



HISTORIC
FRANKLIN
TENNESSEE

ITEM #12
BOMA
05/08/2012

MEMORANDUM

March 6, 2012

TO: Board of Mayor and Alderman

FROM: Eric Stuckey, City Administrator *Eric*
Russ Truell, Assistant City Administrator of Finance and Administration
Becky Caldwell, Solid Waste Director

SUBJECT: Consideration of inter-local agreement with Bi-County Solid Waste Management to haul and dispose of solid waste processed in the City-owned transfer station

Purpose

The purpose of this memorandum is to provide the Board of Mayor and Aldermen (BOMA) with information to consider an inter-local agreement with Bi-County Solid Waste Management relative to hauling and disposal of solid waste processed in the City-owned transfer station.

Background

During the past several years, the City has seen a considerable increase in landfill tip fees. The most striking example is the 25% increase in landfill tipping fees experienced by the City in January of 2010. Because the City of Franklin does not own and/or operate a landfill, it can expect to continue to see increasing fluctuations in the fees based on its ability to obtain agreements with third parties for extended timeframes. Additionally, the number of landfills and landfill capacity in the middle Tennessee area continues to decrease and directly impacts the City's operational expenses.

The City of Franklin currently disposes of solid waste through a contract with Republic Services, Inc. with the City providing the transportation ("hauling") to the Middlepoint Landfill in Murfreesboro. With this agreement set to expire June 30, 2012, the City has been exploring options to manage costs associated with disposal and secure landfill capacity for an extended period of time. The City has an opportunity to enter into an inter-local agreement with Bi-County Solid Waste Management to provide both transportation and disposal services for an extended period of time. Bi-County Solid Waste Management is a Tennessee Solid Waste Authority formed by Montgomery and Stewart Counties in 1974. This local government authority, which is governed by a seven member board, was the first government-run landfill, in Tennessee, to meet the new Subtitle D regulations for solid waste. The Bi-County landfill is a total of 556 acres. In 2007, Bi-County completed a land swap with Fort Campbell U. S. Army Base that provided 356 acres, which added an estimated 100 years of capacity to the landfill. Current operating practices include the use of compactors to compact solid waste in a balefill.

The proposed inter-local agreement establishes a partnership with Bi-County Solid Waste Management and is based on an initial 2-year agreement with four (4), 3-year options for renewal. The agreement is to maintain a set fee for two (2) years, while increasing the rate incrementally, every three (3) years based on the Consumer Price Index (CPI). This inter-local agreement establishes a 14-year relationship between the City of Franklin and Bi-County Solid Waste Management. Through this long-term



arrangement the City can realize both rate stability and certainty at a highly competitive rate. The provision of solid waste transportation services through Bi-County also presents an opportunity for savings by eliminating to own and maintain several tractor trailer units.

The attached spreadsheet offers a comparison of the projected expenses for the next five fiscal years. The first column represents expected costs with maintaining hauling and disposal services as we currently operate, while the “Bi-County” column provides similar details of expected costs associated with entering into an inter-local agreement with Bi-County Solid Waste Management for hauling and disposal services. Additionally, details of the cost per ton calculations using both our current operating expenses and the projected cost per ton upon entering the inter-local agreement with Bi-County Solid Waste Management indicate the potential savings per ton associated with this decision. As depicted on the attached spreadsheet, the City projects an annual savings over the next five years ranging from \$551,986 (FY13) to \$937,971 (FY15). The fluctuation in annual savings is largely driven by the anticipated need for equipment replacement under the City’s current operations. In total, the projected savings from FY13 through FY17 is \$3.87 million or an annual average of \$756,461.

As an additional option within the proposed interlocal agreement, staff sought a cost for a tip fee only option with the City providing hauling to the Bi-County landfill. Bi-County has estimated the tip-fee only rate to be \$20 per ton. The estimated 2013 cost for hauling to the Middlepoint Landfill (approximately 108 miles round-trip) is \$11.28 per ton. If you extrapolate this cost based on mileage to the Bi-County landfill which has a round-trip of 166 miles, the hauling cost estimate would be \$17.33 per ton. Combining the tip fee with the City-provided hauling results in a total estimated of \$37.33 per ton. This is significantly higher (16.6%) than the Bi-County cost of both landfill and transportation of \$32 per ton.

Choosing to partner with Bi-County Solid Waste Management will decrease the City’s Disposal Division by four employees. The City will provide options for these employees to maintain employment within the City of Franklin at their current rate of pay and current benefits.

The proposal to partner with Bi-County Solid Waste Management for our hauling and disposal services will decrease the City’s risk and liability associated with everyday operations. The City can also decrease our variable expenses and provide a high degree of certainty in our landfill service agreement for the next 14 years.

Options

At this time, the Board has the option to choose one (1) of four (4) arrangements for solid waste disposal:

1. Choose to approve the inter-local agreement with Bi-County Solid Waste Management for hauling and disposal of solid waste processed through our City-owned transfer station
2. Choose to continue hauling solid waste with City-owned resources and extend the existing agreement, with Republic Services, with the expectation the tip fee will increase to \$26.23 per ton and continue to increase every year, based on the Consumer Pricing Index, for the remaining two (2) years of the existing agreement.



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3. Choose to continue hauling solid waste with City-owned resources and request preparation of specification documents to proceed through the bid process to possibly obtain an alternative arrangement for landfill services. To allow for potential transition in service providers by the July 1, 2012 expiration of the existing contract, the City's bid would need to be release no later than April 1, 2012.
4. Choose to request preparation of specification documents to proceed through the bid process to obtain a third party hauling company, in addition to a possible alternative arrangement for landfill services. To allow for potential transition in service providers by the July 1, 2012 expiration of the existing contract, the City's bid would need to be release no later than April 1, 2012.

Financial Impact

The proposed inter-local agreement presents an opportunity for the City to realize significant saving compared to existing operations. As depicted on the attached spreadsheet, the City projects an annual savings over the next five years ranging from \$551,986 (FY13) to \$937,971 (FY15). The fluctuation in annual savings is largely driven by the anticipated need for equipment replacement. In total, the projected savings from FY13 through FY17 is \$3.87 million or an annual average of \$756,461.

Recommendation

Approval of inter-local agreement with Bi-County Solid Waste Management for solid waste hauling and disposal services is recommended.

INTERLOCAL AGREEMENT BETWEEN BI-COUNTY SOLID WASTE MANAGEMENT
SYSTEM AND THE CITY OF FRANKLIN FOR THE TRANSPORT AND DISPOSAL OF
SOLID WASTE
COF Contract #2012-0023

THIS INTERLOCAL AGREEMENT, (“Agreement”), is entered into by and between the CITY OF FRANKLIN, (“City”), a municipal government located at 109 Third Ave. South, Franklin, Tennessee, 37064, and Bi-County Solid Waste Management System, (“Bi-County”), a solid waste authority created by interlocal agreement and pursuant to the laws of the State of Tennessee, located at 3212 Dover Road, Woodlawn, TN 37191, to establish the terms and financial responsibilities for the provision of transport and disposal of solid waste processed at the City’s transfer station.

RECITALS

WHEREAS, the City of Franklin and Bi-County Solid Waste Management System are public instrumentalities of the State of Tennessee and, as such, are authorized to enter into interlocal agreements pursuant to *Tennessee Code Annotated*, Section 12-9-104;

WHEREAS, the City of Franklin owns and operates a transfer station to ensure the availability of an economical and environmentally sound method to transfer from solid waste collection vehicles to solid waste landfill disposal vehicles solid waste deposited at the transfer station; and

WHEREAS, Bi-County transports and disposes of solid waste; and

WHEREAS, the City desires to secure services to transport solid waste from the City transfer station to a sanitary landfill for ultimate disposal; and

WHEREAS, the City agrees to retain Bi-County to transport, deliver and dispose of all solid waste deposited at City's transfer station to a sanitary landfill owned and/or operated by Bi-County in accordance with Federal, State, and local laws, regulations, rules and ordinances; and

WHEREAS, in reliance upon this Agreement, Bi-County will secure the necessary equipment, permits, approvals, services and personnel to fulfill all obligations contained herein.

NOW THEREFORE, in consideration of the mutual promises contained herein, the sufficiency of which is hereby acknowledged, the parties agree as follows:

I. **Purpose of Agreement.** The purpose of this Interlocal Agreement is to clearly define the contractual responsibilities and financial obligations of the City and Bi-County for the provision of transport and disposal of solid waste from the City’s transfer station (“Transfer Station”), located at 409 Century Court, Franklin, Tennessee to the Bi-County landfill at 3212 Dover Road, Woodlawn, Tennessee.

II. **Authority.** This Agreement is made and entered into pursuant to the authority granted to the parties under the *Interlocal Cooperation Act*, Tennessee Code Annotated

Sections 12-9-101, et seq., and the parties agree that all approvals and filings required by the terms of the Act shall be achieved prior to the execution of this Agreement.

III. Definitions.

1. **"Agreement"** shall mean the entire Interlocal Agreement between City and Bi-County as contained herein and any attachments or exhibits to this Agreement explicitly incorporated into this Agreement by the parties.

2. **"City Solid Waste"** shall mean the non-hazardous material as defined by CERCLA and all other applicable laws and non-special solid waste material collected by private haulers or the City and deposited at the City's Transfer Station, including garbage, refuse, trash, bulky waste construction and remodeling debris, and commercial waste. This definition excludes yard waste, discarded appliances, tires, and white goods, and any other solid waste that may be diverted for purposes of calculating the State's 25% reduction goal for Williamson County. The solid waste materials must be of the type and consistency to be lawfully accepted at the City's Transfer Station and the Sanitary Landfill under all applicable Federal, State and local laws, regulations, and permits governing each.

3. **"Contract Documents"** means all drawings, schedules, and other documents pertaining to the Project. All Contract Documents, including all attachments and exhibits, shall be incorporated into this Agreement.

4. **"Hazardous Waste"** shall mean solid waste defined as hazardous under the Resource Conservation and Recovery Act, 42 U.S.C. §2601 et seq., regulations promulgated thereunder or applicable state law concerning the regulation of hazardous or toxic waste.

5. **"Sanitary Landfill"** means the Bi-County Landfill, at 3212 Dover Road, Woodlawn, TN, or any other alternate, duly permitted sanitary landfill site mutually agreeable to the parties.

6. **"Special Waste"** shall mean any discarded material from a non-residential source as defined by the State of Tennessee Rules of Tennessee Department of Environment and Conservation Division of Solid Waste Management.

7. **"Transfer Station"** shall mean the City's facility located at 409 Century Court, Franklin, Tennessee.

8. **"Work"** means all labor, services, equipment, and material necessary to complete the obligations and all other requirements included in this Agreement.

9. **"Excluded waste"** shall mean Hazardous Waste, Special Waste as disallowed by the State of Tennessee, yard waste, medical waste, discarded appliances and white goods, toxic substances, trees, earth, body wastes, abandoned vehicles, vehicle parts, large equipment (or parts thereof), or any other type of waste that is not permitted to be disposed of in a Subtitle D, Class 1 landfill.

IV. City Obligations.

1. The City shall own and operate the Transfer Station.

2. The City shall deliver or cause to be delivered to the Transfer Station all City Solid Waste, under the City's direction and excluding any City Solid Waste diverted to the recycling program.

3. The City shall maintain the Transfer Station which shall be open for the performance of this Agreement between the hours of 6:00 a.m. and 3:00 p.m., Monday through Friday. The City of Franklin agrees to allow access to its facility at times other

than normal operating hours to accommodate Bi-County for efficiency, dependent upon agreement for liability.

4. The City shall cause no less than four (4) and no more than eight (8) transfer trailers available for use, on a daily basis, to clear the transfer station floor of waste.

5. The City of Franklin Solid Waste Department shall maintain an area with enough space to park up to eight (8) transfer trailers for no longer than forty-eight (48) hours at a time.

6. The City shall also:

- a. Pull an empty transfer trailer into the transfer station tunnel, using a City-owned road tractor or other piece of equipment designed to move transfer trailers a short distance
- b. Load each empty transfer trailer within the weight limits of the law
- c. Pull each loaded transfer trailer out of the transfer station tunnel
- d. Clearing loose debris from the top of each loaded transfer trailer
- e. Park each loaded trailer in a staged area for driver to obtain easy access for hook-up and transport

The City shall use City-owned scales, based on tonnage, for weighing trucks, both empty and loaded, into and out of the City-owned facility.

7. The City shall communicate and share all pertinent data to assist Bi-County in planning and efficient management for the transport and disposal of solid waste managed through the City of Franklin transfer station.

8. City expects Bi-County to communicate potential operations issues that may adversely affect ability to transport waste away from City of Franklin facility.

9. The City of Franklin transfer station recognizes and closes its transfer station operations for all holidays observed by City.

V. Bi-County's Obligations.

1. Bi-County shall be responsible for securing necessary permits and approvals from relevant Federal, State and local governmental agencies having jurisdiction over its transportation and disposal operations referenced herein; provided, however, the City shall retain responsibility for obtaining all permits and approvals related to the construction and operation of the Transfer Station. During the term hereof, Bi-County shall receive and accept City Solid Waste from the Transfer Station and transport and dispose of such waste at the Sanitary Landfill, all in compliance with applicable laws and regulations.

2. Bi-County shall transport City Solid Waste from the Transfer Station to the Sanitary Landfill within 10 hours of loading of the solid waste except for trailers and/or vehicles which are loaded too late in the day to be transported to the Sanitary Landfill within the 10 hour requirement. In such cases City Solid Waste shall be transported to the Sanitary Landfill on the next business day. Bi-County will provide additional trailers as necessary as the City deems appropriate in cases of delayed transporting. Bi-County shall be responsible for all temporary storage and shall ensure that it complies with all relevant Federal, State and local laws and regulations.

3. Bi-County shall provide necessary personnel with necessary trucks and equipment to transport at least Two Hundred Seventy-Five (275) tons per work day from the Transfer Station to the Sanitary Landfill. City hereby specifically rejects any minimum or maximum limits on the quantities of municipal solid waste for transport and disposal.

4. Bi-County shall communicate with City personnel regarding events/issues that adversely affect turnaround time during daily operations.

5. Bi-County agrees to take full responsibility for damages and loss (liability) when accessing Transfer Station outside normally scheduled work hours.

VI. Compensation to Bi-County.

1. The Service Fee due to Bi-County from the City for Bi-County's receipt and handling of City Solid Waste from the Transfer Station and the transportation and disposal of such waste at the Sanitary Landfill shall be pursuant to the following schedule:

<u>Cost Per Ton</u>	\$32.00
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Fee(s) for services rendered shall be at the initial rate for the first term of this agreement. Fee(s) for each successive term shall be adjusted exactly once for each such period and exactly by the percentage change between the US Department of Labor, Bureau of Labor Statistics, Consumer Price Index-U, US City Average, All Items Less Food and Energy, not seasonally adjusted, for the South Urban Statistical Area, for the month of March of the same calendar year during which the successive term commences, in comparison with the like index figure descriptive for the month of July, 2012.

Bi-County shall transport and dispose of City Solid Waste from the Transfer Station on a per ton basis as stated above without further cost to City. Fee(s) for services rendered shall be expressed in terms of US dollars per short ton (2,000 pounds) of solid waste.

2. Bi-County shall invoice City on a monthly basis for the Service Fee, and payment thereon shall be due thirty (30) days after receipt of the detailed invoice.

3. The Service Fee shall include any fees charged to Bi-County for the disposal of the waste at the Sanitary Landfill. Fee(s) for services rendered shall be all inclusive for all services to be rendered and all costs of doing so. City hereby specifically rejects any other fee or other surcharge. Examples of such rejected other fees or other surcharges include, but are not limited to, fuel charges, State and/or landfill-host-county and/or landfill-host-municipality fees and/or taxes, equipment and/or maintenance charges, and/or charges for time-of-delivery or day-of-delivery. Any changes to Bi-County's cost of doing business and/or service delivery, such as any example listed above, shall be absorbed by Bi-County and shall not be subject to pass-through to City.

4. In the event it becomes necessary for Bi-County to dispose of waste at a landfill other than the Sanitary Landfill, such site must first be agreed to by Bi-County and the City.

VII. Representations and Warranties of City. The City warrants that it will undertake reasonable efforts to exclude regulated Hazardous Waste and Special Waste disallowed by the State of Tennessee, from the City Solid Waste delivered to the Transfer Station. To the knowledge of the City, the City Solid Waste will not contain either Hazardous or Special Waste disallowed by the State of Tennessee. The City warrants that it shall exercise its best efforts to maintain its collection and transportation of Solid Waste to the Transfer Station in compliance with the terms hereof and in compliance with applicable Federal, State and local laws and regulations throughout the term of this Agreement. City shall be responsible for the proper disposal of Excluded Waste in the event any such waste is provided to Bi-County for disposal.

VIII. Health and Safety.

1. In the performance of this Agreement Bi-County will be solely and completely responsible for the health and safety of all persons, including employees and property during performance of the Work and services. Health and safety provisions will conform to the following: *U.S.* Department of Labor, Occupational Safety and Health Act; all other applicable Federal, State, County, and local laws, ordinances, codes; and all other regulations. When any of these conflict, the more stringent regulation/requirement will be followed. Bi-County's failure to thoroughly familiarize itself with the aforementioned safety provisions will not relieve it from its responsibility to comply with the safety provisions.

2. Bi-County shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as City may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the Agreement.

3. It is a condition of this Agreement, and shall be made a condition of each subcontract, which Bi-County enters into pursuant to this contract, that Bi-County and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

4. It is a condition of this contract that any authorized representative for the United States, State of Tennessee or City shall have right of inspection to any site or vehicle used in the performance of this Agreement and to inspect or investigate the matter of compliance with the construction safety and health standards.

5. If death, serious injuries, or serious property damages are caused, the accident or loss will be reported verbally and immediately to the City of Franklin Risk Management Department, at (615) 791-3277 during business hours and at (615) 708-6720 (Risk Manager's cell phone) after business hours. In addition, Bi-County must promptly report in writing to the City of Franklin Risk Management Department within 24 hours from Bi-County's discovery of all accidents or incidents or loss whatsoever arising out of or in connection with the performance of Work, obligations, services in the transportation and disposal of City Solid Waste.

IX. **Term.** The initial term of this Agreement shall be for a period of two (2) years which shall begin July 1, 2012 and end on June 30, 2014. The Agreement may be extended at the City's option for four additional 3-year terms.

X. **Default.** Except as otherwise provided herein, if either party allegedly defaults in the performance of any of the warranties, covenants, or conditions contained herein for 30 days after the other party has given the defaulting party written notice of such default, unless a longer period of time is required to cure such default, and the party allegedly defaulting shall have commenced to cure such default within said period and pursues diligently to the completion thereof, the other party may: 1) terminate this Agreement as of any date at least 30 days after the last day of the 30-day period; ii) cure the default at the expense of the defaulting party; and iii) have recourse to any other right or remedy to which it may be entitled by law or equity, including, but not limited to, the right for all damage or

loss suffered as a result of such default and termination. In the event either party waives default by the other party, such waiver shall not be construed or determined to be a continuing waiver of the same or any subsequent default. In the event that, in the exercise of due diligence during the aforesaid 30 day period, such cure cannot reasonably be effected or completed, such cure period shall be extended to include such additional time as is reasonably necessary to effect or complete such cure provided the defaulting party exercises continuous diligent efforts to cure such default during such extended period.

XI. Cooperation. The parties agree to cooperate fully in order to successfully execute the terms and conditions of this Agreement including obtaining all regulatory and governmental approvals required by this Agreement recognizing that the intent of each party to the other is to serve the individual interests of each party while respecting the conditions and obligations of this Agreement.

XII. Limitation on Liability. Each party shall be responsible for its own actions and the actions of their employees, contractors, subcontractors, and agents conducted pursuant to this Agreement. Neither party shall be liable for claims against the other party unless liability is imposed under the Tennessee Governmental Tort Liability Act. Bi-County shall provide a copy of a Certificate of Liability Insurance naming the City as additional insured.

XIII. General Terms.

1. **Choice of Law and Forum.** This Agreement shall be exclusively governed by the laws of the State of Tennessee. In the event that any section and/or term of this Agreement, or any exhibits hereto, becomes subject to litigation, the venue for such action will be exclusively maintained in a court of competent jurisdiction sitting in Williamson County, Tennessee.

2. **Notices.** All notices, demands and requests to be given hereunder by either party shall be in writing and must be sent by certified or registered mail and shall be deemed properly given if tendered at the address below or at such other address as either party shall designate by written notice to the other.

City: **CITY OF FRANKLIN, TENNESSEE**
City Hall
109 3rd Avenue South
Franklin, TN 37064
Attn: City Administrator

With copy to: **CITY OF FRANKLIN SOLID WASTE DEPARTMENT**
417 Century Court
Franklin, TN 37064
Attn: Solid Waste Director

Bi-County: Bi-County Solid Waste Management
3212 Dover Road
Woodlawn, TN 37191

3. **Entire Agreement and Modifications in Writing.** This Agreement and any exhibits included herewith at the time of execution of this Agreement contain the entire

agreement between the parties, and no statements, promises, or inducements made by either party or agent of either party that is not contained in this written Agreement shall be valid or binding; and this Agreement may not be enlarged, modified, or altered except in writing and signed by the parties and attached hereto.

4. **Dispute Resolution.** The parties may agree to participate in non-binding mediation in an attempt to resolve any disputes. Notwithstanding the foregoing statement, any claims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof shall be subject to and decided by a court of law.

5. **Assignment.** The rights and obligations of this Agreement are not assignable.

6. **Waiver.** No waiver of any provision of this Agreement shall be valid unless in writing and signed by the parties against who charged.

7. **Compliance with Laws.** The parties shall comply with all laws of the United States of America, the State of Tennessee, and local laws and shall secure all necessary permits and licenses and keep the same in force during the term of this Agreement.

8. **Employment Practices.** Neither party shall subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to race, creed, color, national origin, age, sex or which is in violation of applicable laws concerning the employment of individuals with disabilities. The parties shall not knowingly hire any unauthorized employees or fail to comply with record keeping requirements set forth in the Federal Immigration Reform and Control Act of 1986, Chapter 878 of the 2006 Tennessee Public Acts and all other applicable laws.

9. **Relationship Between the Parties.** The relationship of the parties shall be that of an independent contractor. No principal-agent or employer-employee relationship is created by this Agreement. The parties hereto shall not hold itself out in a manner contrary to the terms of this paragraph. No party shall become liable for any representation, act or omission of any other party contrary to the terms of this paragraph.

10. **Severability.** If any one or more of the covenants, agreements or provisions of this Agreement shall be held contrary to any expressed provisions of law or contrary to any policy of expressed law, although not expressly prohibited, contrary to any express provision of public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separate from the remaining covenants, agreements or provisions of this Agreement.

11. **Specific Performance.** The parties recognize that the rights afforded to each under this Agreement are unique and, accordingly, City shall, in addition to such other remedies as may be available to them in equity, have the right to enforce their respective rights hereunder by an action for injunctive relief and/or specific performance to the extent permitted by law.

12. **Headings.** The headings in this Agreement are for convenience and reference and are not intended to define or limit the scope of any provision of this Agreement.

13. **Effective Date.** This Agreement shall not be binding upon the parties until it has been properly approved by the governing bodies of the respective parties. When it has been so signed and filed, this contract shall be effective July 1, 2012.

IN WITNESS WHEREOF, the City and Bi-County have executed this Agreement effective as of the date and year provided herein.

ATTEST:

CITY OF FRANKLIN, TENNESSEE

BY: Eric S. Stuckey, City Administrator

BY: Dr. Ken Moore, Mayor

DATE: _____

DATE: _____

APPROVED AS TO FORM AND LEGALITY:

City of Franklin Attorney

ATTEST:

BI-COUNTY SOLID WASTE MANAGEMENT
SYSTEM

BY:

BY:

DATE: _____

DATE: _____

APPROVED AS TO FORM AND LEGALITY:

Bi-County Solid Waste Management System Attorney