

October 21, 2002
Keyport, New Jersey

Minutes of a Special Meeting of the Mayor and Council, Borough of Keyport, held on the above date in the Borough Hall Council Chambers, 18-20 Main Street, Keyport, N.J. pursuant to being called by Mayor and Council, in accordance with the Open Public Meetings Act. Notices were faxed to the Courier, Asbury Park Press, Independent and Two River Times and posted on the Bulletin Boards.

Mayor Graham called the meeting to order at 5:10 P.M. and read the Sunshine Law Notice.

ROLL CALL

On Roll Call the following were present: Councilmembers Atkins, Merla, Ashmore, Hyer. Absent: Councilmembers Bergen and Stalter (arrived 5:25 P.M.). Others present: Wesley Kain, Borough Attorney

RESOLUTION

1. Resolution #343-02, Closed Meeting - Personnel and Contract Negotiations

WHEREAS, the Mayor and Council of the Borough of Keyport propose to discuss the following subjects:

Personnel

1. Borough Clerk's Office

Contract Negotiations

1. Garbage Contract

WHEREAS, the Governing Body has determined that within the provisions of the Open Public Meetings Law, the Public should be excluded from the discussion of said subjects;

NOW, THEREFORE, BE IT RESOLVED by the Governing Body that a meeting of the Mayor and Council shall be held forthwith from which the public shall be excluded in the Borough Hall Council Chambers for the purpose of discussing the following subjects:

Personnel and Contract Negotiations

BE IT FURTHER RESOLVED that the discussions on Personnel, and Contract Negotiations conducted at said closed session shall be disclosed when the matters discussed are resolved and this meeting shall continue in approximately 20 minutes.

Offered for adoption by Mr. Hyer, seconded by Mr. Merla

Roll Call Vote: Ayes: Councilmembers Atkins, Merla, Ashmore, Hyer
Absent: Councilmembers Bergen and Stalter

Council went into closed session at 5:12 P.M. and this meeting was reconvened at 5:33 P.M.

Mr. Kain said there was abandonment of the Garbage Contract by Marrone Waste Paper & Disposal since October 16, 2002 and on the recommendation of the Superintendent of Public Works as there were shore comings. The Borough will terminate the contract. Liquidated damages will be assessed. Cifelli Disposal will collect garbage and recyclables on a temporary basis (October 17th-November 16, 2002).

RESOLUTIONS

2. Resolution #344-02, Terminate Services of Marrone Disposal

WHEREAS, the Mayor and Council of the Borough of Keyport did advertise certain bid specifications for garbage and recyclable materials collection in and for the Borough of Keyport; and

WHEREAS, bids were received on February 14, 2001 by the Borough of Keyport for the collection, removal and disposal of garbage, trash, refuse and recyclable materials for the Borough of Keyport; and

WHEREAS, following receipt of bids and review of bids

submitted, it was determined that Marrone Waste Paper & Disposal, Inc., Avenel, New Jersey, was the lowest responsible bidder submitting and complying with the bid specifications for the collection, removal and disposal of garbage, trash, refuse and recyclable materials for the Borough of Keyport; and

WHEREAS, after review and consideration of certain objections filed by a competitive bidder to the bid process, the Mayor and Council did by Resolution #122-01 on March 26, 2001 authorize the Mayor to enter into an agreement with Marrone Waste Paper & Disposal, Inc. for the collection of trash, refuse and recyclable materials in and for the Borough of Keyport for a term commencing May 1, 2001 through April 30, 2004; and

WHEREAS, a contract was entered into between the Borough of Keyport and Marrone Waste Paper & Disposal on March 26, 2001, which provided for the collection of garbage and recyclable materials in and for the Borough of Keyport; and

WHEREAS, pursuant to the terms of the contract, the contractor, Marrone Waste Paper & Disposal, Inc. did commence work on or about May 1, 2001, and did provide service consisting of the removal of garbage, refuse and recyclable materials from the Borough of Keyport; and

WHEREAS, the Mayor and Council began to receive numerous complaints regarding the service provided by the contractor, Marrone Waste Paper & Disposal, Inc. regarding the collection of trash, refuse and recyclable materials within the Borough of Keyport; and

WHEREAS, previously, the Mayor and Council have issued certain fines against the Contractor, Marrone Waste Paper & Disposal, Inc. for violation of the contract and failing to provide service in accordance with the specifications agreed to by Marrone Waste Paper & Disposal, Inc. and between the Borough of Keyport; and

WHEREAS, during the summer 2002, the Mayor and Council began to obtain specific complaints against the contractor, Marrone Waste, Paper & Disposal, Inc. relative to the services provided to the pursuant to the contract between the parties; and

WHEREAS, investigation by the Mayor and Council revealed that the contractor was in violation of the contract between the parties with respect to the delivery and accounting of recyclable materials and the appropriate credits due to the Borough of Keyport, the contractor further being in default with respect to the failing to maintain a complaint log, respond to complaints, provide necessary weight slips to the Borough of Keyport and provide the necessary phone and office support as called for in the contract between Marrone Waste Paper and Disposal, Inc. and the Borough of Keyport; and

WHEREAS, commencing in October 2002, the Mayor and Council did receive reports that several trucks owned and operated by Marrone Waste Paper and Disposal, Inc. used in connection with collection services in the Borough of Keyport, were impounded by the Keyport Police Department and State Police for numerous safety violations; and

WHEREAS, on or about October 16, 2002, the Mayor and Council were notified by the Keyport Police Department that the Borough of Keyport in conjunction with the Borough of Keansburg and the Monmouth County Prosecutor's Office, had executed search warrants and seized records, computers and equipment belonging to Marrone Waste Paper & Disposal, Inc.; and

WHEREAS, statements from Jeffrey Messler, President, indicates a knowledge of intention to defraud the Borough of Keyport by the submission of duplicate or altered receipts relative to recyclable materials and garbage collection amounts within the Borough of Keyport; and

WHEREAS, the Mayor and Council have been advised by the Keyport Police Department that all equipment relative to the

operation of a collection service company has been seized and impounded by the Monmouth County Prosecutor's Office; and

WHEREAS, the Mayor and Council have been advised by the Superintendent, Department of Public Works that Marrone Waste Paper & Disposal, Inc. failed to collect recyclables within the Borough of Keyport on October 16, 2002 and subsequently has failed to make garbage collection on October 17, 2002 and October 18, 2002; and

WHEREAS, from the facts and circumstances presented, it appears to the Mayor and Council that the contractor, Marrone Waste Paper & Disposal, Inc has abandoned its responsibilities to the Borough of Keyport and to the contract executed between Marrone Waste Paper & Disposal, Inc and the Borough of Keyport relative to the collection of trash, refuse and recyclable materials; and

WHEREAS, the contract between the contractor, Marrone Waste Paper & Disposal, Inc and the Borough of Keyport, specifically provides as follows in addition to those incidents specifically referred to in other sections herein contained, the Borough shall have the right at its option to terminate the contract, said termination evidenced by a due and proper resolution of the Borough Council of the Borough of Keyport, and by mailing a copy thereof certified by the Borough Clerk, by certified mail, return receipt requested, to the principal place of business of the contract, under any one or more of the following circumstances:

- (e) In the event the contractor shall abandon the work.
- (k) If the Borough Council upon the advice of the Borough Superintendent of Public Works shall be of the opinion that the contractor is not or has not been performing the contract in good faith in accordance with the terms of the specifications

WHEREAS, the Mayor and Council have received a report for the Superintendent of Public Works indicating that the contractor, Marrone Waste Paper & Disposal, Inc has failed to pick up recyclable collections and trash collection as called for in the contract and that numerous trash and other recyclables continue to remain on the streets of the Borough of Keyport; and

WHEREAS, the Mayor and Council have been further advised that the Health Official had declared a Health Emergency as a result of the failure of the contractor, Marrone Waste Paper & Disposal, Inc. to comply with the terms of the contractual arrangement; and

WHEREAS, the Mayor and Council have reviewed and considered the facts and circumstances in this matter together with the comments of the Superintendent of Public Works in and for the Borough of Keyport; and

WHEREAS, it appearing to the Mayor and Council of the Borough of Keyport that the contractor, Marrone Waste Paper & Disposal, Inc has abandoned his work in and for the Borough of Keyport and further appearing that the Superintendent of the Department of Public Works, has indicated that the contractor has not performed the contract in good faith in accordance with the terms of the specifications in the contract by and between the parties hereto; and

WHEREAS, the Mayor and Council have resolved to take action appropriate with the failure of the contractor, Marrone Waste Paper & Disposal, Inc. to honor the terms of the contractual agreement by and between the parties hereto.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Keyport as follows:

1. The Mayor and Council of the Borough of Keyport hereby terminate the contract with Marrone Waste Paper & Disposal, Inc. in accordance with the terms and specifications of the contract by and between the parties specifically, Section 5.20 Breach of Contract, Liquidated damages, remedies (e) (k).

2. The termination shall be effective upon the adoption of the within resolution by the Mayor and Borough Council of the Borough of Keyport.
3. The Borough Clerk is hereby authorized to forward to the contractor, Marrone Waste Paper & Disposal, Inc a copy of the within resolution, duly certified by the Borough Clerk, by certified mail, return receipt requested, to the principal place of business of the contractor, Marrone Waste Paper & Disposal, Inc.
4. That copies of the within resolution duly certified by the Borough Clerk be forwarded to the Borough Attorney, Chief of Police, Municipal Finance Officer and the Insurance Company holding the Performance Bond on Marrone Waste Paper & Disposal, Inc., First Indemnity Insurance of America, Parsippany, New Jersey.

Offered for adoption by Mr. Merla, seconded by Mr. Hyer

Roll Call Vote: Ayes: Councilmembers Atkins, Merla, Ashmore
Hyer, Stalter
Absent: Councilman Bergen

3. Resolution #345-02, Assessing Liquidated Damages Against Marrone Waste Paper & Disposal, Inc.

WHEREAS, the Mayor and Council of the Borough of Keyport did enter into a contractual arrangement between Marrone Waste Paper & Disposal, Inc. and the Borough of Keyport which called for the collection of trash, refuse and recyclable materials for a period commencing May 1, 2001 through April 30, 2004; and

WHEREAS, the within contract by and between the parties provides for liquidated damages in the event the contractor, Marrone Waste Paper & Disposal, Inc. shall have failed to perform or otherwise breach the agreement between Marrone Waste Paper & Disposal, Inc and the Borough of Keyport; and

WHEREAS, the contract between the parties provides as follows:

"Inasmuch as damage and loss will be difficult or impossible to accurately assess, the contractor shall pay to the Borough as liquidated damages and not as a penalty, in all cases where the Borough shall elect to accept the said liquidated damages in lieu of actual damages, the following sums for the following acts:

1(a) for failure to make any collection on any one collection day, the contractor shall pay to the Borough of Keyport the sum of Two Thousand Five Hundred Dollars (\$2,500.00), for each day in which the failure continues plus the sum of Five Hundred Dollars (\$500.00) per day for each vehicle hired or used by the Borough for the purposes of performing the basic collection and disposal service which the contractor has failed to perform and also plus the sum of One Hundred Dollars (\$100.00) per day for each person used or employed including Borough Employees assigned to the performance of the service".

WHEREAS, the Mayor and Borough Council have been advised by the Superintendent, Department of Public Works, that the contractor, Marrone Waste Paper & Disposal, Inc. has failed to provide collection services for October 16, 17 18, 19 and 21, in accordance with the terms and provisions of the contract thereto, hereto; and

WHEREAS, based upon the circumstances involved in the within matter, the Mayor and Council have determined that the contractor, Marrone Waste Paper & Disposal, Inc. has abandoned his work with the Borough of Keyport and no longer wishes to proceed in accordance with the contract thereto; and

WHEREAS, it is the intention of the Mayor and Council of the Borough of Keyport to assess as liquidated damages in accordance with the provisions set forth herein.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Keyport as follows:

1. The Mayor and Council hereby assess liquidated damages for the failure of the contractor, Marrone Waste Paper & Disposal, Inc. to provide for collection of recyclables on Wednesday, October 16, 2002 in the sum of Two Thousand Five Hundred Dollars (\$2,500.00). The Mayor and Council further assess an additional sum of One Thousand Dollars (\$1,000.00) for the use of Borough employees and equipment necessary for the collection of recyclable materials within the Borough of Keyport on October 16, 2002 or a total of Three Thousand Five Hundred Dollars (\$3,500.00).
2. The Mayor and Borough Council hereby assess as liquidated damages the sum of Two Thousand Five Hundred Dollars (\$2,500.00) representing liquidated damages for the failure of the contractor, Marrone Waste Paper & Disposal, Inc. to provide collection services for trash and garbage on October 17, 2002 of the Borough of Keyport.
3. The Mayor and Council hereby assess against the contractor, Marrone Waste Paper & Disposal, Inc. the sum of Two Thousand Five Hundred Dollars (\$2,500.00) as liquidated damages for the failure of the contractor Marrone Waste Paper & Disposal, Inc. to provide trash collection services on October 18, 2002.
4. The Mayor and Council hereby assess against the contractor, Marrone Waste Paper & Disposal, Inc. the sum of Two Thousand Five Hundred Dollars (\$2,500.00) for failure to provide recycling collection services on October 19, 2002.
5. The Mayor and Council hereby assess the contractor, Marrone Waste Paper & Disposal, Inc. the sum of Two Thousand Five Hundred Dollars (\$2,500.00) for the failure to provide for garbage or trash related collection service on October 21, 2002.
6. The Mayor and Council hereby direct that the sum of liquidated damages fixed in the above amount of Thirteen Thousand Five Hundred Dollars (\$13,500.00) shall be deducted from all monies due which shall become due from the Borough of Keyport to the Contractor, Marrone Waste Paper & Disposal, Inc.
7. The assessment of liquidated damages against the contractor, Marrone Waste Paper & Disposal, Inc are in addition to and not in substitution of any and all rights and means the Borough now has or may have hereunder or at law, in equity, by statute or otherwise for the recovery or collection of such monies, together with all other legal rights as a result of the breach of contract by Marrone Waste Paper & Disposal, Inc.
8. All damages assess hereto in accordance with the within Resolution shall be deducted from any payments due and owing to the contractor.
9. A copy of the within resolution shall be served upon the contractor, by certified mail, return receipt requested, postage pre-paid at his place of business.
10. Copies of the within Resolution, duly certified, shall be provided to the Borough Attorney, Chief Municipal Finance Officer and to First Indemnity Insurance of America, the holder of the Performance Bond for the contractor, Marrone Waste Paper & Disposal, Inc.

Offered for adoption by Mr. Merla, seconded by Mr. Hyer

Roll Call Vote: Ayes: Councilmembers Atkins, Merla, Ashmore

Hyer, Stalter
Absent: Councilman Bergen

4. Resolution #346-02, Retain Emergency Services of Cifelli Disposal (10/17/02-11/17/02)

WHEREAS, the Mayor and Council of the Borough of Keyport, did enter into an agreement with Marrone Waste Paper & Disposal, Inc. for the collection of garbage, trash and other recyclable materials in the Borough of Keyport commencing May 1, 2001 through April 30, 2004; and

WHEREAS, the Mayor and Council have terminated the contract with Marrone Waste Paper & Disposal, Inc. based upon the recommendation of the Superintendent of Public Works as well as the abandonment of the contract by Marrone Waste Paper & Disposal, Inc. effective October 21, 2002; and

WHEREAS, based upon the facts and circumstances surrounding the termination including criminal investigations being conducted by the Borough of Keyport, Borough of Keansburg and the Monmouth County Prosecutors Office, an emergency presently exists whereby the Borough of Keyport must maintain certain trash, refuse and recyclable collection within the Borough of Keyport; and

WHEREAS, the Mayor and Council have been advised that the Board of Health has declared a Public Health emergency based upon the actions of the contractor, Marrone Waste Paper & Disposal, Inc. which has resulted in recyclable materials and trash refuse being left upon the streets of the Borough of Keyport; and

WHEREAS, the Mayor and Council of the Borough of Keyport have contacted Cifelli Disposal, Inc., Matawan, New Jersey, for the purposes of entering into a temporary agreement to provide for a trash refuse and recyclable pickup in the Borough of Keyport commencing on or about October 17, 2002 and continuing initially for a period of one (1) month, while the Mayor and Council of the Borough of Keyport evaluate options relative to the above matter; and

WHEREAS, it has become necessary for the Mayor and Council to enter into this agreement based upon the circumstances surrounding this entire matter.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Keyport as follows:

1. In response to the emergency created by the termination of the contract with Marrone Waste Paper & Disposal, Inc. including for reasons set forth herein, the failure of Marrone Waste Paper & Disposal, Inc. to perform under the contract, the abandonment of the contract and the recommendation of the Superintendent, Department of Public Works, the Mayor and Council do hereby authorize Cifelli Disposal, Inc. to perform services including the pick up of all waste, trash refuse and recyclable materials within the Borough of Keyport commencing on or about October 17, 2002 through November 16, 2002.
2. The Mayor and Borough Council hereby authorize the Chief Financial Officer to pay to the contractor, Cifelli Disposal, Inc. for the collection of refuse, trash and recyclable materials the sum of Twenty Two Thousand Dollars (\$22,000.00) per month upon the submission of required documents necessary for the payment of the aforesaid bills.
3. That the Mayor and Council hereby authorize the Mayor to enter into such temporary agreements as may be necessary in order to effectuate the terms and conditions of the within resolution.
4. That copies of the within resolution duly certified be forwarded to the Borough Attorney, Board of Health, Municipal Finance Officer and to Cifelli Disposal, Inc.,

Matawan, New Jersey and a copy of the resolution be retained in the office of the Borough Clerk for public inspection.

Offered for adoption by Mr. Merla, seconded by Mr. Hyer

Roll Call Vote: Ayes: Councilmembers Atkins, Merla, Ashmore
Hyer, Stalter

Absent: Councilman Bergen

ADJOURNMENT

Motion to Adjourn moved by Mr. Merla, seconded by Mrs. Atkins with Ayes by all present.

Time of Adjournment: 5:36 PM

Respectfully submitted,

Judith L. Poling
Judith L. Poling, RMC/CMC
Borough Clerk/Administrator

Allyson M. Cinquegrana
per Allyson M. Cinquegrana, RMC
Deputy Borough Clerk

