

Memorandum of Understanding

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is made as of July 10, 2019, by and between Sacyr Rooney Recovery Team, LLC, an Oklahoma limited liability company having an address at 3330 Washington Blvd, Suite 400 Arlington, Virginia 22201 (“SRRT”) and the Materials Innovation and Recycling Authority, a quasi-public agency established pursuant to Chapter 446e of the Connecticut General Statutes, having an address at 200 Corporate Place, Rocky Hill, Connecticut 06067 (“MIRA”). SRRT and MIRA are each a “Party” and are collectively, the “Parties”.

**RECITALS**

WHEREAS, SRRT was selected as the preferred proposer on December 31, 2017 for the Redevelopment of the Connecticut Solid Waste System Project (the “CSWS Project”) after the Request for Proposals (“RFP”) process established by the Connecticut Department of Energy and Environmental Protection (“DEEP”) pursuant to Conn. Gen. Stat. 22a-268g concluded;

WHEREAS, since SRRT was selected as the preferred proposer, SRRT and MIRA entered into negotiations in order to achieve the objectives of the RFP with the ultimate goal of entering into a Comprehensive Development Agreement (“CDA”) for the CSWS Project on terms acceptable to both parties;

WHEREAS, this MOU reflects the selection by DEEP of the one final proposal for MIRA to negotiate with as set forth in Conn. Gen. Stat. 22a-268g and fulfills the requirements of Conn. Gen. Stat. 22a-268g;

WHEREAS, MIRA has the authority pursuant to Conn. Gen. Stat. 22a-268 to determine terms and conditions of its contracts and to use private industry, provided MIRA considers such terms, conditions and contracts to be in the best interests of its municipalities and such contracts are determined by MIRA to be compliant with Chapter 446e;

WHEREAS, the purpose of this MOU, though not contractually binding upon the Parties, is to memorialize certain agreed upon conceptual aspects of the project structure between SRRT and MIRA and to outline a process to facilitate the advancement of CDA negotiations; and

WHEREAS, the Parties acknowledge that this MOU establishes a staged development framework, capacity sharing model and high level description of the roles and responsibilities of the Parties, consistent with MIRA’s aforementioned authority, which shall be used to further develop a Term Sheet and CDA, and which framework is further recognized as necessary for calculating a competitive tip fee, establishing revenue sharing and capacity sharing arrangements, structuring an availability payment and developing meaningful 30 year forecasts such that redevelopment of the WTE Facility and development of the MBT Facility as defined herein are achieved and its pricing to the municipalities is reasonable and competitive;

WHEREAS, the Parties further acknowledge that this MOU establishes the initial baseline parameters for such staged development framework and capacity sharing model including the estimated throughput capacity requirements of the WTE Facility, Recycling Facility and MBT Facility during and after refurbishment activities, MIRA guaranteed deliveries of MSW and recycling, and the parameters for the Joint Capacity Share and SRRT Capacity Share, as hereinafter defined;

WHEREAS, if further due diligence by the parties demonstrates significant changes to such baseline parameters are warranted to achieve a financially viable project, or if MIRA is unable to provide a long term capacity guaranty as contemplated herein, the Parties reserve the right to renegotiate such parameters such that a reasonable and competitive tip fee is secured;

WHEREAS, the Parties desire to execute this MOU acknowledging that certain values to be used within the framework and model established herein remain subject to further analysis based upon due diligence and financial modelling, and subsequently set forth more particularly in Term Sheets and ultimately the CDA; and

WHEREAS, the Parties acknowledge that time is of the essence for the Parties to develop the Term Sheet and the CDA and this MOU shall terminate if neither the Term Sheet or the CDA are executed on or before the dates set forth herein.

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, SRRT and MIRA are willing to proceed based upon the following Project Structure:

1. **Term:** The Term of the CDA will be for 30 Years, with a potential for two, five-year extensions as to be determined between MIRA and SRRT in the CDA.
2. **The Project Facilities & Capacities:** The CSWS Project shall be undertaken in three stages.
  - a. **Stage I.** The first stage shall begin immediately, be the priority and include the redevelopment of the Waste-to-Energy Facility, which includes the waste processing facility and power block facility, (together the "WTE Facility"). During Stage 1 the WTE Facility shall be refurbished in a manner to provide annual processing capacity of 500,000 tons throughout the redevelopment period. Stage I shall also include any agreed upon improvements to the Recycling Facility and Transfer Stations. During Stage 1 the Recycling Facility shall be refurbished in a manner so as to continuously provide annual processing capacity of 50,000 tons throughout the redevelopment period. MIRA and SRRT jointly shall develop technical standards and specifications, schedule milestones, and an appropriate design and construction approval regime. The Parties further agree that, subject to certain agreed upon conditions, the design, permitting, engineering and development work for the MBT Facility shall be initiated by SRRT upon execution of the CDA and MIRA shall not be required to fund or provide any financing for the MBT Facility. The permitting for the MBT Facility shall achieve 2,250 TPD, with diversion goals to be consistent with the RFP (including a deadline for achievement thereof) and based upon the final capacity and capabilities of the facility, all to be further established in the Term Sheet.
  - b. **Stage II.** The second stage shall begin upon substantial completion of the WTE (as defined in the CDA) Facility redevelopment and continue through completed development of SRRT's proposed Mechanical and Biological Treatment (MBT) Facility. Pursuant to the DEEP RFP and this MOU, upon the commencement of Stage II the WTE Facility shall have the capacity to process a minimum of 698,063 tons per year ("TPY") of Acceptable MSW which reflects a design capacity of 2,250 tons per day ("TPD") at 85% annual availability. It is presently estimated that the WTE Facility redevelopment will provide adequate additional capacity to combust the permitted capacity of the WTE Facility as set forth on Exhibit A attached hereto. The parties agree that the Stage I and II WTE Facility redevelopment shall at all times be developed and operated within all existing permit limitations summarized on Exhibit A. Further pursuant to the DEEP RFP and this MOU, the Recycling Facility shall have the capacity to processes a minimum of 100,000 TPY of Acceptable Recyclables.

- c. Stage III. The third stage shall begin upon completion of the MBT Facility and continue through the term of the CDA. It is expected that, upon the commencement of Stage III, the CSWS shall have the capacity to receive approximately 880,000 tons of MSW annually and that such additional capacity shall be derived through enhanced diversion of MSW achieved through use of the MBT Facility such that no more than the permitted capacity of RDF shall be combusted annually throughout Stage III.
3. Public Ownership and Grant of Access. The CDA shall set forth the following terms and conditions:
- a. MIRA owns all sites and facilities comprising the CSWS Project (the WTE, Recycling Facility and transfer stations) ("Existing Facilities") redeveloped in Stage I and the MBT Facility (to be developed in Stage II).
  - b. At all times, the Existing Facilities, as redeveloped or otherwise modified, and the MBT shall be considered "public facilities", owned and operated on behalf of public sector interests.
  - c. MIRA shall contract directly with Connecticut municipalities under municipal solid waste agreements ("MSAs") and with private haulers under hauler agreements (collectively "MIRA Disposal Contracts") and shall further secure Interruptible Contract Waste ("ICW") and deliver Acceptable MSW and Acceptable Recyclables, which must be accepted at the CSWS Project.
  - d. MIRA will seek to guarantee, through acquisition of MIRA Disposal Contracts and ICW, a minimum of 650,000 tons of municipal solid waste ("MSW") deliveries to the WTE and seeks to achieve 75,000 tons of single stream recycling deliveries to the Recycling Facility ("MIRA Capacity Share"). The guarantee is conditioned upon:
    - (i) reaching satisfactory terms in the CDA including but not limited to a schedule of firm Availability Payments (as defined in Section 6.c.(i)2 below) to be included in the tip fees to be assessed by MIRA pursuant to the MIRA Disposal Contracts, and renewals thereof throughout the term of the CDA, if appropriate, for the WTE, Recycling and MBT Facilities;
    - (ii) tonnage committed to the project by each MIRA customer pursuant to MIRA Disposal Contracts and agreement on the allocation of risk between MIRA and its customers that could increase the tip fee beyond changes in law (if any such risks are agreed to by MIRA and its customers);
    - (iii) MIRA Disposal Contracts structured to provide adequate security to support the waste guarantee, which security may include a "put or pay" provisions and/or other guarantees securing each municipality's delivery of its share of MSW to the CSWS Project;
    - (iv) Any events or conditions that could increase the Availability Payments.
  - e. MIRA Disposal Contracts and CDA shall be structured to provide enforceable flow control of solid waste as determined by MIRA and recyclables to the CSWS by MIRA.
  - f. MIRA shall administer and enforce all terms and conditions of MIRA Disposal Contracts and ICW.
4. Capacity above 650,000 tons.
- a. MIRA and SRRT shall be jointly responsible for delivery of the next 70,000 tons of MSW ("Joint Capacity Share") and shall negotiate further terms, conditions and enforceability of such delivery contracts

- b. Subject to the existing permit limitations set forth on Exhibit A, SRRT has the right to secure delivery of the next 160,000 tons ("SRRT Capacity Share").

5. Financing

a. WTE Facility, Transfer Stations and Recycling Facility (Stage I)

- (i) MIRA agrees to finance the WTE Facility redevelopment together with any improvements necessary for the transfer stations and Recycling Facility ("MIRA Financing"). The MIRA Financing shall consist of tax-exempt revenue bonds secured by a pledge of the revenue due MIRA for the MIRA Capacity Share, due MIRA for the Joint Capacity Share and the SRRT Capacity Share. The MIRA Financing shall be conditioned on MIRA contracting adequate security under the MIRA Disposal Contracts, a firm design build contract for the WTE Facility redevelopment and the Recycling Facility redevelopment approved by MIRA, a firm Availability Payment for the WTE Facility and the Recycling Facility, a tip fee schedule, and approval of a Special Capital Reserve Fund for the MIRA Financing by the Office of the State Treasurer.
- (ii) Further details related to the financing of the Stage I will be set forth in the term sheet and/or CDA, including without limitation each party's responsibilities with respect to such financing, a deadline for obtaining financing, and the consequences of not obtaining financing by such deadline.

b. MBT Facility (Stage II)

- (i) MIRA and SRRT agree that the MBT Facility, once ultimately permitted, will be financed separately from Stage I as will be set forth in further detail in the term sheet and CDA.
- (ii) The construction of the MBT Facility shall be financed exclusively by SRRT.
- (iii) CSWS Project revenue available for debt service on the MBT Financing includes the SRRT Revenue Sharing due SRRT for the Joint Capacity Share, the SRRT Capacity Share, and the MBT commodity revenues. The MBT Financing shall be conditioned on MIRA securing the MIRA Financing. The CDA will set forth in detail the conditions precedent for construction of the MBT Facility, including without limitation obtaining all necessary permits therefor, the availability of financing on commercially reasonable terms, and the commercial feasibility thereof.
- (iv) Prior to entering into the CDA, SRRT will develop a price for the design and a schedule for regulatory permitting and approvals for the MBT.
- (v) It is expressly understood between the parties that neither MIRA nor any second party to MIRA Disposal Contracts shall be or become liable for the payment of any debt service on bonds issued by SRRT to finance its improvement and development of Stage II in the event of an SRRT default or otherwise. The only lender recourse in the event of such a default shall be the assumption of SRRT development and operating obligations (subject to further structuring and negotiation between SRRT's lender and MIRA) in

- return for receipt of the revenue pledged to repayment of such obligations defined above and ultimately under the CDA.
- (vi) Further details related to the financing of the Stage II will be set forth in the term sheet and/or CDA, including without limitation each party's responsibilities with respect to such financing, a deadline for obtaining financing, and the consequences of not obtaining financing by such deadline.

6. Compensation from Bond Proceeds and Revenues

- a. MIRA Financing (Stage I).
- (i) A construction fund will be established as part of the MIRA Financing, which shall be adequately funded and administered by MIRA to pay SRRT for construction of the WTE Facility redevelopment and Recycling Facility redevelopment on the schedules to be determined in the WTE Facility and Recycling Facility Design Build Contracts, which contracts shall be required at the time of the CDA.
- (ii) All WTE Facility and Recycling facility revenue will be deposited and administered by MIRA under the terms of an Indenture of Trust and the CDA.
- b. For Design/Build/Operation of Stage II & III.
- (i) Other than distribution of the MIRA Availability Payments, together with SRRT Revenue Sharing due SRRT for the Joint Capacity Share and the SRRT Capacity Share, MIRA has no obligation to make any payments to support the design, permitting, engineering and development work, or operation of the MBT Facility.
- c. For Operation & Maintenance of Stage I
- (i) Allocation of Revenues Associated with the WTE Facility.
1. Unless otherwise specifically identified herein or negotiated otherwise in the Term Sheet and/or CDA, all revenues associated with the operation of the WTE Facility and Recycling Facility shall be MIRA's whether revenues result from the MIRA Capacity Share, the Joint Capacity Share or the SRRT Capacity Share. By way of example and not limitation, MIRA shall retain all WTE Facility tip fee, energy, post combustion and other "Non Disposal Fee Revenues" and provide Stage I distributions as set forth herein, if any.
2. MIRA will pay SRRT a fixed monthly sum, indexed for inflation, for the operation and maintenance of the WTE Facility and Recycling Facility (excluding any operation and maintenance expense associated with the MBT Facility) (the "Availability Payments") in amounts yet to be determined. The Availability Payments will require SRRT to operate and maintain the WTE Facility and Recycling Facility such that they meet the capacity requirements set forth in Section 2 hereof, all in accordance with technical and performance standards to be agreed upon in the CDA. The effectiveness of the Availability Payments shall be established in ongoing

discussions of the Term Sheet and CDA pursuant to the status and terms of existing operator contracts.

3. Certain energy and output standards with respect to energy and recyclables shall be established in the Term Sheet and/or CDA. The terms shall recognize that MIRA will remain responsible for the marketing of such energy and Acceptable Recyclables.
4. The Availability Payments will be subject to periodic audits and a reconciliation process to be agreed upon in the CDA. The intent of this process will be to ensure that the Availability Payments are being expended for appropriate operations and maintenance, such that unreasonable unfunded liabilities for such operations and maintenance are not accruing, and that the WTE Facility and Recycling Facility are operated and maintained to standards to be established in the CDA. The CDA shall provide a mechanism for the withholding of funds from the Availability Payments in the event unreasonable unfunded liabilities are found to be accruing or such maintenance standards are not being met, as determined by a mutually agreed upon independent engineer throughout the Term.

(ii) Allocation of Revenues Associated with the Joint Capacity Share

1. The tip fee and energy revenue, excluding capacity payments and renewable energy credits, associated with deliveries between 650,000 tons and 720,000 tons shall be shared 50 % by MIRA and 50% by SRRT, who shall both be responsible for acquiring such MSW. MIRA agrees that its share of Joint Capacity Share revenue, after its proportionate share of marginal WTE costs, shall be used to offset tip fees for the WTE. SRRT's share of Joint Capacity Revenue shall be used to pay its proportionate share of marginal WTE costs, partially fund its development and operation of the MBT Facility, and earn a reasonable profit. The parties anticipate that throughout Stage II the Joint Capacity Share will generate net revenues to SRRT which are expected to be used for such purposes. Since the duration of Stage II remains unknown, the parties agree that MIRA shall establish a fund for the deposit of such net revenue and shall administer such fund solely for the payment of MBT Facility development and operating costs to SRRT which process shall be further defined in ongoing discussions of the Term Sheet and CDA. Any amounts remaining in such fund and not required for such purposes shall be returned to MIRA.

(iii) Allocation of Revenues Associated with the SRRT Capacity Share

1. The tip fee revenue beyond 720,000 tons shall inure to the benefit of SRRT with some sharing due MIRA as to be further negotiated in the term sheet. For any tonnage over 720,000 tons MIRA receives all other revenues (e.g., energy, post combustion revenues). SRRT's tip fee revenue shall be used to pay marginal waste to energy facility costs, subsidize its development and operation of the MBT Facility and provide an agreed upon profit for SRRT.

d. For Operation and Maintenance of the MBT Facility (Stage III).

- (i) SRRT shall have the exclusive right to operate and sell recycled commodities derived through operation of the MBT Facilities. SRRT and MIRA agree to develop a revenue sharing formula in the Term Sheet for revenues derived from Phase III. SRRT shall have the exclusive right to market and administer disposal capacity not otherwise allocated to MIRA as a priority delivery under the CDA; provided that the CDA shall include terms and conditions upon which SRRT could accept additional MIRA deliveries.
- e. Stage III Contingency. In the event the MBT Facility is not permitted and/or constructed, the parties acknowledge that the CDA must provide for the terms specified herein or as may be further set forth in the term sheet to unwind and alternative terms must be developed relative to the Availability Payment, and the allocation of revenues associated with the Joint Capacity Share and the SRRT Capacity Share.

**7. SRRT Due Diligence.**

- a. SRRT and MIRA acknowledge that additional work is required to ascertain the condition of the WTE Facility and Recycling Facility and the precise rehabilitative work and improvements to be performed such that construction costs can be estimated, a design-build contract may be developed, operational costs projected, and tip fees may be calculated. Promptly upon execution of this MOU, MIRA and SRRT agree to devote sufficient technical resources to develop and agree upon a scope of such work to a degree of detail that will allow SRRT to develop fixed turnkey pricing, a design and construction schedule for the design-build work and information sufficient to support a design-build contract.
  - b. SRRT will also develop a price proposal for the operation and maintenance of the WTE Facility and Recycling Facility for MIRA's review, including proposed Availability Payment schedules. The price proposal may be accepted, rejected or modified by MIRA based upon its review.
  - c. In parallel, SRRT will develop a scope for the MBT Facility and a price for the MBT Facility work for the review and approval of MIRA and DEEP.
- 8. Tip Fees.** Reasonable tip fees are required for MIRA to secure MIRA Disposal Contracts and are required for each of the WTE, Recycling Facility and MBT.
- a. Financial forecasts and the contract terms and conditions underlying projected tip fees and firm Availability Payments must be developed in adequate detail for MIRA to secure the MIRA Disposal Contracts and the MIRA Financing as contemplated herein. The parties agree to work together to develop the basis for such forecasts, tip fees and Availability Payments generally in accordance with the areas of responsibility described herein.
  - b. SRRT shall develop a scope of work and cost estimate for its proposed refurbishment of the WTE Facility and Recycling Facility in sufficient detail to enable a thorough review by MIRA, ultimate agreement between the Parties and inclusion in firm design / build contracts for each facility. SRRT shall further develop its proposed Availability Payments for the WTE Facility and Recycling Facility in sufficient detail to enable a thorough review by MIRA and ultimate agreement between the Parties. MIRA has provided its available baseline information concerning the WTE Facility and Recycling Facility operating and maintenance expenses for evaluation by SRRT together with its itemization of elements to be included in the Availability Payments. SRRT shall evaluate this information, including,

but not limited to operating and maintenance expense savings to be achieved as a result of its proposed refurbishment work, and provide MIRA with its proposed thirty (30) year forecast of firm Availability Payments. All labor, administrative and O&M expenses will be specified in detail. SRRT shall further define any requested circumstance beyond CPI increases and change in law that would produce a change in the firm Availability Payments. SRRT shall further provide its estimated improvement in facility performance metrics to be achieved as a result of its proposed refurbishment work including, but not limited to, energy production from the WTE Facility, MSW and recycling throughput capabilities, in sufficient detail to enable review by MIRA and agreement between the Parties on SRRT performance guarantees ultimately to be included in the CDA. SRRT agrees to respond timely and fully to MIRA requests for information concerning such forecasts and terms.

- c. MIRA shall incorporate SRRT's estimates into an overall forecasting model that shall reflect the full Cost of Operation, including City of Hartford PILOT Payments, Non Disposal Fee Revenue, Net Cost of Operation and estimated tip fees for use of the CSWS. The forecasting model shall be developed by MIRA consistent with the capacity share regime outlined herein, as may be modified by mutual agreement between the Parties during the course of Term Sheet negotiations. The forecasting model shall further produce estimates of gross non commodity revenue available to support SRRT's development and operation of the MBT Facilities.
- d. The CDA will include an initial base Availability Payment to be included in the tip fee to be assessed under the MIRA Disposal Contracts, with such Availability Payment rising only (a) in accordance with changes to CPI and (b) upon the occurrence of a Change in Law or any such other events or conditions as may be agreed to by MIRA and SRRT.
- e. The CDA shall separately address the development and assessment of tip fees associated with the Joint Capacity Share and the SRRT Capacity Share provided that deliveries under the MIRA Disposal Contracts shall receive first priority.

**9. Schedule.**

- a. A term sheet shall be executed by the parties on or before November 15, 2019 and a CDA by October 15, 2020. These dates reflect a realistic and appropriate time frame for the parties to negotiate in good faith, while recognizing that time is of the essence for the development of the Term Sheet and the CDA. If no Term Sheet or CDA is executed on or before these dates, this MOU shall terminate and no further negotiations shall occur, with no recourse to either party.
- b. The Term Sheet to be executed on or before November 15, 2019, shall include but not be limited to definitive terms relating to (i) a proposed scope of work and cost estimate for each of the WTE and Recycling Facilities to be redeveloped in Stage I; (ii) proposed Availability Payments for each of the WTE and Recycling Facilities; (iii) Requested conditional terms for change in Availability Payments (other than CPI or changes in law); and (iv) proposed guaranteed performance metrics for each of the WTE and Recycling Facilities. After execution of this MOU, the parties agree to develop a meeting and negotiation schedule to facilitate achievement of these terminal dates. Despite this schedule each party reserves the right at any time to terminate further development of a term sheet or CDA upon written notice to the other party and without any recourse or claim against the terminating party.

- 10. Reservation of Rights.** This MOU is an aid designed to clarify certain terms such that further negotiations constructed upon these fundamental terms may proceed. However, both parties reserve the right to terminate negotiations at any time. MIRA also may cease negotiations and exercise its

right to pursue its own refurbishment of the WTE and Recycling Facility at any time. SRRT agrees it is proceeding at its own risk and that it shall have no recourse against MIRA in the event of any termination by MIRA.

11. **No Joint Venture.** The execution of this MOU shall not be deemed or implied to create any relationship or joint venture between MIRA and SRRT. It is not and was not intended that any activities of MIRA or SRRT in connection herewith were for or shall be for the benefit of, or may be relied upon by, any third party, and neither MIRA or SRRT shall be liable or responsible for any reason to any such party.
12. **Modifications.** This MOU shall not be modified or amended except by a writing signed by the parties hereto, it being understood that no oral modification or amendment of this MOU shall be effective.
13. **Capitalized Terms.** Any capitalized terms used herein and not defined shall have the meaning as set forth in the RFP.

SACYR ROONEY RECOVERY TEAM, LLC

MATERIALS INNOVATION AND  
RECYCLING AUTHORITY

By:  \_\_\_\_\_

By:  \_\_\_\_\_

Title: AUTHORIZED REPRESENTATIVE

Title: President

Date: 7-10-19

Date: 7/10/19