

# BOARD OF SELECTMEN

## DEEP RIVER TOWN HALL

Regular Meeting — November 10, 2015

**Attendance:** Selectmen Richard Smith, Angus McDonald & David Oliveria. Also: Margo Hilfinger & John Greene (*videography*); Jonathan Kastner.

This regular meeting was called to order at 6:45 pm by Smith.

**Minutes:** Regular Meeting of October 27, 2015

Oliveria moved, McDonald 2<sup>nd</sup>, to accept the minutes of the meeting of October 27, 2015, with two corrections:

1. Oliveria had been present for the vote on the minutes, but abstained because he had been absent from the meeting of October 13, 2015.
2. McDonald, not Oliveria, departed the meeting of October 13, 2015, prior to adjournment due to scheduling conflicts.

APPROVED 3 – 0

### **Additions to the Agenda:**

Smith asked for a motion to add to the agenda the following items:

- A. Proposed schedule of Board of Selectmen meetings for calendar year 2016
- B. Agreement between the Town of Deep River and MIRA (formerly CRRA)
- C. Reappointment to Boards and Commissions

McDonald moved, Oliveria 2<sup>nd</sup>, to add the three items to the agenda for discussion and action.

APPROVED 3 – 0

**A. Meeting Schedule:**

Oliveria moved, McDonald 2<sup>nd</sup>, to approve the proposed schedule of Board of Selectmen's meetings for calendar year 2016.

APPROVED 3 – 0

**B. MIRA Agreement:**

McDonald moved, Oliveria 2<sup>nd</sup>, to approve the amended agreement with the Materials Innovation and Recycling Authority (MIRA), subject to approval of Town Attorney Jane Marsh. MIRA processes Municipal Solid Waste (MSW) for Deep River and 38 other municipalities. The agreement is entitled

MIRA Tier 1 Long-Term Municipal Solid Waste Management Service Agreement,

APPROVED 3 – 0

*NOTE: The Board of Selectmen's 2016 meeting schedule and the MIRA agreement are appended, in their entirety, to these minutes.*

**C. Appointments:**

*NOTE: The reappointment of members to each Board and Commission was considered by individual motion.*

Conservation & Inland Wetlands:  
( C & I W )      Oliveria moved, McDonald 2<sup>nd</sup>, to reappoint as follows:  
Three Year Terms – Expire December 1, 2018  
John Dube  
Tanner Steeves  
Michael H. Tomlinson

APPROVED 3 – 0

Community Health Committee:  
( C H C )      McDonald moved, Oliveria 2<sup>nd</sup>, to reappoint as follows:  
Two Year Terms – Expire December 1, 2017  
Maura Carver      (Chairwoman)  
Janet Klinck  
Janice Kmetz  
Grace Krick

APPROVED 3 – 0

Constables:

Oliveria moved, McDonald 2<sup>nd</sup>, to reappoint as follows:

One Year Terms – Expire December 1, 2016

Peter Lewis

Richard H. Smith

Raymond Sypher, Jr.

APPROVED 3 – 0

Constables ( Special ):

McDonald moved, Oliveria 2<sup>nd</sup>, to reappoint as follows

One Year Terms – Expire December 1, 2016

James E. Beardsley, Jr.

Jerry F. Clark, Sr.

Robert L. Jenkins

Jonathan Kastner

Roycroft A. Monte

Keith W. Nelson

Marc Piscioti

APPROVED 3 – 0

Design Advisory Board:  
( D A B )

Oliveria moved, McDonald 2<sup>nd</sup>, to reappoint as follows:

Two Year Terms – Expire December 1, 2017

Michael A. Cole

Peter Howard

Alan Paradis (Chairman)

Pamela Potter

APPROVED 3 – 0

Economic Development  
Commission:  
( E D C )

McDonald moved, Oliveria 2<sup>nd</sup>, to reappoint as follows

Three Year Terms – Expire December 1, 2018

Theodore W. MacKenzie

Mariann Rossi-Ondusky

Adam D. Schwartzman

APPROVED 3 – 0

Parks & Recreation  
Commission:  
( P & R )

Oliveria moved, McDonald 2<sup>nd</sup>, to reappoint as follows

Three Year Terms – Expire December 1, 2018

Kevin Crosby

Tania Crosby

James Cunningham

Sarah Kately

Mary-Elizabeth C. Massey

Brandon Woodcock

APPROVED 3 – 0

Planning & Zoning  
Commission:  
( P & Z )

McDonald moved, Oliveria 2<sup>nd</sup>, to reappoint as follows  
Three Year Terms – Expire December 1, 2018  
Leigh Balducci  
Jonathan Kastner  
William L. Burdick

APPROVED 3 – 0

Town Hall Auditorium  
Management Committee  
( T H A M C )

Oliveria moved, Smith 2<sup>nd</sup>, to reappoint as follows:  
One Year Terms – Expire December 1, 2016  
Carol V. Doak-Jones  
Angus McDonald, Jr.  
Luther M. Moen  
Linalynn Schmeltzer  
Calice D. Sterling

APPROVED 3 – 0

*NOTE: McDonald, who was subject to reappointment, recused himself.*

Zoning Board of Appeals:  
( Z B A )

McDonald moved, Oliveria 2<sup>nd</sup>, to reappoint as follows  
Three Year Terms – Expire December 1, 2018  
Edward Judd  
Charles Rayner  
Lenore T. Kuhn

APPROVED 3 – 0

*NOTE: Per State Statute, appointments to the Planning & Zoning Commission and the Zoning Board of Appeals must be ratified by Town Meeting*

Deep River Housing  
Authority:  
( D R H A )

Oliveria moved, McDonald 2<sup>nd</sup>, to reappoint as follows:  
Five Year Term -- Begins February 1, 2016; Expires February 1, 2021  
Lisa M. Berube

APPROVED 3 – 0

### **Audience of Citizens – Any Other Matters to Come Before the Board:**

Smith gave an update on Town projects.

Smith presented a letter from Steven Budney requesting reimbursement for out-of-pocket costs resulting from an injury suffered while on duty with the Deep River Ambulance. Under the town's Workers Compensation policy, which includes

coverage for First Responders (Fire & EMS), Budney was reimbursed for wages withheld by his full-time employer during his absence of approximately 2½ months. However, due to his absence, the employer ceased contributing to Budney's major medical insurance premium. To maintain his insurance benefits, Budney assumed responsibility for the entire premium, which amounted to an additional \$1,580.04, the amount for which he requests be reimbursed.

The Board of Selectmen expressed concern that the inability to maintain medical insurance during a long-term absence could have severe consequences. Since this situation has no precedence in the Town's experience, action was tabled pending a survey of other municipalities. All agreed that the Board should conduct a substantial study before attempting to formulate a policy,

**Adjournment:**

Motion by McDonald, Oliveria 2<sup>nd</sup>, to adjourn at 7:30 pm.

APPROVED 3 – 0

Respectfully submitted,

**Richard H. Smith,**  
First Selectman

*NOTE: The four-page proposed MIRA agreement, prefaced by a letter of explanation from the president of MIRA, begins on the next page. MIRA is followed by the single page 2016 Selectmen Meeting Schedule,*



100 CONSTITUTION PLAZA • 6TH FLOOR • HARTFORD • CONNECTICUT • 06103-1722 • TELEPHONE (860) 757-7700  
FAX (860) 727-4141

August 31, 2015

The Honorable Richard Smith  
First Selectman, Town of Deep River  
174 Main Street  
Deep River, CT 06417

Dear First Selectman Smith:

I am writing to provide you with a proposed amendment to your town's Municipal Solid Waste Management Services Agreement (MSA) with the Materials Innovation and Recycling Authority (MIRA). The enclosed amendment addresses the responsibility for costs of alternative disposal in the unlikely scenario that the South Meadows Facility is unavailable for an extended period of time due to a Force Majeure event.

Your town's MSA with MIRA currently requires that "... incremental costs, if any, incurred by CRRRA (now MIRA)...." for the emergency bypass of waste in an insurable Force Majeure event (ex., the diversion of waste to an alternative disposal site), will to be borne by the town. (See Sec 2.7 of your MSA.)

MIRA has procured Business Interruption Insurance to protect MIRA from some of the financial impact of such an interruption in our ability to dispose of waste at the South Meadows facility. However, under the current language of the MSAs, the towns, not MIRA, are responsible for diversion costs during such an interruption. Accordingly, we have created the enclosed amendment to clarify the responsibility for additional costs associated with a Force Majeure insurable event. The amendment provides that, to the extent that MIRA's insurance covers additional costs associated with the emergency bypass of waste, the municipality will have no responsibility for such costs.

MIRA's insurance premium will not increase as a result of towns adopting the amendment. Our premium anticipates the costs associated with a Force Majeure event. Of course, the town is not required to adopt the amendment; however failure to adopt it means that the incremental costs associated with an insurable Force Majeure event will remain the responsibility of the town.

We recommend that the town execute the attached amendment at it earliest opportunity. If you have any questions, please call me or any of the MIRA board members to discuss.

Thank you for your continued patronage. On behalf of all of us at MIRA, we appreciate the opportunity to meet your town's solid waste disposal, renewable energy and recycling needs.

Sincerely,

  
Thomas D. Kirk  
President

Enclosure

PRINTED ON RECYCLED PAPER

**FIRST AMENDMENT TO  
TIER 1 LONG TERM MUNICIPAL SOLID WASTE  
MANAGEMENT SERVICES AGREEMENT**

This First Amendment to Tier 1 Long Term Municipal Solid Waste Management Services Agreement (this "First Amendment"), is made and dated as of \_\_\_\_\_, by and between the **MATERIALS INNOVATION AND RECYCLING AUTHORITY (fka Connecticut Resources Recovery Authority)**, a body politic and corporate, constituting a public instrumentality and political subdivision of the State of Connecticut, and having a principal place of business at 100 Constitution Plaza, 6<sup>th</sup> Floor, Hartford, Connecticut 06103 (the "Authority") and the Town of Deep River in the State, a municipality and political subdivision of the State (the "Municipality"). The Authority the Municipality are sometimes hereinafter referred to individually as a "Party" and collectively as the "Parties."

**Recitals**

**WHEREAS**, the Parties entered into that certain Tier 1 Long Term Municipal Solid Waste Management Services Agreement commencing as of November 16, 2012 (the "MSA"), for the provision by the Authority of certain Solid Waste processing and disposal services for the Municipality, and the payment by the Municipality of Tier 1 Long-Term Disposal Fees and all other amounts payable under the MSA to the Authority for the provision of such services; and

**WHEREAS**, the Parties wish to amend the terms and conditions of the MSA as set forth below;

**NOW THEREFORE**, in consideration of the mutual promises and undertakings of the Parties, and for other good and valuable consideration, the receipt and sufficiency of are hereby acknowledged, the Parties agree as follows:

**I. AMENDMENTS TO THE MSA**

1. All references in the MSA to "CRRA" shall refer to the Authority. All capitalized terms used but not defined herein have the meanings in the MSA.
2. Section 2.7 of the MSA ("Emergency Bypass Waste"; Force Majeure") is deleted in its entirety and replaced with the following:

**2.7. Emergency Bypass Waste; Force Majeure**

- (a) To the extent the Authority determines that it cannot accept the Municipality's Acceptable Solid Waste at the Designated Waste Facility, the Authority 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 the Authority has the right to so redirect without penalty or incurring any cost, to an Alternate Facility. After such redirection(s), if the Authority still cannot accept the Municipality's Acceptable Solid Waste at the Designated Waste Facility, then such



Acceptable Solid Waste ("Emergency Bypass Waste") shall be disposed of pursuant to the applicable provisions of this Section 2.7. The Authority may redirect such Emergency Bypass Waste to an Alternate Facility or Alternate Facilities selected by the Authority. Prior to any such redirection of Emergency Bypass Waste, the Authority shall verify that such Alternate Facility is properly permitted and acceptable to the Authority.

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



Party may terminate this Agreement, upon thirty (30) days prior written notice to the other Party.

3. Section 6.4 of the MSA ("Insurance") is deleted in its entirety and replaced with the following:

#### **6.4. Insurance**

Subject to Section 2.7(d), the Authority 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 the Authority, against loss or damages, use and occupancy, and public and other liability, to the extent reasonably necessary to protect the interest of the Authority and of the Participating Municipalities.

4. The following definitions are added to **Exhibit A** ("Definitions") to the MSA, in the appropriate locations based on alphabetical order:

"Additional Delivery Costs" has the meaning set forth in Section 2.7(b).

"Additional Delivery Costs Insurance" has the meaning set forth in Section 2.7(d).

**II. RATIFICATION** Except as specifically amended by this First Amendment, all of the terms, covenants and provisions of the MSA are hereby ratified and confirmed in all respects, and declared to be and shall remain in full force and effect.

This First Amendment shall be deemed effective as of the date first written above (the "Effective Date"). On and after the Effective Date, all references to the "MSA" herein and therein shall mean the MSA as amended by this First Amendment.

#### **III. Miscellaneous.**

1. Entire Agreement. This First Amendment and the MSA constitute the entire agreement and understanding of the Parties with respect to the subject matter hereof and thereof, and supersedes all oral communication and prior writings (except as otherwise provided herein) with respect thereto.
2. Governing Law. This First Amendment shall be governed, construed, interpreted and enforced in accordance with its express terms, and otherwise in accordance with the substantive laws of the State of Connecticut, without reference to the principles of

conflicts of law of Connecticut or any other jurisdiction, and where applicable, the laws of the United States.

3. Incorporation. The Recitals set forth at the beginning of this First Amendment are hereby incorporated in and made a part of this First Amendment by this reference.
4. Counterparts. This First Amendment may be executed and delivered in counterparts (including by facsimile transmission), each of which will be deemed an original.
5. Further Assurances. The Parties shall execute such additional documents and do any and all such further things as may be necessary to implement and carry out the intent of this First Amendment.

**[Remainder of Page Intentionally Left Blank; Signature Page Follows]**

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to be duly authorized and executed as of the date first written above.

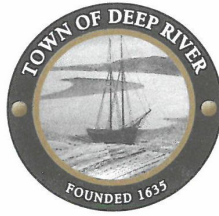
MATERIALS INNOVATION AND RECYCLING  
AUTHORITY

By \_\_\_\_\_  
Thomas D. Kirk  
It's President  
Duly Authorized

Town of Deep River

By: \_\_\_\_\_  
Richard H. Smith  
First Selectman  
Duly Authorized

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SELECTMAN'S OFFICE  
174 Main Street  
Deep River, Connecticut 06417

### **2016 SELECTMEN MEETING SCHEDULE**

The Board of Selectmen meetings are held the second and fourth Tuesdays of each month at 6:30 p.m. at the Deep River Town Hall.

JANUARY 12, 2016  
JANUARY 26, 2016

FEBRUARY 9, 2016  
FEBRUARY 23, 2016

MARCH 8, 2016  
MARCH 22, 2016

APRIL 12, 2016  
APRIL 26, 2016

MAY 10, 2016  
MAY 24, 2016

JUNE 14, 2016  
JUNE 28, 2016

JULY 12, 2016  
JULY 26, 2016

AUGUST 9, 2016  
AUGUST 23, 2016

SEPTEMBER 13, 2016  
SEPTEMBER 27, 2016

OCTOBER 11, 2016  
OCTOBER 25, 2016

NOVEMBER 8, 2016  
NOVEMBER 22, 2016

DECEMBER 13, 2016  
DECEMBER 27, 2016

JANUARY 10, 2017  
JANUARY 24, 2017