

SPECIAL CALLED SESSION
May 25, 2018

BE IT REMEMBERED that the Board of Franklin County Commissioners met in Special Called Session at the Franklin County Courthouse in Winchester, Tennessee, on May 25, 2018. Chairman Eddie Clark presided and called the meeting to order at 6:03 pm. Sheriff Tim Fuller led everyone in pledging allegiance to the flag. Commissioner Chuck Stines gave the invocation. Deputy Clerk Mary Sons recorded the minutes.

ROLL CALL:

Dale Schultz
Dave Van Buskirk
Eddie Clark
Chuck Stines
Johnny Hughes
Helen Stapleton
Barbara Finney
Doug Goodman
David Eldridge

Angie Fuller

Don Cofer

Sam Hiles

Iris Rudder

Gene Snead
Lisa Mason

Carolyn Wiseman

PRESENT (12)

ABSENT (4)

A QUORUM WAS DECLARED

- 1) Resolution 1-052518 Authorizing Submission of an Application for Litter Collecting Grant for F/Y 2018-2019 From the Tennessee Department of Transportation

**MOTION BY VAN BUSKIRK TO APPROVE, SECOND GOODMAN, ALL
AYES; APPROVED BY VOICE VOTE 12/0.**

- 2) Ambulance Service Discussion:
 - a) Mayor addressed the commission about calling a meeting with the Emergency Service Board to discuss Ambulance Service in the county.
 - b) Research is needed on how to correct any problems
 - c) Wants the hospital to be involved

MEETING RECESSED from 6:07-6:14 at Mayor Stewarts request for Attorney Ben Lynch to conduct business.

- 3) Landfill Lawsuit: Resolution Approving Settlement of all the Lawsuits Filed Against Franklin County, Tennessee by William F. Yarborough, Inc. and Authorizing Payment of Said Settlement Amount

**MOTION BY STINES TO APPROVE, SECOND WISEMAN, ALL AYES;
APPROVED BY VOICE VOTE 12/0.**

**DETAIL ATTACHMENTS TO
COMMISSION MINUTES
ON FOLLOWING PAGES**

RESOLUTION # 1-052518

**RESOLUTION AUTHORIZING SUBMISSION OF AN APPLICATION FOR
LITTER COLLECTING GRANT FOR F/Y 2018-2019 FROM THE
TENNESSEE DEPARTMENT OF TRANSPORTATION**

WHEREAS, Franklin County is eligible for a litter grant from the Tennessee Department of Transportation for F/Y 2018-2019; and

WHEREAS, the Franklin County Board of Commissioners does intend to apply for said grant; and

WHEREAS, said grant and the contract for said grant will impose certain legal obligations upon Franklin County, Tennessee, as set forth in Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, the budget for the use of said grant is attached hereto as Exhibit "B" and is made a part hereof.

NOW, THEREFORE, BE IT RESOLVED,

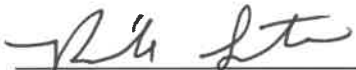
1. That the County Mayor of Franklin County, Tennessee is hereby authorized to apply on behalf of Franklin County, Tennessee for a litter grant for F/Y 2018 - 2019 from the Tennessee Department of Transportation.

2. That upon approval of said litter grant application to the Tennessee Department of Transportation, the County Mayor of Franklin County, Tennessee is authorized to execute all contracts and other documents required in order to accept said grant on behalf of Franklin County, Tennessee

BE IT FURTHER RESOLVED that this Resolution shall take effect upon adoption, the general welfare requiring it.

ADOPTED this 25th day of May, 2018.

APPROVED:



Richard Stewart, Mayor

APPROVED:



Eddie Clark, Chair of Commission

ATTEST:


Phillip Custer, County Clerk

SPONSORED BY:

Van Buskirk and Goodman

MOTION TO ADOPT:

Van Buskirk

SECOND:

Goodman

VOTES:

AYES: 12 NAYS: 0

DECLARATION:

Approved

EXHIBIT "A"

Work Plan for Franklin County 2018-2019

Franklin County proposes to utilize prisoners housed in the county jail to collect litter and trash along County and State roads within the County's boundaries. The prisoners will be transported to and from work by means of a covered truck. During transport, a guard will be present in order to provide necessary security and oversight of prisoners during work periods away from the jail. No prisoners involved in roadside litter pick-up activities will have a felony conviction.

It is proposed that litter and trash collection will take place five (5) days a week using an area rotation system. The rotation will accomplish two things: 1) It prevents an excessive build-up of litter in any area, and 2) It prevents the possibility of transporting prisoners to a recently cleaned area where inmate labor would be less efficient and effective.

Any illegal dumps along roadsides will be cleaned up. These will also be reported in detail on all monthly progress reports submitted to TDOT.

All litter workers, guards, drivers or prisoners will be required to wear safety vests at all times while working on or near a roadway. Work gloves, litter bags, and tools will be used for the purpose of litter collection. County personnel will ensure that a first-aid kit and adequate drinking water will be present at each worksite. Lunches will be provided to all prisoners who participate in the litter collection of the Litter Grant Program.

Specific roads covered for litter collection, pounds of litter collected, and other pertinent information will be reported and submitted in the required monthly report to TDOT.

Education Plan for Franklin County 2018-2019

Franklin County will target 4 areas for this year's litter education.

Student Education

Franklin County intends on entering the school system targeting the 2nd grade age group to discuss the importance of stopping the litter cycle and recycling. Along with the 2nd graders, Educational talks will be directed towards older children in the Junior Cadet Program affiliated with the Franklin County Sheriff's Office to discuss the State Laws regarding litter. A deputy will accompany the Educational Coordinator to help reinforce these laws. Bulletin board and poster contests are intended this next fiscal year along with prizes to the best school that promotes litter clean up.

Public Education

Franklin County Solid Waste will hold a Hazardous Waste Event that will include the Education Coordinator and the "Tarp It or Ticket" campaign. Franklin County plans on putting the logo for TDOT on at least one of our main billboards in town. Franklin County will also set up a booth at the county fair to promote the campaign as well as recycling.

Media Education

Franklin County has always participated in local morning talk shows on WCDT and WZYX Radio Stations discussing litter, laws, and upcoming activities. This year Franklin County will expand by reaching out the citizens at the local theater and drive in with campaign ads. Along with radio and theater, we plan on setting up a Facebook page.

Government Education

Franklin County plans on partnering with Tim's Ford State Park during their summer youth events to speak to groups on the importance of keeping our county clean. Education Coordinator plans on enhancing existing bulletin boards in county buildings to include the campaign logo, recycling tips, and litter information.

EXHIBIT "B"

| GRANT BUDGET | | | | |
|---|---|---------------------------|----------------------------------|----------------------|
| County of : Franklin County | | | | |
| The grant budget line-item amounts below shall be applicable only to expense incurred during the following | | | | |
| Applicable Period: BEGIN: July 1, 2018 END: June 30, 2019 | | | | |
| POLICY 03 Object Line-Item Reference | EXPENSE OBJECT LINE-ITEM CATEGORY ¹ | GRANT CONTRACT | GRANTEE PARTICIPATION | TOTAL PROJECT |
| 1. 2 | Salaries, Benefits & Taxes | \$37,950.00 | 0.00 | \$37,950.00 |
| 4. 15 | Professional Fee, Grant & Award ² | 0.00 | 0.00 | 0.00 |
| 5, 6, 7, 8, 9, 10 | Supplies, Telephone, Postage & Shipping, Occupancy, Equipment Rental & Maintenance, Printing & Publications | \$0.00 | 0.00 | \$0.00 |
| 11. 12 | Travel, Conferences & Meetings | 0.00 | 0.00 | 0.00 |
| 13 | Interest ² | 0.00 | 0.00 | 0.00 |
| 14 | Insurance | 0.00 | 0.00 | 0.00 |
| 16 | Specific Assistance To Individuals | 0.00 | 0.00 | 0.00 |
| 17 | Depreciation ² | 0.00 | 0.00 | 0.00 |
| 18 | Other Non-Personnel ² | \$12,650.00 | 0.00 | \$12,650.00 |
| 20 | Capital Purchase ² | 0.00 | 0.00 | 0.00 |
| 22 | Indirect Cost | 0.00 | 0.00 | 0.00 |
| 24 | In-Kind Expense | 0.00 | 0.00 | 0.00 |
| 25 | GRAND TOTAL | \$50,600.00 | 0.00 | \$50,600.00 |

¹ Each expense object line-item shall be defined by the Department of Finance and Administration Policy 03, *Uniform Reporting Requirements and Cost Allocation Plans for Sub-recipients of Federal and State Grant Monies, Appendix A.* (posted on the internet at: <http://www.state.tn.us/finance/act/documents/policy3.pdf>).

GRANT BUDGET LINE-ITEM DETAIL:

| PROFESSIONAL FEE, GRANT & AWARD | AMOUNT |
|--|--------------------|
| EDUCATION to include Student, Public, Media, and Government Education | \$12,650.00 |
| TOTAL | \$12,650.00 |

RESOLUTION # 3-052518

**RESOLUTION APPROVING SETTLEMENT OF ALL THE LAWSUITS FILED
AGAINST FRANKLIN COUNTY, TENNESSEE BY WILLIAM F. YARBOROUGH, INC.
and AUTHORIZING PAYMENT OF SAID SETTLEMENT AMOUNT**

WHEREAS, the lawsuits involving the Franklin County landfill located on property owned by William F. Yarbrough, Inc. have been pending for several years, as follows:

1. Filed July 30, 1996: *William F. Yarbrough, Inc. v. Franklin County, Tennessee*, filed in the Circuit Court of Franklin County, Tennessee, Civil Action File No.: 9687-CIV; and

2. Filed September 30, 1996: *Franklin County, Tennessee v. William F. Yarbrough, Inc.*, filed in the Circuit Court of Franklin County, Tennessee, Civil Action File No.: 9980-CIV against Yarbrough in the Circuit Court for the County by filing a Petition for Condemnation (the "Condemnation Proceeding") to acquire certain property described therein, which petition Yarbrough answered on March 29, 2018; and

WHEREAS, the Franklin County Board of Commissioners is of the opinion that it would be in the best interest of Franklin County, Tennessee and the citizens and taxpayers of said county that these lawsuits be settled and brought to a conclusion after these many years.

NOW, THEREFORE, BE IT RESOLVED,

1. That the Franklin County Board of Commissioners in order to resolve said lawsuits and to bring them to a conclusion does hereby approve the settlement of both lawsuits involving William F. Yarbrough, Inc. for the total sum of Two Hundred Ten Thousand and no/100's Dollars (\$210,000.00), in addition to any sums previously paid and deposited with the Court. This sum will be paid in order to completely and fully resolve both cases and shall be paid in return for a full Release of All Claims from William F. Yarbrough, Inc. of any and all claims it might have against Franklin County, Tennessee in connection with the landfill or any lawsuits pending in regard thereto.

2. That this settlement is approved by the Franklin County Board of Commissioners in accordance with the terms and conditions of a Settlement Agreement to be signed and executed by William F. Yarbrough, Inc. and Franklin County, Tennessee, a copy of which is attached hereto and made a part hereof Exhibit "A".

3. That the Franklin County Mayor, Richard Stewart, is hereby authorized and directed to execute and sign said Settlement Agreement (Exhibit "A") on behalf of Franklin County, Tennessee, and he is further authorized and directed to sign and execute any and all documents required in order to conclude said matters and resolve these lawsuits.

4. That Franklin County Mayor, Richard Stewart, is further authorized and directed to pay said settlement amount from the Franklin County, Tennessee General Fund.

BE IT FURTHER RESOLVED that this Resolution shall take effect upon adoption, the general welfare requiring it.

ADOPTED this 25TH day of May, 2018.

APPROVED:


Richard Stewart, Mayor

APPROVED:


Eddie Clark, Chair of Commission

ATTEST:


Phillip Custer, County Clerk

SPONSORED BY: Van Buskirk and Goodman

MOTION TO ADOPT: Stines **SECOND:** Wiseman

VOTES: AYES: 12 NAYS: 0

DECLARATION: Approved

EXHIBIT "A"

RELEASE AND SETTLEMENT AGREEMENT

This Release and Settlement Agreement (“Settlement Agreement”) is made as of May ____, 2018 (the “Effective Date”) by and between Franklin County, Tennessee (“County”) and Wm. F. Yarbrough Inc., aka William F. Yarbrough, Inc., (“Yarbrough”) (the County and Yarbrough also collectively the “Parties” or individually, a “Party”).

Recitals

WHEREAS, on July 30, 1996, Yarbrough filed in the Circuit Court for Franklin County (the “Court”) Civil Action No. 9687-CIV against the County, by filing a complaint for inverse condemnation, breach of contract and declaratory judgment (the “Yarbrough Complaint”) related to certain property owned by Yarbrough, which complaint the County answered on January 1, 1997;

WHEREAS, on September 30, 1996, the County filed in the Court Civil Action No. 9980-CIV against Yarbrough in the Circuit Court for the County by filing a Petition for Condemnation (the “Condemnation Proceeding”) to acquire certain property described therein, which petition Yarbrough answered on March 29, 2018;

WHEREAS, the Parties have agreed to compromise and settle any and all claims, disputes, and differences between them relating to the landfill and the disputes outlined in the Yarbrough Complaint and the Condemnation Proceeding;

WHEREAS, the Parties believe that the terms of this Agreement are fair, equitable, and the result of an arm’s-length, bargained-for exchange and they affirm the mutual desirability of entering into this Agreement;

NOW, THEREFORE, for good and valuable consideration, and in consideration of the mutual covenants and agreements set forth herein, the sufficiency of which as consideration for this Agreement is hereby acknowledged by the Parties, the Parties hereby agree as follows:

1. Dismissal By Yarbrough. By June 1, 2018, Yarbrough will file in the Court an Order of Dismissal with Prejudice of the Yarbrough Complaint dismissing with prejudice any and all claims it has brought in Case No. 9687-CIV in the form attached as **Exhibit 1**.

2. Agreed Order in Condemnation Proceeding. By June 1, 2018, the Parties shall file an Agreed Order in the Condemnation Proceeding in the form attached **Exhibit 2** that states:

a. The County shall not provide an easement for ingress or egress across the Landfill Property to benefit a separate parcel of land also presently owned by Yarbrough, or otherwise provide Yarbrough any access to the Landfill Property, despite any language in the Condemnation Proceeding to the contrary; notwithstanding the foregoing, Yarbrough shall have the non-exclusive right to use the 2.68 acre property described in Exhibit C for access to property Yarbrough owns adjacent to the road described in Exhibit C.

b. Yarbrough agrees that the \$235,680 that it has already received in the Condemnation Proceeding is complete and adequate compensation to it for property at issue in the Condemnation Proceeding (“the Landfill Property”), and no interest on such amount shall be owed;

c. Because of these facts, and pursuant to the Settlement Agreement signed by the Parties, no controversy exists in Case No. 9980-CIV, and the Parties agree that the case should be closed with title and deed to the Landfill Property being placed solely in the name of the County and recorded.

3. County Rights to the Landfill Property. Yarbrough shall properly and legally deed and title to the County the three tracts of land set forth in Exhibit A and B and C (attached hereto collectively as **Exhibit 3**) of the Condemnation Proceeding within ten days of the judge’s entry of the order closing the Condemnation Proceeding.

4. Yarbrough Rights to the Landfill Property. Yarbrough shall have no rights to access or use any of the Landfill Property except that it shall have the non-exclusive right to use the 2.68 acre property described in Exhibit C for access to property Yarbrough owns adjacent to the road described in Exhibit C.

5. Payment. No later than ten (10) days after the later of the filing of the Dismissal of Case No. 9687-CIV, the entry of the order closing Case No. 9980-CIV, and completion of the deed and titling of the Landfill Property to the County, the County agrees to pay Yarbrough the total sum of Two Hundred and Ten Thousand Dollars (\$210,000.00) (the “Settlement Payment”). The Settlement Payment will be made Wm. F. Yarbrough, Inc. and Floyd Don Davis and Clinton A. Swafford and mailed to Floyd Don Davis, Esq., Davis Kessler & Davis, 705 Dinah Shore Blvd, Winchester, TN 37398.

6. Release. The parties hereby fully and forever remise, release, acquit, and discharge each other and each other’s agents, representatives, employees, employers, administrators, independent contractors, insurers, assigns, principals, parents, successors, affiliated entities and agencies, attorneys, and/or heirs and assigns (all of the foregoing released persons and entities may collectively be referred to as the “Released Parties”) from any and all legal, equitable and other claims and causes of action of any kind, including but not limited to, any and all suits, liens, judgments, debts, sums of money, accounts, covenants, contracts, agreements, arrangements, promises, obligations, acts, omissions, warranties, statutory claims, torts, injuries, losses, damages, claims, counterclaims, cross-claims, third-party claims, demands, expenses, fees, oral modifications, accord and satisfaction, novation, setoff, recoupment, and mutual releases, of any kind and any other relief of any nature whatsoever, whether known or unknown, whether absolute, fixed or contingent, whether actual or potential, foreseen or unforeseen, and whether in tort or contract, law or equity, under the laws of the State of Tennessee or any other state, or the United States of America, that they may have had, now have or hereinafter can, shall or may have against each other by reason of, arising out of, or in connection with the Landfill Property or property near or abutting the Landfill Property. It is the intention of the Parties that the releases provided herein are to be as broad and all-encompassing

as the law allows and are to serve as full and final resolution, as to all Parties, of the claims and disputes set forth in the Yarbrough Complaint and the Condemnation Proceeding, as well as any other related in any way to the Landfill Property.

In addition, the Parties acknowledge that, while they could become aware of facts in addition to or different from those of which they are now aware with respect to the subject matter of the Settlement Agreement, it is their intention that this Settlement Agreement is and will remain final and enforceable. Notwithstanding the foregoing, no release or waiver herein releases any obligation created by this Settlement Agreement.

7. No Admission of Liability. Nothing in this Settlement Agreement will in any way be construed or understood to be an admission by the Parties of the validity of any of the claims or allegations asserted against them. The Parties desire to enter into this Settlement Agreement solely to avoid the further expense, inconvenience, and uncertainty of the ongoing or any other litigation related to these matters.

8. Costs and Fees. Each Party agrees to bear its own attorneys' fees and expenses and all other costs related to the Yarbrough Complaint and/or the Condemnation Proceedings.

9. Further Documents and Acts. Each Party will take such further action (including, but not limited to, the execution, acknowledgment, and delivery of documents or other tangible items in such Party's possession) as reasonably requested by the other Party in order to facilitate the implementation and performance of this Settlement Agreement. Each Party hereto agrees that such Party will not take any action that would interfere with the performance of this Settlement Agreement by the other Party hereto or that would adversely affect any of the rights provided for herein.

10. Entire Understanding. Each Party executes this Settlement Agreement at its own free and voluntary will. This Settlement Agreement contains the entire understanding between the Parties with respect to the settlement herein and supersedes any and all prior discussions, negotiations, proposals, understandings and agreements, if any, whether oral or written, with regard to this Settlement Agreement. The Parties hereto acknowledge that no other Party, nor agent or attorney of any other Party, has made any promises, inducements, statements, representations or warranties whatsoever, expressed or implied, not contained herein concerning this Settlement Agreement, and the Parties acknowledge that they have not executed this Settlement Agreement in reliance upon any such promise, inducement, statement, representation, or warranty. Each Party to this Settlement Agreement further acknowledges that it has had an opportunity to consult with legal counsel, and has in fact consulted with legal counsel, regarding this Settlement Agreement and is entering into it with full knowledge and understanding of the provisions and consequences of this Settlement Agreement.

11. Modification. This Settlement Agreement may not be amended except by an instrument signed by all of the Parties hereto.

12. Breaches of the Settlement Agreement. In the event of any breach of this Settlement Agreement by a Party, the Parties agree that any such dispute will be brought

exclusively in the Circuit Court of Franklin County, Tennessee, and the prevailing Party will be awarded, in addition to any other amounts due or rights granted to the Parties under this Settlement Agreement, all costs and reasonable attorneys' fees incurred by the prevailing Party in pursuing or defending against the enforcement of or collection under this Settlement Agreement, and the non-prevailing Party will pay such costs and fees.

13. Binding Nature of Settlement Agreement. The provisions of this Settlement Agreement will be deemed to bind, obligate and extend to, and inure to the benefit of, the Parties hereto and their successors and assigns.

14. Construction. This settlement and the provisions of this Settlement Agreement are the result of negotiations between the Parties and will be deemed to have been jointly drafted by them. Accordingly, no ambiguity, if any, in this Settlement Agreement will be interpreted against or adversely to either of the Parties solely because that Party or that Party's representative was involved in proposing, drafting, or reviewing any language or term of this Settlement Agreement.

15. Invalidity of Any Provision. Every provision of this Settlement Agreement is intended to be severable. In the event that any term or provision hereof is declared to be unenforceable or invalid by a court or other authority of competent jurisdiction, such unenforceability or invalidity will not affect the balance of the terms and provisions hereof, which terms and provisions will remain binding and enforceable, provided the remaining terms are consistent with the material intent and incentives of the Parties for entering into the Settlement Agreement. In lieu of any such provision of the Settlement Agreement, or part thereof, that is determined to be invalid or unenforceable, there will be added as part of the Settlement Agreement a valid and enforceable provision as similar as possible in terms to such invalid or unenforceable provision.

16. Counterparts. For the convenience of the Parties, the Settlement Agreement may be executed in one or more counterparts and each executed counterpart will, for all purposes, be deemed an original and will have the same force and effect as an original, all of which counterparts together will constitute in the aggregate but one and the same instrument. The Parties may rely on signatures transmitted via facsimile or email.

17. Authority. Each signatory to this Settlement Agreement represents and warrants that its signature has been authorized by the Party upon whose behalf the signature is made. Each Party further separately warrants and represents on its own behalf that (a) it is the sole and lawful owner of all right, title and interest in and to every claim and other matter which it releases through this Agreement; (b) it has not heretofore assigned, transferred, encumbered, subjected to a lien or disposed of all or any part of any legal, equitable and other claims and causes of action released or otherwise affected by this Settlement Agreement (except as set forth herein), or purported to assign, transfer or lien, voluntarily or involuntarily, to any person or entity, any right, claim, debt, liability, obligation, account, or action, or any part of or portion thereof, that is released herein; and (c) it shall protect, defend, hold harmless and indemnify the other Party and the other Released Parties affiliated with that other Party from and against any and all claims, demands, actions, liabilities, losses, costs and expenses (including, but not limited

to, reasonable attorneys' fees) arising out of any actual or alleged assignment, transfer or lien of any right, claim, debt, liability, obligation, account, or action, or any part of portion thereof, that is not disclosed herein.

18. Governing Law. The Parties agree that this Settlement Agreement will be governed by the laws of the State of Tennessee.

19. Headings. The headings set forth in this Settlement Agreement are for convenience of reference only and will not be deemed a part of, or considered in, construing or interpreting this Settlement Agreement.

IN WITNESS WHEREOF the Parties have executed this Settlement Agreement as of the day and year first set forth above.

WILLIAM F. YARBROUGH, INC.

By: _____

Its: _____

FRANKLIN COUNTY, TENNESSEE

By: _____

Its: _____

**SIGN-IN
GUEST/MEDIA**

**SPECIAL CALLED SESSION
FRANKLIN COUNTY COMMISSION
Friday May 25, 2018**

| <u>NAME</u> | <u>AFFILIATION</u> |
|---------------------------|---|
| 1. <i>Jerre M Hood</i> | <i>attorney/tax paper</i> ^{<i>citizen</i>} |
| 2. <i>Al Lupp</i> | <i>WEDT</i> |
| 3. <i>Bill Hancock</i> | <i>Wm F Yessouf INC</i> |
| 4. <i>David Alexander</i> | <i>State Representative</i> |
| 5. <i>Andrew Ernst</i> | <i>Finance</i> |
| 6. _____ | _____ |
| 7. _____ | _____ |
| 8. _____ | _____ |
| 9. _____ | _____ |
| 10. _____ | _____ |
| 11. _____ | _____ |
| 12. _____ | _____ |
| 13. _____ | _____ |
| 14. _____ | _____ |
| 15. _____ | _____ |
| 16. _____ | _____ |

**MOTION BY STINES TO ADJOURN AT 6:16 PM, SECOND FINNEY, ALL
AYES; APPROVED BY VOICE VOTE 12/0.**

Benediction was given by Chairman Clark

May 25, 2018 SPECIAL CALLED SESSION

DATE APPROVED BY COMMISSION: _____ MB _____ PAGE _____

CHAIR OF COUNTY COMMISSION

COUNTY CLERK