution to the Municipality. With respect to any MFN Waste Contract, beginning on the first Day of the Month first following MIRA’s provision of such notice to the Municipality and continuing for so long as the Municipality is eligible to receive the Other Tip Fee, MIRA shall charge and the Municipality shall pay the Other Tip Fee for its Acceptable Solid Waste. With respect to any MFN Recycling Contract, beginning on the first Day of the Month first following MIRA’s provision of such notice to the Municipality and continuing for so long as the Municipality is eligible to receive the MFN Recycling Rights, MIRA shall grant and the Municipality shall receive such MFN Recycling Rights.
- (d) The Municipality’s eligibility for the Other Tip Fee or the MFN Recycling Rights, as applicable, shall cease as of the first Day of the Month following MIRA’s provision of written notice to the Municipality of such cessation for any of the following reasons: (i) the issuance of a Notice of Non-Compliance with Delivery Obligations by MIRA or any other event of default by the Municipality hereunder, (ii) the Municipality’s Designated Waste Facility or Designated Recycling Facility, as applicable, changes such that the requirements of this Section 3.3 are no longer satisfied; or (iii) the expiration or earlier termination of the subject MFN Waste Contract or MFN Recycling Contract, as applicable.

3.4. Recycling Program

On and after the Commencement Date and provided that no event of default (including the issuance by MIRA of a Notice of Non-Compliance with Delivery Obligations) exists hereunder, for any period with respect to which (i) revenues received by MIRA from the sale of Acceptable Recyclables exceed MIRA’s processing and administrative costs with respect to such Acceptable Recyclables, as determined by MIRA in a commercially reasonable manner, and (ii) the MIRA Board of Directors has declared a surplus with

respect to such revenues pursuant to Conn. Gen. Stat. § 22a-267(6), as the same may be amended, supplemented or superseded, MIRA shall provide a rebate (a “Recycling Rebate”) to the Municipality for each Ton of Acceptable Recyclables delivered by or on behalf of the Municipality during such period. If so provided, Recycling Rebates shall be provided retroactively for any applicable Contract Year (or portion thereof). Nothing in this Section 3.4 shall establish a claim or any other right of the Municipality to any Recycling Rebate, or impose any obligation on MIRA to declare any Recycling Rebate.

4. FAILURE TO ENFORCE DELIVERY OBLIGATIONS

4.1. Failure to Enforce Delivery Obligations

Subject to Section 4.2, if the Municipality receives a Notice of Non-Compliance with Delivery Obligations and fails to take reasonable steps to remedy the conditions prompting such notice; including, if not previously implemented by the Municipality, the passage of an Ordinance or the creation of a franchise/permit system for Waste Haulers, then MIRA may terminate this Agreement. MIRA may so terminate this Agreement either (i) one hundred eighty (180) days after the expiration of the period for the filing by the Municipality of an objection to a Notice of Non-Compliance with Delivery Obligations (if no such objection is filed), or (ii) one hundred eighty (180) days after the issuance by a Review Panel of a memorandum of decision upholding a Notice of Non-Compliance with Delivery Obligations.

4.2. Municipal Right to Object to Notice of Non-Compliance with Delivery Obligations

The Notice of Non-Compliance with Delivery Obligations shall be binding on the Municipality at the expiration of sixty (60) days after the date of such notice, unless within such sixty (60) day period the Municipality shall have filed with MIRA a written objection thereto, containing the Municipality’s reasons and evidence supporting such objection. MIRA shall review such objection, and accept or reject such objection in whole or in part within forty five (45) days of MIRA’s receipt of such objection. MIRA shall provide the Municipality with notice of and a copy of MIRA’s decision with respect to such objection within three (3) days of the date of MIRA’s decision. If MIRA has rejected all or any part of the Municipality’s objection in such decision, the President of MIRA shall promptly designate a review panel (a “Review Panel”) consisting of one representative from MIRA (who shall act as chairperson of the Review Panel), one representative who shall be the Municipality’s Town Manager or Director of Public Works, and one representative mutually agreeable to the other two (2) Review Panel members, who shall be a municipal official member of the MIRA Board of Directors. The Review Panel shall conduct a hearing on the matter within forty five (45) days following the date on which MIRA’s decision was mailed to the Municipality. The Municipality shall be accorded a full and meaningful opportunity to participate in the hearing and to present such evidence and testimony as may be material to the proceeding. Within ten (10) days following such hearing, the Review Panel shall decide by majority vote whether to overturn or uphold the Notice of Non-Compliance with Delivery Obligations. The chairperson shall draft a memorandum of decision which shall include

findings of fact and a statement of conclusion. The memorandum of decision shall be provided to the Municipality within three (3) days of the date of such memorandum of decision. The memorandum of decision shall be a final adjudication of the matter unless, within thirty (30) days from the date of such memorandum of decision, a Party commences an action in the Superior Court of the State.

5. INVOICING; SUMS DUE ON EXPIRATION

5.1. Invoicing

On or before the fifteenth (15th) Business Day following the end of each Billing Period, MIRA shall provide the Municipality with an invoice setting forth the Tier 1 Long-Term Disposal Fees (net of amounts billed to Waste Haulers) and any other charges or fees due and payable for such Billing Period, together with any other amounts then due. Each invoice shall set forth the actual Tons of Acceptable Solid Waste delivered by or on behalf of the Municipality and accepted by MIRA during such Billing Period, multiplied by the Tier 1 Long-Term Disposal Fee. On or before the twentieth (20th) day following the date of such invoice (the "Due Date"), the Municipality shall pay MIRA or its designee the full amount of such invoice. MIRA shall notify the Municipality in writing as to the identity of any such designee. If the Due Date is a Sunday, a holiday or any other day which is not a Business Day, the next following Business Day shall be the Due Date. Amounts billed to Waste Haulers on behalf of the Municipality and any additional relevant information shall be contained in a monthly statement provided to the Municipality with the aforesaid invoice. The Municipality agrees that: (i) the monthly invoices issued pursuant to this Section 5.1 may not require the current payment of all amounts for which the Municipality is then liable under this Agreement, and (ii) the Municipality shall remain liable for payment of such amounts notwithstanding the deferral of the time at which the payment of such amounts is required. Without limitation of the preceding sentence, the Municipality shall not be responsible to MIRA for the payment of amounts billed by MIRA to Waste Haulers. All Tier 1 Long-Term Disposal Fees and other amounts for which the Municipality is liable hereunder shall be current expenses of the Municipality.

5.2. Failure to Pay Invoice

If payment in full of any invoice rendered by MIRA is not made on or before the Due Date, a delayed-payment charge of the greater of one and one-half percent (1 & ½%) per Month or fifty dollars (\$50.00) shall be assessed on all past due amounts, which delayed-payment charge shall become immediately due and payable to MIRA as liquidated damages for failure to make prompt payment, and shall be reflected in the invoice for the following Month. In addition to, and not in limitation of the foregoing, if payment in full of any invoice rendered by MIRA is not made on or before the Due Date and such non-payment continues uncured for a period of thirty (30) days after written notice of such non-payment from MIRA to the Municipality, then MIRA may in its sole and absolute discretion, cease accepting Acceptable Solid Waste and Acceptable Recyclables from the Municipality until all outstanding invoices, delayed payment charges and any other

payments which have become due, are paid in full. No such cessation by MIRA shall relieve the Municipality from any of its obligations hereunder.

5.3. Sums Due upon Expiration of this Agreement

Subject to the terms of this Agreement, including Section 5.1 and Section 5.2, any amounts due to MIRA from the Municipality upon the expiration or earlier termination of this Agreement shall be paid by the Municipality on or before sixty (60) days after the date on which any invoice containing such amount is presented to the Municipality. Such amounts may include the Municipality's Municipal Share of all costs (including any costs of borrowing) incurred by MIRA as a result of the payment by the Municipality or any other Participating Municipality of less than the full amount owed pursuant to this Agreement or any other Municipal Solid Waste Management Services Agreement. The Parties agree that this Section 5.3 is intended to permit MIRA to fulfill the purpose contained in Section 22a-262(a)(2) of the General Statutes, as the same may be amended, supplemented or superseded from time to time, to provide Solid Waste management services, and to produce from its provision of such services, revenues sufficient to provide for the support of MIRA and its operations on a self-sustaining basis. The provisions of this Section 5.3 shall survive the expiration or earlier termination of this Agreement.

6. COVENANTS BY AUTHORITY AND PLEDGE OF STATE

6.1. Records and Accounts

MIRA shall keep proper books of record and account (separate from all other records and accounts) in which complete and correct entries shall be made of the transactions relating to this Agreement, including records of the quantity and characteristics of Acceptable Solid Waste and Acceptable Recyclables delivered by or on behalf of the Municipality and accepted by MIRA. Such books shall be available for inspection by the Authorized Representative of the Municipality, upon reasonable prior written notice to MIRA.

6.2. Scales

MIRA shall provide and use scales for determining the quantity of Acceptable Solid Waste and Acceptable Recyclables delivered to the Connecticut Solid Waste System by or on behalf of the Municipality. In the event of a dispute as to the accuracy of such scales, the Municipality shall provide written notice of the same to MIRA. Within fifteen (15) days of its receipt of such notice, MIRA have its scales tested for accuracy. If such test reveals that MIRA's scales are in compliance with the tolerances permitted by the State of Connecticut Department of Consumer Protection, then the Municipality shall pay MIRA's reasonable expenses for such tests and the Municipality shall withdraw its dispute. Alternatively, if such test reveals that MIRA's scales are not in compliance with the aforementioned tolerances (whether such non-compliance has resulted in underweights or overweights), then MIRA shall have its scales recalibrated, and MIRA shall pay the Municipality's expenses for such tests and recalibration.

6.3. Right of Inspection

Upon reasonable prior notice to MIRA, MIRA shall permit the Authorized Representative of the Municipality, or his or her designee, to enter the Designated Facilities during usual business hours and to inspect the same, for the purpose of monitoring MIRA's performance under this Agreement. The Municipality shall notify MIRA in writing as to the identity of any such designee.

6.4. Insurance

Subject to Section 2.7(d), MIRA shall at all times maintain or cause to be maintained with responsible insurers, all such insurance as is customarily maintained with respect to facilities of like character to the Waste Facilities and as may be reasonably required and obtainable within limits and at costs deemed reasonable by MIRA, against loss or damages, use and occupancy, and public and other liability, to the extent reasonably necessary to protect the interest of MIRA and of the Participating Municipalities.

6.5. Certain Provisions Executory

The provisions of this Agreement requiring expenditure of monies by MIRA shall be deemed executory to the extent that MIRA shall have monies legally available for such purposes, and no monetary liability on account thereof shall be incurred by MIRA beyond monies legally available for such expenditures.

6.6. Pledge of State

In accordance with the Act MIRA hereby includes the following pledge and undertaking for the State:

The state of Connecticut does hereby pledge to and agree with the holders of any bonds and notes issued under this chapter and with those parties who may enter into contracts with the Connecticut Solid Waste Authority or its successor agency pursuant to the provisions of this chapter that the state will not limit or alter the rights hereby vested in the authority until such obligations, together with the interest thereon, are fully met and discharged and such contracts are fully performed on the part of the authority, provided nothing contained herein shall preclude such limitation or alteration if and when adequate provision shall be made by law for the protection of the holders of such contracts with the authority. The authority is authorized to include this pledge and undertaking for the state in such bonds and notes or contracts. (Section 22a-274 of the General Statutes.)

7. ADDITIONAL AGREEMENTS

7.1. Obligation of Municipality to Make Payments

The Municipality agrees that its obligation to pay the Tier 1 Long-Term Disposal Fees and all other amounts which shall become due hereunder (including any delayed-payment charges), and the costs and expenses of MIRA and its representatives incurred in the collection of any overdue payments from the Municipality, whether to MIRA or to the trustee of any Bonds: (i) shall, absent manifest error, be absolute and unconditional; (ii) shall not be subject to any abatement, reduction, setoff, counter-claim, recoupment, defense (other than payment itself) or other right which the Municipality may have against MIRA, any trustee or any other Person for any reason whatsoever; (iii) shall not be affected by any defect in title, compliance with the plans and specifications, condition, design, fitness for use of, or any damage to or loss or destruction of any Waste Facility; and (iv) so long as MIRA continues to render its services of accepting Acceptable Solid Waste and Acceptable Recyclables delivered by or on behalf of the Municipality to the extent required by the terms of this Agreement, shall not be affected by any interruption or cessation in the possession, use or operation of any Waste Facility by MIRA or any operator thereof for any reason whatsoever. All payment obligations of the Municipality shall survive the expiration or earlier termination of this Agreement.

7.2. Indemnification

- (a) Subject to the terms and conditions hereof and to the extent permitted by law, the Municipality shall protect, indemnify and hold harmless MIRA and its officers, directors, members, employees and agents (individually, a “MIRA Indemnified Party”) from and against all liabilities, damages, claims, demands, judgments, losses, costs, expenses, suits or actions (including reasonable counsel and consultant fees and expenses, court costs and other litigation expenses), suffered or incurred, directly or indirectly arising out of, related to or with respect to this Agreement, and will defend the MIRA Indemnified Parties in any suit, including appeals, for (a) personal injury to, or death of any individual or individuals, or loss or damage to property arising out of the Municipality’s performance (or non-performance) of its obligations hereunder, (b) the Municipality’s breach of any obligation herein contained, or (c) any misrepresentation or breach of warranty by the Municipality hereunder. The Municipality shall not, however, be required to reimburse or indemnify any MIRA Indemnified Party for loss or claim due to the willful misconduct or negligence of such MIRA Indemnified Party, and the MIRA Indemnified Party whose willful misconduct or negligence is adjudged to have caused such loss or claim will reimburse the Municipality for the costs of defending any suit as required above. A MIRA Indemnified Party shall promptly notify the Municipality of the assertion of any claim against it for which it is entitled to be indemnified hereunder, shall give the Municipality the opportunity to defend such claim, and shall not settle such claim without the approval of the Municipality. These indemnification provisions are for the protection of the MIRA Indemnified Parties only and shall not establish, of themselves, any liability to third parties.

- (b) Subject to the terms and conditions hereof and to the extent permitted by law, MIRA shall protect, indemnify and hold harmless the Municipality and its officers, directors, members, employees and agents (individually, a “Municipal Indemnified Party”) from and against all liabilities, damages, claims, demands, judgments, losses, costs, expenses, suits or actions (including reasonable counsel and consultant fees and expenses, court costs and other litigation expenses), suffered or incurred, directly or indirectly arising out of, related to or with respect to this Agreement, and will defend the Municipal Indemnified Parties in any suit, including appeals, for (a) personal injury to, or death of any individual or individuals, or loss or damage to property arising out of MIRA’s performance (or non-performance) of its obligations hereunder, (b) MIRA’s breach of any obligation herein contained, or (c) any misrepresentation or breach of warranty by MIRA hereunder. MIRA shall not, however, be required to reimburse or indemnify any Municipal Indemnified Party for loss or claim due to the willful misconduct or negligence of such Municipal Indemnified Party, and the Municipal Indemnified Party whose willful misconduct or negligence is adjudged to have caused such loss or claim will reimburse MIRA for the costs of defending any suit as required above. A Municipal Indemnified Party shall promptly notify MIRA of the assertion of any claim against it for which it is entitled to be indemnified hereunder, shall give MIRA the opportunity to defend such claim, and shall not settle such claim without the approval of MIRA. These indemnification provisions are for the protection of the Municipal Indemnified Parties only and shall not establish, of themselves, any liability to third parties.

7.3. Default by the Municipality and Remedies of MIRA

The Municipality shall be in default hereunder if: (1) subject to the one hundred eighty (180) day period in Section 4.1, the Municipality has failed to perform its Delivery Obligations, as evidenced either by the issuance by MIRA of a Notice of Non-Compliance with Delivery Obligations that is not timely objected to by the Municipality, or the issuance by a Review Panel of a memorandum of decision pursuant to Section 4.2 concluding that such failure to perform has occurred; (2) payment in full of any invoice rendered by MIRA is not made on or before the Due Date, and such failure continues uncured for a period of thirty (30) days after written notice from MIRA of such failure; or (3) the Municipality shall have materially failed to comply with any of its other obligations hereunder and such failure continues uncured for a period of thirty (30) days after written notice from MIRA of such failure. Without limitation of MIRA’s right to terminate this Agreement pursuant to Section 4.1 for any default under subsection (1) of this Section 7.3, MIRA shall have all the remedies prescribed by law and this Agreement after any default by the Municipality hereunder, including the right to refuse the Municipality’s Acceptable Solid Waste and Acceptable Recyclables. Notwithstanding the initiation or continuance of any remedy by MIRA, the Municipality shall remain obligated to make the payments required hereunder. In addition, the Municipality acknowledges that MIRA is entitled to sue the Municipality for injunctive relief, mandamus, specific performance, or to exercise such other legal or equitable remedies not herein excluded, to enforce the Municipality’s obligations hereunder.

7.4. Default by MIRA and Remedies of the Municipality

Failure on the part of MIRA in any instance or under any circumstances to observe or fully perform any obligation imposed on it by this Agreement or by law shall not (i) make MIRA liable in damages to the Municipality, so long as MIRA acts promptly to remedy the failure to observe or fully perform such obligation after such failure has been brought to its attention in writing or, so long as Acceptable Solid Waste and Acceptable Recyclables delivered by or on behalf of the Municipality shall be processed and disposed of pursuant to the terms of this Agreement, or (ii) relieve the Municipality of its obligations to make the payments required hereby or to fully perform any of its other obligations hereunder. MIRA acknowledges that the Municipality is entitled to sue MIRA for injunctive relief, mandamus or specific performance, or to exercise such other legal or equitable remedies not herein excluded, to enforce MIRA's obligations hereunder.

MIRA shall not be in default of this Agreement if the operation of either of the Designated Facilities, or of any other Waste Facility constituting part of the Connecticut Solid Waste System, shall be delayed or interrupted by a Force Majeure Event.

7.5. Levy of Taxes and Cost Sharing or Other Assessment

To the extent that the Municipality shall not make provisions or appropriations necessary to provide for and authorize the payment by the Municipality to MIRA of the payments required hereunder, the Municipality shall levy and collect all general or special taxes, or cost sharing or other assessments, to the full extent permitted by the laws of the State, as may be necessary to make any such payment in full when due hereunder.

7.6. Enforcement of Collections

The Municipality will diligently enforce or levy and collect all taxes, cost sharing or other assessments or fees, rentals or other charges for the collection of Acceptable Solid Waste and Acceptable Recyclables, and will take all lawful actions, including the commencement and prosecution of any appropriate proceeding, for the enforcement and collection of such taxes, cost sharing or other assessments or fees, rentals or other charges lawfully levied which shall become delinquent, to the full extent permitted by the laws of the State.

7.7. Disputes on Billing

In the event of any dispute as to any portion of any invoice presented to the Municipality hereunder, the Municipality shall nevertheless pay the full amount of such disputed charge(s) by the Due Date, and shall provide within thirty (30) days after the Due Date, written notice of such dispute to MIRA. Such notice shall identify the disputed invoice, state the amount in dispute and set forth a full statement of the grounds on which such dispute is based. No adjustment shall be considered or made for disputed charges until the aforesaid notice is provided. The dispute shall be resolved in accordance with the provisions for dispute resolution set forth in Section 7.17. In the event that the Municipality prevails in such dispute, MIRA shall within thirty (30) days of the final adjudication of such dispute, refund to the Municipality all disputed payments to which

the Municipality is entitled, plus interest at the rate of one and one-half percent (1 & ½%) per Month.

7.8. Further Assurances

At any and all times MIRA and the Municipality (so far as it may be authorized by law) shall pass, make, do, execute, acknowledge, and deliver any and every such further resolution or ordinance, acts, deeds, conveyances, assignments, transfers, and assurances as may be necessary or desirable for the better assuring, conveying, granting, assigning, and confirming all and singular the rights, Tier 1 Long-Term Disposal Fees and other funds pledged or assigned, or intended so to be, or which MIRA or Municipality, as the case may be, may heretofore or hereafter become bound to pledge or to assign, or as may be reasonable and required to carry out the purposes of any such resolution or ordinance, or to comply with this Agreement or the Act.

7.9. Amendments

This Agreement may be amended from time to time by a writing duly authorized and executed by the Parties.

7.10. Severability

If any provision of this Agreement shall for any reason be determined to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions hereof, and this Agreement shall be construed and enforced as if such invalid or unenforceable provision had not been contained herein.

7.11. Execution of Documents

This Agreement may be executed in any number of original or facsimile counterparts and as separate counterparts, all of which when so executed and delivered will together constitute one and the same instrument. If the Parties elect to execute this Agreement by facsimile or other electronic means, the same shall have the same force and effect as if this Agreement had been manually executed by the Parties in one complete document, and the Parties shall exchange wet-signature original signature pages within a reasonable time after such execution.

7.12. Waiver; Amendment

Unless otherwise specifically provided by the terms of this Agreement, no delay or failure to exercise a right resulting from any breach of this Agreement will impair such right or shall be construed to be a waiver thereof, but such right may be exercised from time to time and as often as may be deemed expedient. Any waiver or amendment hereof must be in writing and signed by the Party against whom such waiver or amendment is to be enforced. If any covenant or agreement contained in this Agreement is breached by any Party and thereafter waived by any other Party, such waiver will be limited to the particular breach so waived and will not be deemed to waive any other breach of this Agreement. Making payments pursuant to this Agreement during the existence of a

shall be resolved by a court of competent jurisdiction in the State (including the appellate courts thereof), unless the Parties agree to do so by arbitration or mediation. Any arbitration or mediation proceedings shall be held in Hartford, Connecticut.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK
[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers as of the day and year first hereinabove set forth.

WITNESS

CITY/TOWN OF ??????????

_____ [Signature]

_____ [Signature]

(Seal)

_____ [Signature]
Chief Executive Officer

_____ [Signature]
Keeper of the Seal

WITNESS

**MATERIALS INNOVATION AND
RECYCLING AUTHORITY**

_____ [Signature]

_____ [Signature]

_____ [Signature]
President

[SIGNATURE PAGE TO TIER 1 LONG-TERM
MUNICIPAL SOLID WASTE MANAGEMENT SERVICES AGREEMENT]

EXHIBIT A
DEFINITIONS

As used in this Agreement, except as otherwise expressly provided or unless the context otherwise requires, the terms listed in this section shall have the following meanings:

“Acceptable Recyclables” has the meaning set forth in the Procedures.

“Acceptable Solid Waste” means Solid Waste generated by and collected from residential, commercial, institutional, industrial and other establishments located within the corporate limits of the Municipality and deemed acceptable by MIRA in accordance with all applicable federal, state and local laws, and the Procedures, for processing by and disposal by MIRA hereunder. Acceptable Solid Waste shall include the following: (i) scrap wood not exceeding six (6) feet in length or width or four (4) inches in thickness; (ii) single trees and large tree limbs not exceeding six (6) feet in length or four (4) inches in diameter and with branches cut to within six (6) inches of the trunk or limb, as the case may be; (iii) metal pipes, tracks and banding or cable and wire not exceeding three (3) feet in length and one and one-half (1 & 1/2) inches in diameter; (iv) cleaned and emptied cans or drums not exceeding five (5) gallons in capacity and with covers removed; (v) automobile tires without rims exclusively from the residential Solid Waste stream and in limited quantities, if any, to be determined by MIRA on a day-to-day basis; (vi) paper butts or rolls, plastic or leather strappings or similar materials not exceeding three (3) feet in length or three (3) inches in thickness and cut in half lengthwise; (vii) Nonprocessable Waste; and (viii) any other Solid Waste deemed acceptable by MIRA in its sole discretion; provided, however, that Acceptable Solid Waste shall not include Acceptable Recyclables or other materials required to be recycled in accordance with Section 22a-241(b) of the General Statutes.

“Act” has the meaning set forth in the Recitals.

“Additional Costs” has the meaning set forth in Section 2.7(b).

“Additional Costs Insurance” has the meaning set forth in Section 2.7(d).

“Additional Opt-Out Costs” has the meaning set forth in Section 3.2(e).

“ADP” has the meaning set forth in **Exhibit D**.

“Aggregate Tons” means for any relevant period, the total Tons of Acceptable Solid Waste delivered to the Connecticut Solid Waste System, other than Contract Waste or Spot Waste.

“Agreement” means this Tier 1 Long-Term Municipal Solid Waste Management Services Agreement.

“Alternate Arrangements” has the meaning set forth in Section 2.7(c).

“Alternate Facility” means any Waste Facility other than the Designated Waste Facility or the Designated Recycling Facility, as determined by the context.

“Annual Period” has the meaning set forth in Exhibit D.

“Authorized Representative of the Municipality” means (i) any officer, employee, elected official or other Person eligible under, and properly authorized by applicable law to act on behalf of the Municipality for purposes of this Agreement; or (ii) the chief executive officer of the Municipality.

“Base Disposal Fee” has the meaning set forth in Section 3.2(a).

“Billing Period” means a Month and shall end on the last Day of each Month.

“Bond” (or “Bonds”) means: (i) any bond or bonds, notes or other evidence of indebtedness issued by MIRA to pay for any portion of the Cost of Operation; or (ii) bonds, notes or other evidence of indebtedness issued by MIRA in substitution for, in lieu of, or to refund, retire or pay any such bond or bonds, notes or other evidences of indebtedness.

“Budget” has the meaning set forth in Section 3.1.

“Business Day” means a day when MIRA’s headquarters is open for business.

“Capital Addition” means a fixed-asset addition or modification to the Facility or any other Waste Facility or Waste Facilities, with a dollar cost greater than ten (10) million dollars (\$10,000,000.00).

“Change in Law” means any of the following events or conditions having an impact on MIRA’s costs and expenses to provide its services hereunder:

- (a) the adoption, promulgation, issuance, modification, or written change in administrative or judicial interpretation after the Effective Date, of any federal, state or local law, regulation, rule, requirement, ruling or ordinance, unless such law, regulation, rule, requirement, ruling or ordinance was on or prior to the Effective Date duly adopted, promulgated, issued or otherwise officially modified or changed in interpretation, in each case in final form, to become effective without any further action by any federal, state or local governmental body, administrative agency or governmental official having jurisdiction;
- (b) the order and/or judgment of any federal, state or local court, administrative agency, or governmental officer or body after the Effective Date, if such order and/or judgment is not also the result of willful or negligent action or lack of reasonable diligence of the Party effected thereby, provided that the contesting in good faith or the failure to contest any such order and/or judgment shall not constitute or be construed as a willful or negligent action or a lack of reasonable diligence of the Party affected thereby; or
- (c) the denial of an application for or suspension, termination, interruption, imposition of a new condition in connection with the renewal or failure of renewal after the Effective Date of any permit, license, consent, authorization or approval necessary to MIRA’s performance of this Agreement, if it is not also the result of willful or

negligent action or a lack of reasonable diligence of the Party affected thereby, provided that the contesting in good faith or the failure to contest any such suspension, termination, interruption or failure of renewal shall not be construed as willful or negligent action or a lack of reasonable diligence of the Party affected thereby.

A “Change in Law” shall not include any of the aforesaid events or conditions solely necessitating a Capital Addition.

“Commencement Date” has the meaning set forth in Section 2.1(a).

“Connecticut Solid Waste System” means, collectively, the Facility, the Transfer Stations located in the municipalities of Ellington, Essex, Torrington and Watertown, and the Recycling Facility, together with any additional Waste Facility or Waste Facilities determined by MIRA to be economically and/or operationally necessary to fulfill its statutory mission.

“Contract Waste” means Acceptable Solid Waste delivered to the Connecticut Solid Waste System by Persons other than (i) Participating Municipalities, and (ii) Waste Haulers, with respect to Acceptable Solid Waste generated within the boundaries of any Participating Municipality, that is delivered under a contract with MIRA having a term which includes all or a portion of the relevant Contract Year.

“Contract Year” means each twelve-Month period during the Term commencing on July 1 of each year and ending on June 30th of the following year. The first Contract Year shall begin on the Commencement Date and shall end on June 30, 2018; the second Contract Year shall begin on July 1, 2018, and shall end on June 30, 2019, and so forth.

“Cost of Operation” means, for any relevant period, the greater of: (i) the sum of all MIRA costs and expenses resulting from or necessitated by the ownership, operation and maintenance of, and renewals and replacements to the Connecticut Solid Waste System; or (ii) the rendering of services by MIRA to the Municipality and the other Participating Municipalities pursuant to this Agreement and the other Municipal Solid Waste Management Services Agreements; in either event including without duplication the following items of cost or expense:

- (a) operation, maintenance and administrative expense of the Connecticut Solid Waste System, including insurance, disposal expense for Residue, Recycling Residue and Emergency Bypass Waste, renewals, replacements, repairs, extensions, enlargements, alterations or improvements (including any Capital Addition);
- (b) any amounts to be paid or accrued to pay the principal and sinking fund installments of, the interest and any redemption premiums on, and all other costs of any Bonds, and any other costs and expenses incurred in connection with Bonds;
- (c) the amounts of any MIRA deficits (including costs of collection) resulting from the failure to receive, when and as due: (i) sums payable to MIRA by any Participating Municipality or by any other Person with respect to services provided by MIRA pursuant to this Agreement or to any other Municipal Solid Waste Management

Services Agreement; or (ii) sums payable to MIRA by any Person with respect to services provided by MIRA;

- (d) amounts necessary to fund and maintain such Reserves or sinking funds to provide for expenses of operation and maintenance, or for any purpose deemed necessary or desirable by MIRA, including any purpose enumerated in Sections 22a-262(a) and (b) of the General Statutes;
- (e) all costs of environmental mitigation, clean-up and disposal of Unacceptable Waste, which costs MIRA has been unable, after reasonable efforts, to collect from the generator (or Person delivering such Unacceptable Waste on behalf of such generator);
- (f) the PILOT;
- (g) all costs of accepting, delivering, storing, diverting, transporting, transferring and disposing of Solid Waste, and the marketing of Recovered Products (including ordinary operation and maintenance costs);
- (h) all costs and any special disposal fees incurred by MIRA with respect to types or categories of delivered Solid Waste which MIRA determines require special handling, which fees shall reasonably reflect the costs of such special handling;
- (i) all direct transportation, processing and disposal costs incurred by MIRA with respect to Acceptable Solid Waste which is processed or otherwise disposed of at an Alternate Facility;
- (j) all MIRA costs and expenses for the administration of this Agreement and the analogous agreements with the other Participating Municipalities;
- (k) all costs of the mothballing, decommissioning, retirement, dismantling, monitoring and disposition of any Waste Facility, and any other actions of MIRA necessary under applicable law in order to discontinue permanently the operation of such Waste Facility;
- (l) the insurance required pursuant to Section 6.4 and referenced in Section 2.7(d);
- (m) all amounts payable to any owner or operator of a Waste Facility for the processing or disposal of the Participating Municipalities' Acceptable Solid Waste or Acceptable Recyclables;
- (n) any Shortfall from a previous Contract Year; and
- (o) all compliance costs with respect to federal, state, municipal or other governmental requirements; including all statutes, regulations, rules, orders or other directives, and any Change in Law.

“Day” (or “day”) means a calendar day.

“Delivery Obligations” has the meaning set forth in Section 2.2(c).

“Designated Facilities” means, collectively, the Designated Recycling Facility and the Designated Waste Facility.

“Designated Facility” means, individually, the Designated Recycling Facility or the Designated Waste Facility.

“Designated Recycling Facility” means the location, including any Recycling Transfer Station, designated by MIRA from time to time to which the Municipality will deliver or cause to be delivered during the Term, Acceptable Recyclables.

“Designated Waste Facility” means the Facility, any other Resources Recovery Facility or any Transfer Station designated by MIRA from time to time, to which the Municipality will deliver or cause to be delivered during the Term, Acceptable Solid Waste.

“Due Date” has the meaning set forth in Section 5.1.

“Effective Date” has the meaning set forth in the Preamble.

“Emergency Bypass Waste” has the meaning set forth in Section 2.7.

“Facility” means MIRA’s refuse-derived fuel Resources Recovery Facility located at the South Meadows in Hartford, Connecticut and any improvements to such Resources Recovery Facility, including the scales and scale house, receiving and storage buildings, conveyors and feeders, boiler house, combustion chambers & furnaces and the associated steam-turbine electric generating facilities, feed water system, ash handling equipment, air pollution control equipment, flues and stack(s), yard utilities, low voltage electrical distribution facilities, instrumentation and controls, driveways, parking areas and drainage structures; excluding, however, any buildings, equipment or other improvements to the Facility Site other than the aforementioned improvements.

“Facility Site” means the South Meadows real property owned by MIRA upon which the Facility is located.

“Force Majeure Event” means an Act of God, landslide, lightning, hurricane, tornado, very high wind, blizzard, ice storm, drought, flood, fire or explosion, or any strike, labor dispute, lockout or like action among personnel which delays or impairs operation of any Waste Facility, any act of neglect of the Municipality or its agents or employees, or by regulation or restriction imposed by any governmental or other lawful authority, or any other event or circumstance beyond the control of MIRA and its agents or contractors, which prevents MIRA from performing its obligations under this Agreement, which event or circumstance was not anticipated as of the Effective Date and is not within the reasonable control of, and without fault or negligence of MIRA. Notwithstanding the preceding sentence, a strike labor dispute, lockout or like action among personnel shall not be a Force Majeure Event if such action is due to: (a) MIRA’s breach of a labor agreement with any collective bargaining representative of its employees engaged in such action; or (b) MIRA’s lack of

good faith or maintenance of an unreasonable economic position in negotiating with any collective bargaining representative of the employees engaged in such action.

“General Statutes” has the meaning set forth in the Recitals.

“Landfill” means any proper Waste Facility for the disposal of Residue, Recycling Residue, Emergency Bypass Waste or Nonprocessable Waste.

“MFN Recycling Contract” has the meaning in Section 3.3(b).

“MFN Recycling Rights” has the meaning in Section 3.3(b).

“MFN Waste Contract” has the meaning set forth in Section 3.3(a).

“MIRA” has the meaning set forth in the Preamble.

“MIRA Indemnified Party” has the meaning set forth in Section 7.2(a).

“Month” means a calendar month.

“Municipal Indemnified Party” has the meaning set forth in Section 7.2(b).

“Municipal Share” of any amount means, for any relevant period and unless otherwise expressly provided herein, the same proportion of such amount as the Municipal Tons of the Municipality bears to the total of the Municipal Tons of all Participating Municipalities.

“Municipal Solid Waste Management Services Agreement” means any contract between MIRA and a Participating Municipality for the disposal of the Participating Municipality’s Acceptable Solid Waste or the recycling of its Acceptable Recyclables (or both) by the Connecticut Solid Waste System.

“Municipal Tons” means, for any relevant period, the amount in Tons of Acceptable Solid Waste delivered by or on behalf of a Participating Municipality.

“Municipality” has the meaning set forth in the Preamble.

“Net Cost of Operation” means for any relevant period, the Cost of Operation less Non-Disposal Fee Revenues and other receipts (other than the Service Payments).

“Nonprocessable Waste” means Acceptable Solid Waste that cannot be processed at the Designated Waste Facility without the use of supplemental processing equipment (e.g., a shredder), provided that the individual items of such Acceptable Solid Waste are 2,000 pounds or less in weight and physically of such size as to fit without compaction into an area having dimensions of three (3) feet by five (5) feet by five (5) feet, including the following: (i) household furniture, chairs, tables, sofas, mattresses, appliances, carpets, sleeper sofas and rugs; (ii) individual items such as White Metals and blocks of metal that would in MIRA’s sole discretion and determination cause damage to a Waste Facility if processed and incinerated, or processed or incinerated, therein; (iii) Scrap/Light Weight

Metals; (iv) bathroom fixtures such as toilets, bathtubs and sinks; (v) purged and emptied propane, butane and acetylene tanks, with valves removed, exclusively from the residential Solid Waste stream and in limited quantities, if any, to be determined by MIRA on a day-to-day basis; (vi) Christmas Trees; (vii) automobile tires with/without rims; and (viii) any other Acceptable Solid Waste deemed by MIRA in its sole discretion to be Nonprocessable Waste.

“Non-Disposal Fee Revenues” means proceeds received by MIRA from the sale or other disposition of Recovered Products from the Connecticut Solid Waste System, and Connecticut Solid Waste System receipts from other than: (i) Participating Municipalities; and (ii) Waste Haulers; except that Non-Disposal Fee Revenues (i) include all Service Fees, Transfer Station Usage Surcharges, Transfer Station Fuel Charges, and any additional fees or surcharges pursuant to Section 3.2(b), and (ii) are net of all Service Discounts.

“Non-System Recycling Facility” means the land and appurtenances thereon and structures where recycling, as defined in Section 22a-207(7) of the General Statutes, is conducted, including an Intermediate Processing Facility, as defined in Section 22a-260(25) of the General Statutes, and a Solid Waste Facility, as defined in Section 22a-207(4) of the General Statutes, which provides for recycling in its plan of operations, but excluding the Recycling Facility and the Recycling Transfer Stations.

“Notice of Non-Compliance with Delivery Obligations” has the meaning set forth in Section 2.2(c).

“Original Designated Facilities” has the meaning set forth in Section 2.6.

“Ordinance” has the meaning set forth in Section 2.2(c).

“Other Tip Fee” has the meaning set forth in Section 3.3(a).

“Participating Municipality” means, individually, any Tier 1 Short-Term Municipality, Tier 1 Long-Term Municipality, Tier 2 Municipality, Tier 3 Municipality or Tier 4 Municipality.

“Participating Municipalities” means collectively, all Tier 1 Short-Term Municipalities, Tier 1 Long-Term Municipalities, Tier 2 Municipalities, Tier 3 Municipalities and Tier 4 Municipalities.

“Party” (and “Parties”) have the respective meanings set forth in the Preamble.

“Person” means any individual, corporation, partnership, limited liability company, joint venture, trust or unincorporated organization, or any governmental agency or other governmental authority.

“PILOT” means the total dollar amount in lieu of taxes and all other like sums payable by MIRA with respect to each Contract Year.

“Preceding Contract Year” has the meaning set forth in Exhibit E.

“Procedures” means MIRA’s *CONNECTICUT SOLID WASTE SYSTEM Permitting, Disposal and Billing Procedures* attached hereto as **Exhibit B**, as the same may be amended, supplemented or superseded from time to time by the MIRA Board of Directors after notice to, and an opportunity for comment from the Participating Municipalities.

“Recovered Products” means the useful materials or substances (including energy) derived from the processing of Acceptable Solid Waste and Acceptable Recyclables.

“Recycling Facility” means MIRA’s regional recycling center located at 211 Murphy Road, Hartford, Connecticut.

“Recycling Rebate” has the meaning set forth in Section 3.4.

“Recycling Residue” means Solid Waste remaining after the Recycling Facility or any Non-System Recycling Facility has processed Acceptable Recyclables.

“Recycling Transfer Station” means any of the facilities, including all roads appurtenant thereto, owned and operated, or owned or operated, by MIRA for receiving Acceptable Recyclables from any Participating Municipality for transport to the Recycling Facility or to any Non-System Recycling Facility for processing.

“Reserves” means funds collected by MIRA to provide for estimated future expenses of the Connecticut Solid Waste System.

“Residue” means ash residue or other material remaining after the processing and combustion of Acceptable Solid Waste.

“Resources Recovery Facility” has the meaning set forth in Section 22a-260(11) of the General Statutes.

“Review Panel” has the meaning set forth in Section 4.2.

“RP” has the meaning set forth in **Exhibit D**.

“Scrap/Light Weight Metals” includes the following: scrap steel parts, aluminum sheets, pipes, desks, chairs, bicycle frames, lawn mowers with engines drained, file cabinets, springs, sheet metal, hot water heaters, cleaned and emptied fifty-five (55) gallon drums with the top and bottom covers removed, fencing, oil tanks and fuel tanks approved by MIRA for disposal or recycling, and cleaned and rinsed in accordance with all applicable laws and regulations, and any other materials deemed by MIRA in its sole discretion to be Scrap/Light Weight Metals.

“Service Discount” means the \$2.00 per-Ton discount credited to the Base Disposal Fee for Acceptable Solid Waste delivered to the Connecticut Solid Waste System by or on behalf of (i) each Tier 1 Long-Term Participating Municipality, and (ii) each Tier 3 Participating Municipality.

“Service Fee” means the \$2.00 per-Ton fee added to the Base Disposal Fee for Acceptable Solid Waste delivered to the Connecticut Solid Waste System by or on behalf of each Tier 2 Participating Municipality.

“Service Payments” means the gross amounts payable pursuant to Section 3.1 by (i) the Municipality and each other Participating Municipality, and (ii) Waste Haulers (with respect to other than Contract Waste and Spot Waste); such amounts being the product of the Base Disposal Fee and the Aggregate Tons.

“Shortfall” means for any Contract Year, any difference remaining after the Service Payments received during the subject Contract Year are subtracted from the actual Net Cost of Operation for the subject Contract Year.

“Solid Waste” means unwanted and discarded solid materials, consistent with the meaning of that term in Section 22a-260(7) of the General Statutes, excluding semi-solid, liquid materials collected and treated in a municipal sewerage system.

“Spot Waste” means Acceptable Solid Waste delivered to the Connecticut Solid Waste System other than pursuant to a Municipal Solid Waste Management Services Agreement and that is not Contract Waste.

“State” has the meaning set forth in the Preamble.

“Subject Contract Year” has the meaning set forth in **Exhibit E**.

“Term” has the meaning set forth in Section 2.8.

“Tier 1 Short-Term Municipality” means, individually, any town, city, borough or other political subdivision of and within the State having lawful jurisdiction over Solid Waste management within its corporate limits and which has executed a Municipal Solid Waste Management Services Agreement with MIRA for short-term Tier 1 services.

“Tier 1 Long-Term Disposal Fee” has the meaning set forth in Section 302(a).

“Tier 1 Long-Term Municipality” means, individually, the Municipality and any other town, city, borough or other political subdivision of and within the State having lawful jurisdiction over Solid Waste management within its corporate limits and which has executed a Municipal Solid Waste Management Services Agreement with MIRA for long-term Tier 1 services.

“Tier 2 Municipality” means, individually, any town, city, borough or other political subdivision of and within the State having lawful jurisdiction over Solid Waste management within its corporate limits and which has executed a Municipal Solid Waste Management Services Agreement with MIRA for Tier 2 services.

“Tier 3 Municipality” means, individually, any town, city, borough or other political subdivision of and within the State having lawful jurisdiction over Solid Waste management within its

corporate limits and which has executed a Municipal Solid Waste Management Services Agreement with MIRA for Tier 3 services.

“Tier 4 Municipality” means, individually, any town, city, borough or other political subdivision of and within the State having lawful jurisdiction over Solid Waste management within its corporate limits and which has executed a Municipal Solid Waste Management Services Agreement with MIRA for Tier 4 services.

“Ton” means 2,000 pounds.

“Torrington Transfer Station” means the Transfer Station owned by MIRA and located on Vista Drive, Torrington, Connecticut, 06790

“Transfer Station” means any of the facilities, including all roads and appurtenances thereto, owned, operated (or both) by MIRA for receiving Solid Waste from any Participating Municipality for transport to a destination of ultimate disposal.

“Transfer Station Fuel Surcharge” means the per-Ton surcharge for Acceptable Solid Waste calculated pursuant to **Exhibit D**.

“Transfer Station Usage Surcharge” means the \$2.50 charge paid by each Tier 2 Municipality for each Ton of Acceptable Solid Waste delivered to a Transfer Station.

“Unacceptable Waste” has the meaning set forth in the Procedures.

“Waste Facility” means, individually, either Designated Facility, the Facility or any other properly permitted Resources Recovery Facility, the Recycling Facility, any Transfer Station, Recycling Transfer Station or Landfill, or any other facility that is used or may be used by MIRA to (i) process or dispose of Acceptable Solid Waste or (ii) recycle Acceptable Recyclables.

“Waste Hauler” means a Person (including a “collector,” as defined in Section 22a-220a(g) of the General Statutes), deriving its main source of income from the collection, transportation or disposal of waste.

“Watertown Transfer Station” means the Transfer Station owned by MIRA and located on Echo Lake Road, Watertown, Connecticut, 06795.

“White Metals” means large appliances or machinery, refrigerators, freezers, gas/electric stoves, dish washers, clothes washers and dryers, microwaves, copiers, computers, vending machines, air conditioners, industrial equipment and venting hood fans, and any other material deemed by MIRA in its sole discretion to be White Metals.

EXHIBIT B

**CONNECTICUT SOLID WASTE SYSTEM PERMITTING, DISPOSAL AND BILLING
PROCEDURES**

EXHIBIT C

DESIGNATED WASTE FACILITY AND DESIGNATED RECYCLING FACILITY

Designated Waste Facility: [INSERT NAME]

Designated Recycling Facility: [INSERT NAME]

EXHIBIT D

TRANSFER STATION FUEL SURCHARGE

MIRA shall determine the Transfer Station Fuel Surcharge (if any) as part of its Budget process for each Contract Year, commencing with Contract Year 2. Commencing with Contract Year 2, MIRA shall assess the Transfer Station Fuel Surcharge during each Contract Year in which the average price of diesel fuel (the "ADP") for the immediately-preceding calendar year (the "Annual Period"), exceeds the reference price of \$5.00 per gallon (the "RP"), calculated as the average of the Northeast Urban Automotive Diesel Fuel (Series ID Number APU010074717) for the Annual Period, as published monthly by the U.S. Department of Labor, Bureau of Labor Statistics, or a mutually agreeable alternative index if such index is no longer published or the method of computation thereof is substantially modified.

For each \$0.10 increase (or portion thereof) that the ADP exceeds \$5.00 per gallon, the Transfer Station Fuel Surcharge shall equal \$0.065 (or portion thereof, rounded to the next-highest whole cent), pursuant to the following formula:

$$\text{Transfer Station Fuel Surcharge} = (0.065) \frac{(\text{ADP} - \text{RP})}{(0.10)}$$

EXAMPLE

Assume that the ADP for the prior Annual Period is \$6.00 per gallon.

$$\text{ADP} = \frac{(0.065) \times 1.00}{0.10}$$

$$\text{ADP} = \$0.65 \text{ cents per Ton}$$

EXHIBIT E

OPT-OUT TIP FEE

Commencing with Contract Year 2, the Opt-Out Tip Fee shall be calculated for Contract Year 2 and for each subsequent Contract Year in accordance with the following formula:

$$\text{OOTF}_X = \text{OOTF}_B \times [1 + (.75) \frac{(\text{CPI}_X - \text{CPI}_B)}{\text{CPI}_B}]$$

Where:

OOTF_X is the Opt-Out Tip Fee being calculated for the subject Contract Year (the "Subject Contract Year");

OOTF_B is the Opt-Out Tip Fee for the Contract Year preceding the Subject Contract Year (the "Preceding Contract Year");

CPI_B is the Consumer Price Index for All Urban Consumers (Northeast Urban/Size Class B/C Index, All Items) (Series Id: CUURX100SA0) as published monthly by the U.S. Department of Labor, Bureau of Labor Statistics, as of the December prior to the Preceding Contract Year; and

CPI_X is the Consumer Price Index for All Urban Consumers (Northeast Urban/Size Class B/C Index, All Items) (Series Id: CUURX100SA0) as published monthly by the U.S. Department of Labor, Bureau of Labor Statistics, as of the December prior to the Subject Contract Year.