

**SPECIAL CALLED SESSION**

**February 23, 2015**

**BE IT REMEMBERED** that the Board of Franklin County Commissioners met in Special Called Session at the Franklin County Courthouse in Winchester, Tennessee, on February 23, 2015.

Chairman Eddie Clark presided and called the meeting to order at 7:00 pm. Sheriff Tim Fuller led everyone in pledge of allegiance to the flag. Invocation was given by Commissioner Snead. Deputy Clerk Mary Sons recorded the minutes.

**ROLL CALL:**

Iris Rudder  
Gene Snead  
Stanley Bean  
Lisa Mason  
Dale Schultz  
Dave Van Buskirk  
Eddie Clark  
Chuck Stines  
Johnny Hughes  
Helen Stapleton  
Barbara Finney  
Doug Goodman  
David Eldridge  
Angie Fuller  
Don Cofer  
Dale Amacher

**PRESENT (16)**

**ABSENT (0)**

**A QUORUM WAS DECLARED**

1. Resolution 1-022315 Guaranteeing Franklin County, Tennessee's Portion of Outstanding Total Redleg Funding to Duck River Electric Cooperative for Purchase of Transfer Stations

**MOTION BY FINNEY TO APPROVE, SECOND ELDRIDGE;**

**DISCUSSION:** Bill Anderson, Solid Waste Director and Carol Fulmer, ISWA Regional Administrator answered questions from the commissioners and explained the future benefits of purchasing the transfer stations.

One primary benefit: Interlocal would be able to negotiate for better bids if they owned the transfer stations.

After lengthy discussion on pros and cons, costs, bid process, municipality's involvement, and possible future state mandates on disposal; Commissioner Stines stated "I call the question".

**APPROVED BY ROLL CALL VOTE, 13/1 NAY FROM RUDDER, 2 ABSTAIN FROM VAN BUSKIRK AND COFER.**

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**MOTION BY STINES TO ADJOURN AT 7:46 PM, SECOND GOODMAN, ALL AYES; APPROVED BY VOICE VOTE. 16/0**

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**RESOLUTION NO.: 1-022315**

**A RESOLUTION GUARANTEEING FRANKLIN COUNTY, TENNESSEE'S PORTION OF OUTSTANDING TOTAL REDLEG FUNDING TO DUCK RIVER ELECTRIC COOPERATIVE FOR PURCHASE OF TRANSFER STATIONS**

**WHEREAS**, the Interlocal Solid Waste Authority (the "Authority") was created pursuant to Tenn. Code Ann. §§ 68-211-901, *et seq.*, and is composed of Bedford, Franklin, Giles, Lincoln and Moore Counties and the City of Tullahoma, Tennessee; and

**WHEREAS**, the Authority is operating pursuant to the powers and duties set forth in the Solid Waste Authority Act of 1991, Tenn. Code Ann. §§ 68-211-901, *et seq.*, which Act grants the Authority, with the concurrence of the governing bodies of the counties and cities within the Interlocal Solid Waste Region, the exclusive jurisdiction over and right to control the collection of solid waste within the Authority's boundary and to control the disposition of solid waste collected within the Authority's boundary (Tenn. Code Ann. §§ 68-211-906(b)); and

**WHEREAS**, the Authority has operated for approximately twenty (20) years to provide solid waste disposal services at the best possible pricing for the region; and

**WHEREAS**, the three (3) transfer stations in Estill Springs, Fayetteville, and Pulaski were built by BFI Waste Systems, LLC (the predecessor in interest to Republic Services) as part of the first solid waste disposal and transportation contract awarded by the Authority in 1995 to serve the Authority's solid waste disposal needs; and

**WHEREAS**, the Authority has collected a surcharge per ton on the solid waste that is collected at the three (3) transfer stations and has used the collected surcharge to cover the operational expenses of the Authority; and

**WHEREAS**, the Board of the Authority has determined that it would be in the best interest for the Authority to own the three (3) transfer stations in Estill Springs, Fayetteville, and Pulaski in order to allow more contractors to participate in the competitive proposal process for future waste disposal contracts and to ensure that the Authority obtains the best price for these services for the citizens served by the Authority in future solid waste disposal contracts; and

**WHEREAS**, the Authority has reached an agreement with BFI Waste Systems, LLC to purchase the three (3) transfer stations at the termination of the current disposal contract, on or around April 1, 2015; and

**WHEREAS**, the Authority is planning to fund the purchase of the transfer stations through the REDLEG program of the Rural Development, and South Central Tennessee Development District will submit the application to Rural Development; and

**WHEREAS**, the Duck River Electric Cooperative has agreed to seek approval from its board to serve as the applicant for the REDLEG funding in the amount of \$840,000.00 and to provide the funding once received to the Authority; and

**WHEREAS**, the Authority has agreed to repay the Duck River Electric Cooperative over a ten (10) year period at a maximum 1% administrative fee through the Authority's surcharge that it collects from the entities that use the three (3) transfer stations, including the members and participating entities of the Authority; and

**WHEREAS**, out of abundance of caution, the Duck River Electric Cooperative has asked for any or all of the members of the Authority to guarantee the repayment of the loan in the highly unlikely event that the Authority should cease to exist or should for any reason be unable to repay the loan; and

**WHEREAS**, the funding through the REDLEG program will not be obtained by April 1, 2015, the Authority will obtain a short term capital outlay note in the amount of \$840,000.00 which will be repaid immediately upon obtaining the funding from the REDLEG program or other funding should the REDLEG program funding not be obtained; and

**WHEREAS**, the banking institution will likely require a guarantee for the repayment of the short term capital outlay note in the highly unlikely event that the Authority should default on its payments; and

**NOW, THEREFORE, BE IT RESOLVED**, by the Board of County Commissioners of Franklin County, Tennessee, meeting in its special session on this 23<sup>RD</sup> day of February, 2015, as follows:

1. For the past twenty (20) years, the Authority has been completely self-sufficient and has paid for its operations in part through the Authority's surcharge collected on all waste collected through the transfer stations in Estill Springs, Fayetteville, and Pulaski/Giles County.

2. The Authority is purchasing the three (3) transfer stations in Estill Springs, Fayetteville and Pulaski/Giles County to ensure in part greater flexibility and ability to obtain the lowest and best competitive prices for the future disposal of solid waste in the region. The Duck River Electric Cooperative is seeking approval from its board to serve as the applicant to the REDLEG program of Rural Development to obtain \$840,000.00 for the Authority to use for the purchase of the transfer stations. The Authority must repay this amount to the Duck River Electric Cooperative over a ten (10) year period at a maximum 1% administrative fee.

3. The Duck River Electric Cooperative has requested evidence from the governing bodies of the members of the Authority that they will guarantee the repayment of the funding in the highly unlikely event that the Authority should cease functioning or be unable to repay the loan.

4. As the Authority has demonstrated over a twenty (20) year period its ability to fully finance its operations, and as the ownership of the transfer stations

will better enable the Authority to obtain the best overall solid waste disposal and transportation rates in the future, the Board of County Commissioners of Franklin County, Tennessee, hereby guarantees its portion of the outstanding total REDLEG funding up to \$200,000.00 to the Duck River Cooperative in the event that the Authority defaults on its repayments or ceases to exist.

5. As the REDLEG funding will not be available until after April 1, 2015, the Authority will obtain a short term capital outlay note that will be repaid upon receipt of the REDLEG funding or other funding should the REDLEG funding not be obtained. The Board of County Commissioners of Franklin County, Tennessee, hereby guarantees its portion of the outstanding short term capital outlay note up to \$200,000.00 which the Authority will repay immediately upon receipt of the REDLEG funding or other funding should the REDLEG funding not be obtained.

ADOPTED this 23<sup>rd</sup> day of February, 2015.

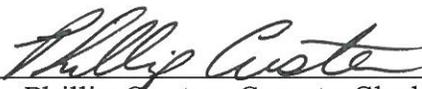
APPROVED:

  
Richard Stewart, Mayor

APPROVED:

  
Eddie Clark, Chair of Commission

ATTEST:

  
Phillip Custer, County Clerk

**RESOLUTION SPONSORED BY: Eddie Clark and Barbara Finney**

**MOTION TO ADOPT: Finney SECOND: Eldridge**

**VOTES: AYES: 13 NAYS: 1 2 Abstain**

**DECLARATION: Approved**



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Edward M. Callaway  
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January 26, 2015

**VIA EMAIL AND U.S. FIRST CLASS MAIL**

Jennifer L. Brundige, Esq.  
Luna Law Group, PLLC  
Suite 300  
333 Union Street  
Nashville, TN 37201

Re: Interlocal Solid Waste Authority/BFI Waste Services of Tennessee, LLC Contract

Dear Jennifer:

On behalf of BFI Waste Services of Tennessee, LLC ("BFI"), we are writing to make the Interlocal Solid Waste Authority ("ISWA") aware that its proposed award of contracts for future transportation and disposal services for solid waste from the three transfer stations currently owned and operated by BFI to serve the ISWA is premature, given that BFI and the ISWA have not established terms for the sale of the transfer stations.

As you know, BFI and the ISWA are parties to a ten-year contract for solid waste transportation and disposal services at the transfer stations in Estill Springs, Pulaski and Fayetteville, Tennessee, dated April 1, 2005 (the "Contract"). That contract remains in force, and does not expire on its face until March 31, 2015. Nevertheless, the ISWA has conducted two public bid processes in 2014 for future solid waste management services, and it is BFI's understanding that the ISWA will be considering a proposal to award contracts to other parties at its January 28, 2015, meeting. However, BFI owns the transfer stations, and the ISWA has not followed the prescribed process to exercise its options to purchase them.

BFI would like to point out that the Contract specifies certain procedures for the end of its term, which the ISWA has ignored to date:

- ISWA has not provided notice of its intent to exercise its right to purchase the transfer stations. Pursuant to that contract, BFI owns and operates the transfer stations, and the ISWA may exercise a right to purchase them for fair market value at the expiration of the Contract. Under section 2.05(B) of the Contract, the ISWA may give notice of its intent to exercise such purchase options within the sixty (60) day period preceding the expiration of the term of the Contract. As of the date hereof, the expiration of the Contract is more than sixty (60) days in the future, and thus the ISWA has not and cannot provide the required notice at this time.

- Section 2.05(B) of the Contract requires that the ISWA purchase the transfer stations for fair market value. The Contract establishes a three-step appraisal process to determine the fair market value of the transfer stations. First, the parties must mutually agree upon one independent appraiser to provide an initial fair market value of the transfer stations, the cost of which is borne equally by the parties. Second, if either party objects to the valuation set forth in the first appraisal, the objecting party may engage a second independent appraiser to provide a fair market valuation of the transfer stations, the cost of which shall be borne solely by the objecting party. Third, if after receipt of the second appraisal, the parties are unable to agree upon the fair market value of the transfer stations after negotiating the purchase price in good faith, the parties must mutually agree upon and appoint a third appraiser whose determination of the fair market value of the transfer stations shall be binding upon the parties. The cost of the third appraiser shall be borne equally by the parties. To date, the parties have not begun the foregoing appraisal process to determine the fair market value of the transfer stations, nor have they discussed the appointment of the first appraiser who must be mutually agreeable to both parties. Any appraisals obtained unilaterally by the ISWA do not conform to the requirements of the Contract and have no effect on determining the fair market value of the transfer stations.

In addition to these contract-based concerns with the ISWA's current course, BFI also objects to the \$382,000 aggregate valuation in appraisals by Thomas R. Carter, dated December 2014, which the ISWA apparently obtained for its own purposes and shared with BFI. BFI was not consulted in the decision to obtain these appraisals, and will not share in the cost of their production. Such appraisals do not comply with the valuation procedures expressly set forth in Section 2.05(B) of the Contract and are of no effect in the context of the Contract. BFI's own fair market valuation of the three (3) transfer stations is \$2,350,500 in the aggregate. BFI strongly believes that the ISWA's appraisal is faulty on its face for the following reasons, among others: (i) the appraiser who conducted such appraisals does not hold an MAI designation; (ii) the comparables used in such appraisal are for entirely different uses and do not appropriately consider the unique characteristics of the transfer stations and the specialized equipment used therein which are part of the sale; and (iii) such appraisals do not appear to utilize a regression analysis or econometric modeling in their valuations and instead rely upon "traditional" unscientific anecdotal methods.

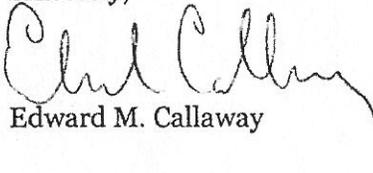
Finally, the ISWA's evaluation does not consider the value of the permits issued by the Tennessee Department of Environment and Conservation that BFI maintains for operations at the transfer stations. Those permits by rule authorize the operation of each facility, and bestow the authority to put the facilities to their highest and best use as a solid waste transfer station. Ignoring the increase in value that the permits by rule bring to the facility by authorizing them as a going concern causes the ISWA's appraisals to miss the mark.

waller

Jennifer L. Brundige, Esq.  
January 26, 2015  
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Because the ISWA has not yet followed the terms of the Contract to establish the fair market value for the transfer stations, BFI believes any contract award is premature. BFI sincerely hopes to address these issues cooperatively with the ISWA, before the ISWA proceeds with new contract awards without complying with the existing Contract. To that end, BFI requests that new contracts not be awarded on January 28, 2015, and that it be afforded the opportunity to meet with the ISWA to discuss orderly ways to address the end of the Contract's term.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ed Callaway", written in black ink.

Edward M. Callaway

EMC:

cc: Tim Trost, *Area President, Republic Services*  
John Sakmar, *General Manager, Republic Services*

## Talking Points

For Special Called Meeting

### Solid Waste Resolution

- 1) The Inter-Local Solid Waste Authority is made up of a region including Franklin County, Giles County, Bedford County, Moore County, Lincoln County and the City of Tullahoma. Franklin County was a founding member and entered into the authority as a means to dispose of its solid waste after the closing of the land-fill in 1994-95. The purpose behind creating a region was for the bargaining power while negotiating: storing, transporting, and disposal of waste with contractors like BFI, Republic, Santek, and Richardson. Franklin County annually has close to 12,000 tons of municipal / household solid waste. This figure does not include the City of Winchester or the businesses and industries that operate in and around the county. Inter-local does an average of 128,000 tons of solid waste annually. Thus you can see the huge difference in volume.
- 2) Franklin County's waste as a whole to include all the cities, businesses, and industries is processed through the transfer station located in Estill Springs that is currently owned and operated by Republic Industries (BFI). This is a final stop located inside the county for all of the counties refuse. Republic then takes possession of the garbage and disposes of it in the land-fill called Mid-Point located in Rutherford County. We are billed by Inter-local Solid Waste authority for all of the waste that Franklin County is responsible for at a charge of 32.11 / ton.
- 3) Last month at its monthly board meeting Santek out of Bradley County was awarded the contract as the lowest bidder for disposing of all of Franklin County and Tullahoma's solid waste. The transfer of contract date is to begin April 1<sup>st</sup> 2015. This presents a huge problem as BFI still owns the actual transfer station, road improvements, permits, collection system, and scales at the Estill Springs facility. BFI owns two additional transfer stations located in Lincoln and Giles County. BFI hinted toward litigation via an attached letter addressed to the board of Inter-local Solid Waste Authority if they were to lose the contract for the five county waste disposal. For this reason and to have an additional bargaining chip and source of income in the future, Inter-local is exercising its option to purchase all three transfer stations located with-in its region.
- 4) Inter-local predicts that purchasing of the three transfer stations will make it much easier to negotiate the contracts for transportation and disposal of garbage when the newly negotiated contracts expire in five years. The Authority would also be in a position to charge rent and recover some of the costs associated with disposing of waste.
- 5) Inter-local Solid Waste Authority is in the process of securing a loan through Duck River Electric Membership Corporation via the REDLEG program (administered by Department of Agriculture). The loan would be for a term of ten years with a maximum APR of 1%. Noted though that Lora Fisher the program administrator states that she has never seen DREMC charge the 1%. Each transfer station would be purchased from Republic (BFI) for a sum of 350,000 /ea. This is the negotiated rate with no litigation and immediate hand-over to the new contractor, Santek on April 1<sup>st</sup> 2015. BFI was initially asking for an average of 3 million dollars per each of the three transfer stations. No doubt the awarding of three of the counties waste contracts back to Republic softened the asking prices during negotiations.

- 6) Franklin County has been asked by the Authority to bear its share of the five county burden by offering collateral in the form of resolution toward the loan in the amount of 200,000 dollars; in the event that Inter-Local Solid Waste can't meet its loan burden over the next ten years and defaults on the loan.
- 7) Inter-local Solid Waste Authority has liquidable assets as of the January 2015 meeting of approximately \$568,287 dollars. It intends to pass an additional fee onto each ton toward paying for the new loan. Franklin County currently pays 32.11 per ton. On April 1<sup>st</sup> the amount will increase to 44.06 / ton without the surcharge and debt fee. I estimate the new rate to be approximately 47.00 / ton initially. I expect that running the extent of the contract at its maximum rate in five years Franklin County would be paying an estimated 60.00 per every ton of solid waste disposed of.

#### **Courses of Action (to consider)**

**Most probable:** Franklin County agrees to the collateral of 200,000 dollars and transfer of authority happens in a smooth manner from Republic (BFI) to Santek at the Estill Springs facility. Trash disposal is delayed no more than a week for which Franklin County could bear the burden with little to no interruption to the cities, residents, and industries of the county. The other Counties pass their resolutions and the contracts are all awarded and ownership of the transfer stations begin for the Authority. Franklin County continues to decrease its waste stream by the 3R's: reducing, reusing, and recycling. It explores new disposal options on its own and / or with the help of the Authority for future disposal upon the next contract negotiations.

**Less Probable:** Franklin County does not pass the resolution and ownership and purchase of the Estill Springs transfer station is left up in the air. I foresee a long and tedious litigation between the Inter-Local Solid Waste Authority and Republic (BFI). Santek would not immediately be able to take possession and operate the Estill Transfer Station. Franklin County would have to find an alternative disposal method until the details of ownership and or lease could be worked out with Santek and Republic (BFI). We are not currently equipped or manned to ship solid waste outside of Franklin County. We are not currently equipped to house solid waste for any length of time at our Joyce Lane Facility.

**Least Probable:** Franklin County breaks from the Authority after a twenty year partnership and goes it alone. Litigation would be anticipated from the Authority, other four counties, City of Tullahoma and the affected contractors. An **immediate** upgrade to the Joyce Lane facilities, manning, and equipment estimated to be in the 5-10 million dollar range would be needed.

*Side note: Regardless of the decision made, I always have Franklin County's best interest at heart as a life-long resident of the county and faithful County employee. Trash is about to become very expensive in Franklin County and our immediate efforts should be toward the 3R(s) reduce, recycle, and re-use.*

Very Restfully,

William Anderson

Director, Franklin County Solid Waste

**SIGN-IN  
GUEST/MEDIA**

**SPECIAL CALLED SESSION  
FRANKLIN COUNTY COMMISSION  
February 23, 2015**

NAME

AFFILIATION

- |     |                         |                       |
|-----|-------------------------|-----------------------|
| 1.  | <u>William Anderson</u> | <u>FC SOLID WASTE</u> |
| 2.  | <u>Lindsey Ladd</u>     | <u></u>               |
| 3.  | <u>A.J. Ladd</u>        | <u>FC Solid Waste</u> |
| 4.  | <u>Carol Fulmer</u>     | <u>ISWA</u>           |
| 5.  | <u>Donnie Burnett</u>   | <u></u>               |
| 6.  | <u></u>                 | <u></u>               |
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| 16. | <u></u>                 | <u></u>               |

Benediction was given by Chairman Clark.

**FEBRUARY 23, 2015 SPECIAL CALLED SESSION**

**DATE APPROVED BY COMMISSION:** \_\_\_\_\_ **MB** \_\_\_\_ **PAGE** \_\_\_\_

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**CHAIR OF COUNTY COMMISSION**

\_\_\_\_\_  
**COUNTY CLERK**