

# AGREEMENT

**THIS AGREEMENT**, is made this \_\_\_\_ day of December, 2010, by and among the Village of Goshen, a duly constituted municipal corporation having offices at Maplewood, 276 Main Street, Goshen, New York 10924, hereinafter the "Village," and Longhorn Transport, a duly constituted New Jersey entity having offices for the transaction of business at 170 Frelinghuysen Avenue, Newark, New Jersey 07114, and C.J. Nesti Materials, a duly constituted New Jersey entity and subcontractor to Longhorn Transport, having an office for the transaction of business at 32 Monroe Blvd, Monroe Township, New Jersey 08831, and with each New Jersey entity hereinafter collectively referred to as "Contractor," recites as follows:

**WHEREAS**, The Village is the owner of certain real property located at 2501 New York State Route 17M, Goshen, New York; and

**WHEREAS**, certain material, primarily consisting of the remains of an abandoned landfill, has been excavated and stockpiled on the aforementioned property in connection with the construction of the new Village of Goshen Waste Water Treatment Facility; and

**WHEREAS**, the Village is obligated by law to dispose of the said stockpiled material in a manner that is consistent with all applicable rules, regulations, statutes and ordinances; and

**WHEREAS**, the Contractor has need for the stockpiled material pursuant to their contractual obligation to render certain services at the Middlesex County Landfill, hereinafter referred to as the "Facility," located at 53 Edgeboro Road, East Brunswick, New Jersey; and

**WHEREAS**, the Contractor specifically will utilize the stockpiled material as Alternative Daily Cover (hereinafter referred to as "ADC") in connection with their contractual agreement to perform certain services at the Facility; and

**WHEREAS**, the parties wish to enter into this agreement to establish the parameters pursuant to which the Village shall provide, and the Contractor shall accept, the stockpiled material as well as establish the method pursuant to which the Village shall compensate Contractor for the removal of said material;

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

### **1. Services of Contractor**

Contractor shall load, transport and reuse the aforesaid stockpiled material pursuant to and consistent with applicable law which stockpiled material is located on certain real property owned by the Village located at 2501 New York Route 17M, Goshen, New York 19024. In no event shall Contractor incur liability for any hazardous waste or other conditions on or under the aforesaid property. In performing the services outlined in this Contract, Contractor shall at all times comply with the terms and provisions of the work plan that is annexed hereto as Exhibit "A."

### **2. Compensation**

In consideration of the foregoing services, the Village shall pay to Contractor the following:

- \$49.75 per ton Transportation & Reuse
- \$2.50 per ton Loading
- \$75.00 per ton Transportation & Disposal for non-hazardous material that is not accepted at the Middlesex County Landfill (MCLF) as ADC.

In the event that the MCLF stops delivery of material for any reason, the Village will pay for the cost of all material loaded, transported and reused at the above rates. Contractor shall make, prepare and submit invoices, which shall contain all necessary back up documentation, including weigh tickets from MCLF, to the Village from time to time but in no event in intervals longer than 30-days. The Village of Goshen shall receive and process invoices pursuant to normal Village accounting practices and the said invoices shall be processed and audited in accordance with the standard auditing provisions of municipal expenses pursuant to New York State Law. The Village shall make said payments to Contractor within 30-days of submission of the invoice for services rendered with the express exception that the parties understand that the initial payment from the Village may take as long as 90-days from the date of this Contract to allow for the Village to borrow the funds necessary to pay for the services being provided hereunder

### **3. Disposal of Stockpiled Material**

Contractor represents that the stockpiled material which is the subject of this Contract shall be reused at the Middlesex County Landfill, 53 Edgeboro Road, East Brunswick, New Jersey and for no other purpose, except in the event that material is not accepted by the MCLF Contractor may reuse and/or dispose of the material at an alternative, licensed facility as set forth above. Contractor further represents that they are authorized by all necessary parties and pursuant to all applicable law, rules, statutes and regulations to utilize the stockpiled material as ADC at the Middlesex County Landfill. In this regard, Contractor specifically represents to the Village that all necessary and proper permits have been obtained from the State of New Jersey Department of Environmental

Protection as well as any other administrative agency, legislative body or other entity having jurisdiction allowing Contractor to provide the services herein described.

#### **4. Acceptable Material**

It is understood and agreed that the stockpiled material being provided by the Village to Contractor shall meet the minimum requirements set forth on Exhibit "B" to this Contract. In the event that any stockpiled material fails to meet these minimum requirements, the Village shall be responsible for the costs of disposal at such rates as are commercially reasonable in the New York/New Jersey region for the disposal of the material which does not meet the said minimum requirements.

#### **5. Term of Contract**

It is the intention of the parties that the Village shall provide and Contractor shall accept a preliminary volume of 10,000 cubic yards of stockpiled material based upon the results of 10 composite samples tested for a full TCLP with PCB and TPH. After the initial 10,000 has been removed and disposed of, additional testing may be required by Contractor before Contractor proceeds to remove all of the stockpiled material remaining. It is understood and agreed that the Village of Goshen shall be responsible for testing of the material.

#### **6. Severability and Reformation**

Any provision or part thereof of this agreement held to be void or unenforceable under any law shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the parties. The parties agree that this agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision which comes as close as possible to expressing the intention of the stricken provision.

#### **7. Integration and Amendments**

This agreement represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters. This agreement shall not be amended, modified, supplemented or rescinded in any manner except by written agreement executed by the parties.

#### **8. Choice of Law/Jurisdiction**

This agreement shall be governed by and construed in accordance with the law of the State of New York.

## **9. Notices**

Any and all notices provided for under this agreement shall be in writing and shall be deemed to have been sufficiently given if personally delivered or if mailed, postage prepaid, by certified or return receipt requested mail addressed to the parties at the addresses set forth below:

NESTI  
C.J. Nesti Materials  
Carmine J. Nesti  
32 Monroe Blvd  
Monroe Twp. N.J. 08831

VILLAGE  
The Village of Goshen  
Attn: Hon. John Higgins  
276 Main Street  
Goshen. NY 10924

LONGHORN  
Longhorn Transport  
Attn: Tom Faulkner  
170 Frelinghuysen Avenue  
Newark, NJ 07114

Notice given by certified mail shall be deemed complete on the third business day after mailing.

## **10. Representations**

Each party represents and warrants to the other that:

- (a) It is duly organized and validly existing in the jurisdiction of its organization and has all the necessary power and authority to execute, deliver and perform this agreement.
- (b) The execution, deliver and performance of this agreement has received all necessary partnership, corporate or other approvals, and does not conflict with any law, regulation, order, contract or instrument to which such party is bound.
- (c) The individual signing on its behalf is duly authorized to execute this Agreement to legally bind such party.

## **11. Insurance**

Contractor has heretofore delivered a copy of their insurance certificate naming the Village as an additional insured. Contractor shall maintain said insurance in full force and affect during the term of this Contract.

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

**VILLAGE OF GOSHEN**

**LONGHORN TRANSPORT**

\_\_\_\_\_  
By: John Higgins, Mayor

\_\_\_\_\_  
By: Tom Faulkner

**C.J. NESTI MATERIALS**

\_\_\_\_\_  
By: Carmine J. Nesti

STATE OF NEW YORK )

) ss.

COUNTY OF ORANGE )

On the \_\_\_\_ day of December in the year 2010 before me, the undersigned, a Notary Public in and for said state, personally appeared **John Higgins** 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 \_\_\_\_\_ )

) ss.:

COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_ day of December in the year 2010, before me, the undersigned, a Notary Public in and for said state, personally appeared **Tom Faulkner** 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 \_\_\_\_\_ )

) ss.:

COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_ day of December in the year 2010, before me, the undersigned, a Notary Public in and for said state, personally appeared **Carmine J. Nesti** 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

## **Work Plan for the Waste Material Stockpile Removal**

**Village of Goshen**

**December 2010**

### General

The work will entail excavation of the stockpile material and loading it into trucks to be hauled to an off-site landfill for use as alternative daily cover (ADC). It is estimated that there is 52,000 cubic yards of material in-place. Assuming a 30 percent swell factor and a truck density of 1.5 tons/cy, it is estimated that there is 78,000 tons of material to be utilized for ADC.

Work will start on southwest end of the site and progress northeast across the stockpile. The tarp currently covering the material will be removed in sections as excavation progresses. Care will be taken to preserve the bottom liner and perimeter leachate collection system until the end of excavation to control run-off from the pile. This will be accomplished by maintaining a minimum of 24 inches of material above the liner as excavation progresses which will be referred to as the "working area". After the first lift of material is removed, a second pass of excavation will be made to remove the remaining 24 inches of material and the liner system. Any deviation from this approach will need approval by the Village of Goshen.

During hauling activities, a stabilized construction entrance and silt fence and/or hay bales will be provided by the Village of Goshen constructed and maintained around the excavation site to mitigate soil erosion and sediment from leaving the site.

Any materials that do not fit the ADC criteria as defined by Middlesex County Utility Authority (MCUA) Landfill (liner materials, large pieces of metal/logs/boulders, etc) will be loaded into roll-off containers and will be disposed of properly.

The Village or their representatives have the right to temporary stop stockpile removal activity to address non-compliance with the conditions of the work plan.

### Schedule

In the event operations are not complete within 180 days of commencement of work, the Village reserves the right to terminate the contract.

### Excavation and Disposal

Longhorn or its Authorized Agents, will provide all labor, materials, equipment and tools required to complete the work of excavating, hauling and disposing of all the excavated materials including the liner components. The soil like material will be utilized as ADC at the MCUA landfill located in East Brunswick

NJ. The non ADC material will be disposed of at the MCUA landfill or equivalent. Copies of the weigh station tickets from MUCA will be provided to the Village on a weekly basis.

All excavated material will be loaded and transported in a safe and timely manner. The trucks will be loaded for transportation in a manner as to restrict materials from falling to the ground or overfilling the trucks in a manner that will cause the material to fall from the truck during transportation.

#### Cover Requirements

Daily cover material is not necessary as long as run-off is controlled since the material has more characteristics of a soil than of municipal solid waste. Typically daily cover is used to control odors, and vectors. The protocol below should be followed:

- The tarp currently covering the material will be removed in sections as excavation progresses.
- The working area will be sloped to promote positive drainage toward the perimeter leachate collection system.
- Except for removal of the first 10,000 yards, during consecutive days of excavation the working area and working face will not be covered.
- If work is stopped for more than a 7 days, the working area including the working face will be covered.
- In anticipation of major precipitation events (typically 1-inch or greater), the working area will be covered to minimize leachate generation.
- During removal of the first 10,000 yards, C.J. Nesti/Longhorn Transport shall be responsible for covering the working face and work area. After removal of the first 10,000 yards, the Village will become responsible to cover the work area and C.J. Nesti/Longhorn Transport shall be responsible to cover the working face. C.J. Nesti/Longhorn Transport shall assist the Village to the extent practicable in covering the work area after the Village assumes responsibility for that work.

#### Stormwater Control

During excavation operations, surface water run-on will be controlled to minimize contact with the stockpiled material and minimize leachate generation. In addition stormwater run-off from the stockpile area will be controlled to prevent liquid that has come in contact with the stockpiled material (leachate) from draining onto the adjacent areas. The primary means of control will be utilization of the existing liner system and leachate collection system, as well as the existing perimeter berms and drainage channels around the pile. Additional temporary diversion berms will be constructed when necessary to control run-on. Non-contact stormwater will continue to be directed to the onsite stormwater basin. Also, additional hay bales and/or silt fences will be constructed where necessary