

Village Board Work Session
July 18, 2011
7:00 p.m.

Members present: Mayor Roddey, Trustees Char, Mattheus, Smith, and Stewart

Also present: Attorney Donovan, Engineer Tully, Village Clerk Strobl

Bicentennial Committee Gift

Ken Obremski, Doris Obremski, and Ed Garling, representing the Bicentennial Committee, were present to show the Board a plan for a 3' by 5' bronze plaque entitled "Historic Goshen Walking Tour".

Mr. Obremski stated that the plaque should be delivered in approximately 3 weeks, and that the target date for a dedication is August 15th. He also noted that Superintendent Nuzzolese has agreed to assist with the installation.

On a motion by Trustee Stewart, seconded by Trustee Smith, approval was granted for placement of the plaque, pending consultation with the Village's Insurance agents.

Char	aye
Mattheus	aye
Smith	aye
Stewart	aye

Village Sign Regulations

Mayor Roddey opened a discussion of Village sign Regulations, noting his intention to put together a committee to look at possible revisions to the current law, in part to assist local businesses. Trustee Mattheus volunteered to serve on the committee.

Trustee Roddey will start reaching out to the public for volunteers.

Hill Street Closure – Big Band Concert

Mayor Roddey read a letter from Matt Gomm, Director of the Goshen Public Library and Historical Society, requesting the closure of Hill Street on the night of the annual Big Band Concert and Ice Cream Social event. Mayor Roddey also read comments from Chief Watt.

On a motion by Trustee Char, seconded by Trustee Mattheus, permission was granted for the requested closure.

Char	aye
Mattheus	aye
Smith	aye
Stewart	aye

Stockpile Contract

Mayor Roddey gave a background report on recent actions relating to removal of the stockpile.

Mayor Roddey read the following Resolution, which was moved by Trustee Smith, and seconded by Trustee Stewart:

WHEREAS, the Village of Goshen, hereinafter the "Village" has heretofore entered into an Agreement with C.J. Nesti Materials, hereinafter "Nesti" for the purpose of disposing of certain material stockpiled on Village owned property as is reflected in a certain Agreement dated December 14, 2010, as amended by a certain addendum dated February 1, 2011, which Agreement and Addendum were heretofore authorized by duly adopted Resolutions of this Board; and

WHEREAS, pursuant to the foregoing, Nesti commenced removal of the material stockpiled and delivered said material to the Middlesex County Landfill, hereinafter "MCLF," for use as Alternate Daily Cover, hereinafter "ADC,"; and

WHEREAS, Nesti Materials has heretofore removed approximately 71,000 tons of material and delivered same to the MCLF; and

WHEREAS, to assist in the disposal of the stockpiled material, the Village of Goshen did enlist the services of Cornerstone Environmental Group, LLC, hereinafter referred to as "Cornerstone"; and

WHEREAS, Cornerstone did make, prepare and deliver an estimate to the Village indicating that approximately 78,000 tons of material were stockpiled on site and were in need of disposal; and

WHEREAS, Cornerstone now estimates that approximately 50,000 tons of material remain to be disposed of; and

WHEREAS, MCLF has stated that it will no longer accept any of the remaining material for use as ADC thereby necessitating the identification of an alternate facility for the disposal of the stockpiled material; and

WHEREAS Cornerstone has now identified two alternate locations that will accept the material stockpiled to wit: the Warren County Landfill ("WCLF") and the Hackensack Meadowlands District Commission Landfill ("HMDC"); and

WHEREAS, the pricing set forth in the original Agreement between the Village and Nesti, as amended, now requires further amendment to reflect the alternate destinations of the stockpiled material; and

NOW, THEREFORE, it is hereby

RESOLVED, that the existing contract price of \$70.61 per ton for loading, transportation and reuse of the stockpiled material as well as the existing price of \$96.40 for the loading, transportation and disposal of nonhazardous material is amended to reflect a \$70.00 per ton cost for loading, transportation and disposal plus a \$2.00 per ton surcharge to Nesti for the cost of maintaining its equipment on site for a total cost of \$72.00 per ton for disposal of all nonhazardous material; and it is further

RESOLVED, that the Mayor is authorized to affix his signature to the second addendum to the agreement between the Village and C.J. Nesti Materials as is appended to this Resolution.

**SECOND ADDENDUM
To
AGREEMENT**

WHEREAS, on December 14, 2010, as amended retroactively on February 1, 2011, an agreement was entered into by and between the Village of Goshen, a duly constituted municipal corporation having offices at Maplewood, 276 Main street, Goshen, New York 10924, hereinafter the "Village," and CJ Nesti Materials, LLC, a duly constituted New Jersey Limited Liability Company having an office for the transaction of business at 32 Monroe Blvd, Monroe Township, New Jersey 08831, hereinafter the "Contractor," for the loading, transport and reuse and/or disposal of stockpiled contaminated debris on the Village's property at 2501 New York Route 17M, Goshen, New York, hereinafter the "Site," which had been excavated from Goshen's former sanitary landfill; and

WHEREAS, the stockpiled landfill material contains elevated levels of lead and other contaminants associated with solid waste landfills that require proper management in accordance with New York State Department of Environmental Conservation regulations, 6 NYCRR Part 360, and

WHEREAS, time was of the essence to remove the stockpiled material as the office of the New York State Attorney General advised the Village in March, 2009, that it would be subject to an Order on Consent requiring it to expeditiously remove the stockpiled material within a fixed period and subjecting it to daily penalties for delay; and

WHEREAS, the Village engaged the services of Cornerstone Environmental Group, LLC, hereinafter, "Cornerstone," to assist the Village to properly manage the stockpiled material and to evaluate a range of potential alternatives for the disposition of the stockpiled contaminated material in view of the immediate need to dispose of said material in accordance with applicable regulations; and

WHEREAS, Cornerstone prepared a Work Plan for the Waste Material Stockpile Removal, which concluded that the stockpile contained 78,000 tons of material and recommended the use of specialized work practices during the removal work to protect the liner system and perimeter leachate collection system, and to prevent contaminated storm water runoff and contaminated dust generation; and

WHEREAS, Cornerstone also evaluated the cost, feasibility and protectiveness of 11 different alternatives for the disposal of the stockpiled material and concluded that the least expensive and most effective alternative was specialized beneficial reuse of the stockpiled material; and

WHEREAS, Cornerstone identified Contractor as having the specialized skill and capability to implement the Work Plan and also to beneficially reuse the stockpiled contaminated material at the Middlesex County New Jersey Landfill, hereinafter the "MCLF;" and

WHEREAS, under the terms of the Agreement, the Village agreed to pay Contractor \$6.80 per ton to load all of the stockpiled material, and \$63.81 per ton to transport and reuse all of the stockpiled material at the MCLF, which was \$15 per ton less the other alternatives. The Agreement further provided that if the MCLF rejected any load of stockpiled material for reuse due to contaminant levels, then the Village would pay Contractor a prevailing market rate of \$95.86 per ton to load, transport and dispose of the material at an alternative disposal facility; and

WHEREAS, the Agreement specified that approximately 78,000 tons of stockpiled material was estimated to be present at the Work Site that was suitable for reuse at the MCLF, but that Contractor would be responsible to load, transport and reuse and/or dispose all of the stockpiled material at the specified contract rates regardless of the final quantity; and

WHEREAS, from December 14, 2010 to March 14, 2011, Contractor loaded, transported and reused and/or disposed of 71,261 tons of stockpiled material from the Work Site and submitted invoices to the Village totaling \$5,070,685, representing the amount due to Contractor at the specified unit prices under the Agreement; and

WHEREAS, on March 14, 2011, Contractor stopped work and issued a Notice of Temporary Work Stoppage and Default, because the Village had failed to pay any of the Contractor's invoices under the terms of the Agreement; and

WHEREAS, on April 28, 2011, the Village paid Contractor the entire amount of the outstanding invoices totaling \$5,070,685; and

WHEREAS, approximately 50,000 tons of stockpiled material subject to the Agreement is estimated to remain on the Work Site, which material is not acceptable to the MCLF due to its contaminant levels and which therefore is required to be disposed of at an alternative facility; and

WHEREAS, since stopping work on March 14, 2011, Contractor has secured the Site and continued to maintain its equipment at the Site in good faith to enable an expeditious resumption of services to load, transport and reuse and/or dispose of the remaining 50,000 tons of stockpiled material, as specified by the Contract; and

WHEREAS, in order to dispose of the remaining stockpiled material at a lower cost, the Village has investigated and identified the Warren County Landfill ("WCLF") and the Hackensack Meadowlands District Commission Landfill ("HMDC") as alternative suitable disposal sites that will accept the remaining material at an overall cost that is less than the \$95.86 per ton (loading, transportation, and disposal) specified in the Agreement; and

WHEREAS, the Village now desires to amend the Agreement to reduce the specified contract price; and

NOW THEREFORE, in consideration of the foregoing, the parties hereto agree as follows:

1. Paragraph 2 of the Contract is amended as follows:
 - Contractor will load, transport and reuse and/or dispose of all non-hazardous (as determined by applicable laboratory analysis) remaining stockpiled material to either WCLF or HMDC at \$70.00/ton, plus a surcharge of \$2/ton to reimburse the Contractor for cost of maintaining its equipment at the Site and other costs since March 14, 2011.
 - If either WCLF or HMDC refuse to accept any of the remaining material, Contractor shall have the right to select an alternative facility to take the material provided it is acceptable to the Village, in which case the parties will renegotiate pricing expeditiously and in good faith.

2. All other terms and provisions of the Contract not modified by the changes hereinabove shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have entered into this agreement as of the date set forth above.

VILLAGE OF GOSHEN

C.J. NESTI MATERIALS, LLC

By: Kyle Roddey, Mayor

By: Carmine J. Nesti, President

STATE OF NEW YORK)
) SS.
COUNTY OF ORANGE)

On this ____ day of July 2011, before me, a Notary Public, the undersigned officer, personally appeared **Kyle Roddey**, Mayor of the Village of Goshen, New York personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity, and that by his/her/their signature on the instrument, the individual(s), or the person(s) upon behalf of which the individual(s) acted, executed the instrument.

NOTARY PUBLIC

STATE OF NEW YORK)
) SS.
COUNTY OF ORANGE)

On this ____ day of July 2011, before me, a Notary Public, the undersigned officer, personally appeared **Carmine J. Nesti**, President of C.J. Nesti Materials, LLC personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity, and that by his/her/their signature on the instrument, the individual(s), or the person(s) upon behalf of which the individual(s) acted, executed the instrument.

NOTARY PUBLIC

A roll call vote resulted as follows:

Char aye
Mattheus aye
Smith aye
Stewart aye

Trustee Mattheus gave an update on the work being done on Village streets by NYSEG.

On a motion by Trustee Smith, seconded by Trustee Stewart, the Board entered into Executive Session at 7:30 p.m. for a discussion of arbitration with the Town.

Char aye
Mattheus aye
Smith aye
Stewart aye

The Executive Session and the Work Session were concluded at 8:00 p.m.