

**Finance Committee
February 7, 2018
Regular Draft Minutes**

Members Present: Committee Chairman Shanley (In person)
Bob Painter (In person)
Jim Hayden (on the Telephone)
Lizz Milardo (on the Telephone)

MIRA Staff Present: Tom Kirk, President
Mark Daley, Chief Financial Officer
Peter Egan, Director of Operations and Environmental Affairs
Laurie Hunt, Director of Legal Services
Thomas Gaffey, Director of Recycling & Enforcement
Jeffrey Duvall, Director of Budgets and Forecasting
Tina Mateo, Assistant Director of Budgets and Cash Management
Kanchan Arora, General Accountant/Board Administrator

Public Present: Ed Spinella, USA Hauling

PUBLIC COMMENT

Committee Chairman Shanley called the meeting to order at 9:32 a.m. He said there were no members of the public who wished to comment and proceeded with the agenda.

1. Approval of the Minutes of the January 3, 2018, Finance Committee Meeting.

Committee Chairman Shanley requested a motion to accept the minutes of the January 3, 2018 Finance Committee meeting. The motion to approve the minutes was made by Director Hayden and seconded by Director Milardo. Director Painter abstained.

The motion to accept the minutes was approved.

2. Review and Approve Draft Resolution Adopting the FY 2019 CSWS Operating and Capital Budget.

Committee Chairman Shanley requested a motion on the above referenced item. The motion to approve was made by Director Painter and seconded by Director Milardo.

RESOLVED: That the Fiscal Year 2019 Materials Innovation and Recycling Authority Operating and Capital Budget for the Connecticut Solid Waste System (“CSWS”) attached

hereto as Exhibit A (presentation form) and Exhibit B (budget line items) is hereby adopted as presented and discussed at this meeting; and

FURTHER RESOLVED: That the Board of Directors hereby acknowledges that such CSWS Operating and Capital Budget does not include funding of activities associated with the Department of Energy and Environmental Protection’s Resource Rediscovery Request for Proposals including its direction that the Authority enter into an agreement for the redevelopment of the CSWS with Sacyr Rooney Recovery Team, LLC (“Resource Rediscovery Activities”); and

FURTHER RESOLVED: That management is directed to develop and recommend for approval by the Board of Directors a budget, source of funds and reporting protocol for such Fiscal Year 2019 Resource Rediscovery Activities upon execution of a Letter of Intent with Sacyr Rooney Recovery Team, LLC governing such activities substantially in the form discussed and reviewed at this meeting; and

FURTHER RESOLVED: That the Board of Directors hereby approves and establishes the following CSWS tip fees for FY 2019:

- Waste Hauler (Non-Participating Towns) - \$74.00 per ton minimum;
- Tier 1 Short Term - \$74.00 per ton;
- Tier 1 Long Term - \$72.00 per ton;
- Tier 2 - \$ 76.00 per ton;
- Tier 3 - \$ 72.00 per ton;
- Tier 4 (continuation TBD) - \$ 75.00 per ton;
- Recycling Deliveries – for the delivery of single stream recyclables by Non Participating municipalities to a transfer station - \$16.00 per ton; and
- Municipal Bulky Waste Deliveries - \$100.00 per ton

Mr. Daley said we have our recommended Final Budget for CSWS, including Tip Fees for Fiscal Year 2019. The budget reflects and relies on past adopted budgets, including the Authority Budget for allocated overhead and the Property Division for financial support through the Tip Fee Stabilization Fund. No change has been recommended to either of those previously-adopted budgets. Mr. Daley reminded the Committee that the funding for Resource Rediscovery Activities was not included in the prior adopted budgets, nor is it in CSWS. This is acknowledged in the resolution and Management is directed to recommend a budget and funding source once MIRA enters into a Letter of Intent with Sacyr Rooney.

Director Shanley asked if there has been discussion with the Department of Energy and Environmental Protection (DEEP) about the expense side of MIRA’s responsibility, or requiring current municipalities to pay for this transaction.

Mr. Kirk said there has been no discussion about cost and he presumes that it is up to MIRA to figure out how to pay for any expenses associated with negotiations.

Director Shanley said that at some point this needs to be addressed in a direct manner, to ensure that the appropriate parties are paying for it. He said DEEP should give us direct directions that current users are responsible to pay. MIRA has a responsibility to protect its customers.

Mr. Daley said the resolution directs management to recommend a budget once MIRA has executed a letter of intent with the developer. MIRA has developed a draft letter of intent which will be discussed in Executive Session. The final recommended budget reflects the feedback received from the Committee in January, which is less conservative on Non Disposal Fee Revenue and boosts the contingency for Major Maintenance work on the bag house, with additional small changes.

Furthermore, Mr. Daley said, last month we were requested to include the key challenges that were discussed as a slide in the presentation. Please note page 2 and page 3 highlight the challenges as requested and also the updates made from last month. Over the last month, MIRA did not gain enough comfort on the key challenges to lower the operating contingency. In addition, there are a few minor changes made within the line items to increase funding on utilities; changes to the original improvement fund projects to include the transfer stations and the additional \$400,000 contingency.

In addition, MIRA finance team is recommending a \$4 increase in the Tip Fee which will exceed the opt out. Even with the \$4 increase, there is a \$20 subsidy on the Tip Fee. Mr. Daley stated that page 6 in the presentation includes the updated opt out Tip Fees and noted we are roughly \$6 over the opt out fee in each case. There has been an increase in bulky waste processing charges, and MIRA recommends an increase in the bulky waste fee. It is currently \$85 per ton and is increased for FY'19 to \$100 per ton.

The motion previously made and seconded was approved.

3. Review and Approve Draft Resolution Regarding the Dispositions and Transfer of Settlement Funds Received in the Matter Known as CRRA V. Lay e. al.

Committee Chairman Shanley requested a motion on the above referenced item. The motion to approve was made by Director Painter and seconded by Director Milardo.

WHEREAS: The Materials Innovation and Recycling Authority, formerly known as the Connecticut Resources Recovery Authority (the "Authority") has heretofore received settlement funds in the matter known as CRRA v. Lay, et al; and

WHEREAS: The disposition of a portion of such settlement funds recovered from law firms ("Counsel Settlements") was addressed in a June 19, 2007 Memorandum of Decision by the Connecticut Superior Court concluding a class action lawsuit known as Towns of New Hartford, Barkhamsted, individually and on behalf of all similarly-situated municipalities v. Connecticut Resources Recovery Authority ("Court's Decision"); and

WHEREAS: The Court’s Decision was (i) that the Authority was unjustly enriched by the Counsel Settlements; (ii) that a constructive trust should be established on a portion of the Counsel Settlements; and (iii) that restitution should be paid to the Mid Connecticut Project towns (“Restitution”); and

WHEREAS: The Court’s Decision on Restitution was equivalent in value to the Mid Connecticut Project town’s increased tip fees plus a 45% municipality responsibility share of diverted funds resulting from and associated with the failure of the Enron-related buy-down transactions (“Municipal Share”); and

WHEREAS: The Court’s Decision on Restitution specified the methodology through which Restitution would be distributed among the Mid Connecticut Project towns (“Allocation Methodology”); and

WHEREAS: subsequent to the Court’s Decision the Authority used Counsel Settlements remaining after the payment of Restitution to continue pursuing additional settlements in the matter known as CRRA v. Lay, et al and upon conclusion of these efforts transferred the sum of three hundred ninety six thousand, nine hundred twenty four dollars (\$396,924) representing the balance of unused Counsel Settlements to the Authority’s Property Division General Fund (“Balance of Counsel Settlements”); and

WHEREAS: subsequent to the Court’s Decision and prior to the cessation of Mid Connecticut Project operations the Authority received additional settlements from financial institutions and others in relation to CRRA v. Lay, et al which funds were used in support of the Mid Connecticut Project; and

WHEREAS: subsequent to the cessation of the Mid Connecticut Project the Authority received the sum of three million eight hundred forty eight thousand, eight hundred and eighty dollars (\$3,848,880) in additional settlements from financial institutions and others in relation to CRRA v. Lay, et al which funds were deposited to the Authority’s Property Division General Fund pending further evaluation of the best use of these funds in support of the current operations of MIRA and/or reservation of a Mid Connecticut Project municipal share, if any, that may be distributed to the Mid Connecticut Project towns. (“Additional Settlements”); and

WHEREAS: Section 22a-267 (6) of the Connecticut General Statutes provides that the Authority may by resolution, authorize both the segregation of such Authority revenues as may at any time be adjudged to be surplus to the needs of the Authority to meet its contractual and other obligations and to provide for its operations or other business purposes, and the equitable redistribution of such segregated surplus revenues to some or all of the users of the system; and

WHEREAS: The Authority has completed substantial milestones related to the final close out of the Mid Connecticut Project and desires to make an interim distribution of surplus funds to the Mid Connecticut Project towns; and

WHEREAS: the Authority desires that such interim distribution address the disposition of the Balance of Counsel Settlements and Additional Settlements.

NOW THEREFORE, be it

RESOLVED: That management is directed to transfer the sum of one million, nine hundred ten thousand, six hundred and twelve dollars (\$1,910,612) from the Property Division General Fund to the Mid Connecticut Project Post Project Closure Reserve which funds represent the Municipal Share of the Balance of Counsel Settlements and Additional Settlements and which funds are hereby adjudged to be surplus to the needs of the Authority; and

FURTHER RESOLVED: That management is directed to deposit any future net settlement receipts in the matter known as CRRA v. Lay, et al to the Authority's Property Division General Fund and to transfer the Municipal Share of any such receipts to the Mid Connecticut Project Post Project Closure Reserve within five (5) business days of the receipt thereof.

Mr. Daley said the Committee has reviewed this item in the feasibility mode numerous times. He said these reviews addressed the total received for matters known as "counsel settlements" which is in the \$40 million range and how those funds were litigated in the New Hartford Lawsuit. MIRA was directed by the court to pay restitution to the Mid-Connecticut (MIDCT) project towns, which was paid in accordance with the direction of the court. That direction essentially quantified a 45% "municipality responsibility share", which represented the tonnage that the towns brought compared to the total tonnage delivered to the project. The remaining counsel settlement funds above the amount disbursed as restitution was used by MIRA to continue the litigation in this matter and achieve further settlements from financial institutions. MIRA documented how the additional settlement funds received before MIDCT Project closed were fully used in support of the MIDCT project, and settlements received after the close of the MIDCT project were deposited to Property Division General Fund pending the decision being made in this resolution.

Mr. Daley said the decision today relies on the June 19, 2007 decision in the New Hartford Lawsuit that quantified restitution on the basis of a 45% municipality responsibility share. Management is recommending that this share of both the balance of Counsel Settlements and additional settlements be transferred to the MIDCT project for inclusion in an interim distribution of surplus funds to the towns which equals \$1.9 million. There are a number of considerations underlying this recommendation including major milestones in completing the close of MIDCT, DEEP's phased compliance program giving new life to the JETS, enhanced Class II REC value, restructured budget assumptions, increased Tip Fees and over the last two

budget cycles we have financially repositioning back to strategic plan levels. There is one last settlement payment expected, which this resolution directs be handled the same way: 45% of the net amount to be retained by MIDCT.

The motion previously made and seconded was approved.

4. Review and Approve – Draft Resolution Regarding an Interim Distribution of Mid Connecticut Project Surplus Funds.

Committee Chairman Shanley requested a motion on the above referenced item. The motion to approve was made by Director Hayden and seconded by Director Painter.

WHEREAS: The Materials Innovation and Recycling Authority, formerly known as the Connecticut Resources Recovery Authority, (“Authority”) operated the Mid Connecticut Project (“Project”) from its inception through its cessation of operations in November 2012; and

WHEREAS: Since the cessation of Project operations, the Authority has undertaken, and continues to undertake, certain project closeout activities which include, but are not limited to, resolution of claims and litigation, closure of the Hartford landfill and an environmental site certification; and

WHEREAS: The Authority has completed major milestones with respect to the Project’s closeout activities such that it is reasonable to forecast that upon completion of the closeout activities the Project will conclude with surplus funds on hand; and

WHEREAS: The Authority presently forecasts that one million five hundred eighty nine thousand three hundred eighty eight dollars (\$1,589,388) of existing Project funds are surplus to the needs of remaining Project closeout activities; and

WHEREAS: Section 401 of the Municipal Solid Waste Management Services Contract between the Authority and the Project’s member municipalities provided that “Service Payments as so determined shall remain in effect for each Contract Year; provided, however, that if the annual Aggregate Service Payments are less than or greater than the Net Cost of Operation for such Contract Year, then the Authority shall determine such difference and include such difference in the Annual Budget for the next succeeding Contract Year.”; and

WHEREAS: Concurrent with the adoption of this Resolution, the Authority has resolved, through its resolution “Regarding Disposition and Transfer of Settlement Funds Received in the Matter Known As CRRA v. Lay, et al” to transfer certain “Balance of Counsel Settlements” and “Additional Settlements” totaling one million, nine hundred ten thousand, six hundred and twelve dollars (\$1,910,612) from the Authority’s Property Division General Fund to the Mid Connecticut Project’s Post Project Closure Reserve (“Transfer Resolution”).

NOW THEREFORE, be it

RESOLVED: That upon completion of the transfer authorized in the Transfer Resolution, management is directed to distribute the sum of three million five hundred thousand dollars to the Project's towns pursuant to the Allocation Methodology described in the Transfer Resolution and as shown on Exhibit A attached hereto; and

FURTHER RESOLVED: That management is directed to inquire and ascertain each town's preferred method of receiving such a distribution which may include a cash distribution or crediting of a town's ongoing account for use of the Connecticut Solid Waste System; and

FURTHER RESOLVED: That management is directed to recommend further distributions of Project funds as the remaining closeout activities are completed.

Mr. Daley said this resolution acknowledges the completion of major milestones related to the final closeout of the MIDCT Project. It states that at this point it is reasonable to forecast that the project will end with surplus funds on hand which will be approximately \$1.6 million. It also acknowledges the resolution completing the transfer of \$1.9 million from the Property Division General Fund. It directs management to distribute the sum of these values (\$3.5 million) to the MIDCT towns using the allocation methodology established in the New Hartford lawsuit. The resulting distribution will leave approximately \$1.9 million in MIDCT Project to complete the close out, which has been represented as worst case in multiple issues. Management is directed to recommend additional distributions as final matters are resolved and to provide distribution by check or credit to current CSWS participating municipalities.

The motion previously made and seconded was approved.

5. Review and Approve – Draft Resolution Increasing FY 2018 Authorized Distributions to the Tip Fee Stabilization Fund.

Committee Chairman Shanley requested a motion on the above referenced item. The motion to approve was made by Director Painter and seconded by Director Hayden.

WHEREAS: The Materials Innovation and Recycling Authority ("Authority") has previously adopted its Fiscal Year 2018 Property Division Operating and Capital Budgets; and

WHEREAS: Pursuant to the resolution adopting such budgets attached hereto as Exhibit A, the Authority authorized a maximum of five million dollars (\$5,000,000) in Property Division receipts for the periods ending July 31, 2017 through June 30, 2018 to be transferred to the Authority's Tip Fee Stabilization Fund; and

WHEREAS: Effective with the disbursements of receipts for the period ending December 31, 2017 the Authority reached such five million dollar maximum and began distributing surplus receipts to the Property Division General Fund in accordance with its Flow of Funds procedure; and

WHEREAS: The Authority anticipates the need to transfer additional Property Division receipts to the Tip Fee Stabilization Fund to support the CSWS Cost of Operation during Fiscal Year 2018.

NOW THEREFORE, be it

RESOLVED: That effective with the disbursement of Property Division receipts for the period ending February 28, 2018 through June 30, 2018 the maximum distribution of Property Division receipts as described in Exhibit A is increased from five million dollars (\$5,000,000) to seven million dollars (\$7,000,000).

Mr. Daley said that in the fiscal year 2018 Property Division and CSWS budgets, MIRA included \$9.97 million in Property Division receipts to be transferred to the Tip Fee Stabilization Fund and used to subsidize the CSWS. MIRA also established a \$5 million cap on these transfers pending further Board authorization to ensure a mid-year review of that status. As of the distribution of December receipts, MIRA hit the \$5 million cap and started transferring to the Property Division General Fund. Currently, MIRA would like to request an increase in the cap to \$7 million, which remains below the \$9.97 million budget expectation. This recognizes that as of December, CSWS is more than \$0.75 million above budgeted income. The plan is to see how the winter wraps up and potentially request another increase in the spring.

As of the December reporting period there is \$566,000 in the Tip Fee Stabilization Fund, all prepaid Tip Fees received in January 2017 have been applied to accounts and \$22.9 million in prior CSWS draws remained contingently due. In January 2018, MIRA received roughly \$8.2 million in prepaid Tip Fees that flowed to Tip Fee Stabilization Fund as reimbursement of prior draws.

The motion previously made and seconded was approved.

6. Review and Approve – Draft Resolution Regarding Additional Use of Reserves and Payment of Projected Legal Expenditures.

Committee Chairman Shanley requested a motion on the above referenced item. The motion to approve was made by Director Painter and seconded by Director Milardo.

WHEREAS, MIRA has entered into Legal Service Agreements with various law firms to perform legal services; and

WHEREAS, the Board of Directors has previously authorized the use of funds from certain reserves for payment of certain fiscal year 2018 projected legal fees; and

WHEREAS, MIRA expects to incur greater than authorized legal expenses related to the environmental remediation and certification of MIRA's South Meadows property;

NOW THEREFORE, it is RESOLVED: That the following additional amount is authorized for payment of projected legal fees and costs to be incurred during fiscal year 2018:

<u>Firm:</u>	<u>Amount:</u>
Cohn Birnbaum & Shea	\$18,385

FURTHER RESOLVED: That the President is authorized to expend up to an additional \$38,385 from the Mid-Connecticut Post-Project Closure Reserve for payment of legal fees and expenses related to the environmental remediation of the South Meadows property incurred in fiscal year 2018.

Mr. Daly said we would like to request additional authority to use MIDCT funds for payment of legal fees for the South Meadows Exit Strategy. He said the amount is consistent with prior projections and estimated reserve requirements.

Mrs. Hunt said that payments of legal fees approved back in May 2017 included payment to Cohn Birnbaum of \$45,000 but only \$25,000 to come from the MIDCT reserve. This resolution addresses both an additional payment and the authority to take the money from the reserve because it's all related to South Meadows.

The motion previously made and seconded was approved.

7. Discussion-Informational

Mr. Daley reviewed the informational reports through December 31, 2017 with the Committee. Mr. Daley said MIRA's total personnel services are currently 12.4% (\$286,000) under budget year to date. The Authority Budget is 11.9% (\$214,000) under budget year to date.

Mr. Daley said the Property Division earned operating income of \$952,000 in December, 11% above budget for the month and 17% above budget year to date.

Mr. Daley said CSWS operating revenues were 3% above budget in December, which puts year to date operating revenue right on budget while operating expenses were 12% above budget for the month of December but 3% under budget for year to date. CSWS year to date income is 106% above budget.

Mr. Daley said that CSWS energy prices are 27% above budget year to date, and that the bulk of that is being realized in the last month or two. The price differential is offsetting production that is 18% under budget. The plant ran at full capacity in the month of December for 9 of 31 days. Actual boiler availability was 77.5% based on the hours running. December

deliveries were 9.9% under budget. MIRA again had strong performance in the Recycling Facility and in metal sales, which were 88% and 83% above budget respectively.

EXECUTIVE SESSION

Committee Chairman Shanley requested a motion to go into Executive Session to discuss pending litigation and pending RFP responses, trade secrets, personnel matters, security matters and feasibility estimates and evaluations.

The motion was made by Director Milardo and seconded by Director Hayden. The motion was approved. Committee Chairman Shanley requested that the following people remain for the Executive Session in addition to the Committee members:

Tom Kirk
Peter Egan
Laurie Hunt
Mark Daley

The Executive Session commenced at 10:47 a.m. and concluded at 11:44 a.m.

The meeting was reconvened at 11:44 a.m. The door was opened, and the Board Secretary and all members of the public were invited back in for the continuation of public session.

ADJOURNMENT

Committee Chairman Shanley requested a motion to adjourn the meeting, which was made by Director Hayden and seconded by Director Milardo.

The meeting was adjourned at 11:45 a.m.

Respectfully submitted,

Kanchan Arora
Board Administrator/General Accountant