

STATE OF GEORGIA)
COUNTY OF CHEROKEE)

RESOLUTION NO. 2013-R-001

A RESOLUTION BY THE CHEROKEE COUNTY BOARD OF COMMISSIONERS IN
RESPONSE TO THE GRAND JURY PRESENTMENTS

WHEREAS, the Constitution of the State of Georgia, approved by the voters of the State in November of 1982, and effective July 1, 1983, provides in Article IX, Section II, Paragraph I thereof, that the governing authority of the County may adopt clearly reasonable ordinances, resolutions and regulations; and

WHEREAS, the Grand Jury chosen and sworn to serve the September 2012 term of the Superior Court of Cherokee County issued certain Presentments filed and recorded December 18, 2012, in Jury Book 2, Page 326, with the Clerk of Superior Court of Cherokee County (the "Presentments"); and

WHEREAS, the Grand Jury specifically created a special committee to investigate and further review the status of the Cherokee County Resource Recovery Development Authority (the "RRDA") following the May 2012, Chapter 11 bankruptcy of the tenant Ball Ground Recycling, LLC ("BGR") (the "Investigation"); and

WHEREAS, in conducting its Investigation, the special committee interviewed Cherokee County Board of Commission Chairman, L.B. "Buzz" Ahrens, Commissioners Harry Johnston and Jason Nelms, former Commissioners Karen Bosch and Jim Hubbard, County Manager, Jerry Cooper, former County Attorney Mark Mahler, private citizen, Steve Marcinko, and former Development Authority of Cherokee County member Larry Lusk; and

WHEREAS, the Board notes the special committee did not interview other parties with information, including Jimmy Bobo, David Bobo, former Chairman Mike Byrd, former Commissioner Derek Good, or former Chief Financial Officer Amy Davis; and

WHEREAS, the Grand Jury made certain Findings and Recommendations upon completion of the Investigation (the "Findings and Recommendations");

WHEREAS, pursuant to this Resolution, the Board of Commissioners wishes to express its appreciation for the diligence and commitment of the Grand Jury as evidenced by its detailed list of Findings and Recommendations, and to respond to the various Findings and Recommendations by clarifying certain issues, announcing relevant actions that have already been taken, and demonstrating intentions to take other actions as suggested by the Grand Jury.

NOW THEREFORE, BE IT RESOLVED THAT the Cherokee County Board of Commissioners hereby responds to the Grand Jury's Findings and Recommendations as follows:

1. Response to Presentment 14 Findings

The Grand Jury issued certain Findings, but did not list those Findings in an enumerated order for ease of response. Some of the Findings demand response for purposes of correction and clarification. The Findings will be repeated herein and the response shall follow in the order in which they are presented in the Grand Jury Presentments.

Finding: *The Grand Jury found no evidence of another RRDA in the state of Georgia having been created for the purpose of relocating a private business from one location to another, nor has this Committee found an example of another RRDA established for the purpose of "recovering" a waste substance that did not adversely affect public health.*

Response: At the outset, the legality of the transaction has been established repeatedly. (See Ga. Const. Art. IX, Sec. VI, ¶ III; O.C.G.A. § 36-63-2; Ga. Const. Art. IX, Sec. III, ¶ I(a); O.C.G.A. § 48-5-220(20); Thompson v. Municipal Elec. Auth. of Ga., 238 Ga. 19, 21, 231 S.E.2d 720 (1976); Nations v. Downtown Development Authority of the City of Atlanta, 256 Ga. 158, 345 S.E.2d 581 (1986); Ambac Indemnity Corp. v. Akridge, 262 Ga. 773, 425 S.E.2d 637 (1993)). Accordingly, a finding as to whether another government in Georgia has undertaken a legally authorized act seems somewhat irrelevant when the General Assembly and the courts of the State of Georgia have made law in their collective wisdom that authorizes this type of transaction.

Nonetheless, the Board of Commissioners has not done a survey of all development projects in the State of Georgia, however, the Board of Commissioners notes that the Grand Jury does not indicate that it performed a comprehensive audit of all development projects in the State of Georgia either. Significantly, the Board of Commissioners is indeed aware of other development projects in the State of Georgia and other states, whereby governments guaranteed bonds issued for private companies for economic development purposes.

Finding: *The Grand Jury found the circumstances surrounding the original discussions and agreements between the BOC and Mr. Bobo which led to the formation of the RRDA and the establishment of the new recycling facility to be murky and virtually undocumented.*

Response: As noted above, there is no indication that the special committee made efforts to talk to former Chairman Mike Byrd, former Commissioner Derek Good, former Chief Financial Officer Amy Davis, Jimmy Bobo, or David Bobo, who were all involved prior to the actual formation of the RRDA and who may have information as to the "discussions and agreements between the Board and Mr. Bobo which led to the formation of the RRDA and the establishment of the new recycling facility". Notably, certain members of the Board of Commissioners recall that former County Attorney, Mark Mahler, negotiated the deal with Jimmy Bobo and brought it to the Board of Commissioners as a recommendation.

Notwithstanding the potential availability of information from the above-referenced individuals, importantly, the formation of the RRDA and the establishment of the recycling

facility was very well documented and accomplished in a transparent and public manner. Specifically, the Board of Commissioners followed all legal requirements for formation of the RRDA according to the Georgia statutes that authorized the RRDA and the bond issuance process and did so in the public eye, to include multiple public meetings that were duly noticed and advertised, public hearings that solicited public input, public Board meetings at which citizens are invited to speak regularly on topics of interest, and a validation proceeding before the Cherokee County Superior Court – all of which are documented in the public minutes, written agreements and the bond transaction documents, and the judicial records of the Superior Court. As such, the Board of Commissioners must respectfully disagree with the finding that these actions were “murky and virtually undocumented.”

Finding: *The Grand Jury found that in 2006 Mr. Bobo, et al had purchased 61.21 acres of contiguous property on Ball Ground Highway at a total cost of \$3,531,537. This acreage was to be used as the new operations site of BGR.*

The Grand Jury found that in 2007 the BOC/RRDA purchased a 35.85 acre portion of the aforementioned 61.21 acre assemblage at a price of \$3,684,999. The unencumbered ownership of the remaining 25.36 acres was retained by Mr. Bobo, et al.

The Grand Jury found that at the property sale closing Mr. Bobo et al, was reimbursed for the interest carry on the original 2006 loans to purchase the property in the amount of \$323,763. Mr. Bobo et al, was further reimbursed \$239,446 for the closing costs associated with those original loans.

Response: In response to the above Findings, the Board of Commissioners states that a civil action has been commenced by the County and the RRDA against Jimmy Bobo, David Bobo, and legal entities under the common ownership of Jimmy Bobo and/or David Bobo asserting a variety of claims based upon the reimbursements from the bond proceeds and the sharing of the bond proceeds among the Bobo entities. Indeed, these are key points in the litigation, the impetus for claims, and the intended focus of discovery in the lawsuit. Additionally, a forensic audit has already been authorized and is in process that will include an investigation of the real estate transactions and closing documents related to the land purchased by the Bobo entities prior to the October 5, 2007 bond closing. Based upon the pending litigation and forensic audit, the Board will not comment further, except to note that a lack of response to a particular Finding does not constitute the County/RRDA’s agreement or admission as to the Findings because the bond documents, deeds, and closing documents speak for themselves as to their content.

Finding: *The Grand Jury found language in the Bond Documents between the RRDA and BGR/Mr. Bobo, et al that appointed BGR/Mr. Bobo, et al to be the “true and lawful agent” for Cherokee County in this arrangement, such appointment being accepted by Mr. Bobo’s signature.*

Response: This language was drafted by bond counsel and reflects the fact that this project was *not* a county project being run by the Cherokee County staff or government. The

County's only role was to guarantee the bonds (with the desired result of intended economic development), and ultimately take over ownership of the assets should there be a default by the private company. While the wisdom of this arrangement is understandably questioned and the Board of Commissioners has stated repeatedly that it would never enter into such an arrangement with a private company again in the future, that was the fact of how the transaction was contemplated by Georgia law and memorialized by bond counsel in the various bond issuance documents.

Finding: *The Grand Jury found language in the Bond Documents between the RRDA and BGR/Mr. Bobo, et al that arguably prohibited the lessee (BGR/Mr. Bobo, et al) from realizing a profit on the sale of the land to Cherokee County/RRDA. This is the position taken by the BOC/RRDA in its current civil lawsuit against Mr. Bobo, et al. The Grand Jury found that a verbal request from the BOC/RRDA to the County Manager Mr. Jerry Cooper established Mr. Cooper as the de facto project administrator on behalf of the RRDA for the construction oversight of the BGR facility. The Grand Jury further found that the County Manager was solely responsible for validating the criteria for the disbursement of funds for the BGR facility. The Grand Jury further found that the County Manager disbursed the construction funds on the basis of the design architect's signature alone. The Grand Jury found that the design architect was hired by Mr. Bobo et al and was not contracted by Cherokee County.*

Response: The Board of Commissioner agrees, and the documents speak for themselves, as to the prohibition for BGR/Mr. Bobo to make a profit related to the project. As County Manager, Mr. Cooper received the draw requests from BGR, along with the architect's executed certification indicating that the work had been done in compliance with the contract documents and that the value was in the project to justify the requested draw issuance. In particular, the architect certified as part of each draw request as follows: "In accordance with the Contract Documents, based [sic] on on-site observations and the data comprising the above application, the Architect certifies to the [RRDA] that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED." A sample copy of the Architect's Certification is attached hereto as Exhibit "A".

The Architect is designated in the bond documents as having duties and obligations to the project for the benefit of the RRDA/County. According to the bond documents, on behalf of the RRDA, the Architect was responsible for reviewing the completed construction on the project at the time of each draw request, certifying to the Trustee of the bond funds as to the cost of completed construction, the percentage of completion and compliance with the plans and specifications of the project, and determining the maximum allowable disbursement from the Trustee based on a review of the draw request and cost breakdown presented therein. Representative portions of the Lease Agreement are attached hereto as Exhibit "B" regarding the Architect's obligations in connection with the project. Accordingly, given that this was a private project – not a county construction project – the reliance on the Architect's certifications as to draw requests was the contemplated procedure.

The Architect is also a named party in the County and RRDA lawsuit against the Bobo

entities related to this project.

Finding: *The Grand Jury found that there was a free resource available (the Association of County Commissioners of GA (ACCG) Construction Guidelines) to the BOC/RRDA and County Manager that outlined step by step the way to set up and manage a construction project of this scope. However, it appears that the BOC/RRDA and County Manager did not use this resource in developing and managing the project.*

The Grand Jury found that the BOC/RRDA and County Manager in managing the construction draw process, failed to adhere to the Association of County Commissioners of Georgia (ACCG) Construction Guidelines, which follow O.C.G.A. §§ 36-91-1-36-91-2, §§36-91-20-36-91-22, § 36-91-40, §§ 36-91-50-26-91-54, §§ 36-91-70-36-91-72, and §§ 36-91-90-36-91-95, the Georgia state laws governing Local Government Public Works Construction.

Response: The Board of Commissioners is aware of, and familiar with, resource materials from ACCG, as well as the state laws that govern public works construction contracts. “Public Works Construction” is defined by law as “the building, altering, repairing, improving, or demolishing of any public structure or building or other public improvements of any kind to any public real property other than those projects covered by Chapter 4 of Title 32 or by Chapter 37 of Title 50. Such term does not include the routine operation, repair, or maintenance of existing structures, buildings, or real property, or any energy savings performance contract or any improvements or installations performed as part of an energy savings performance contract.” (O.C.G.A. § 36-91-2).

As explained to the special committee and stated above, this project was not a county construction project “involving a public structure or building or other public improvements...” Rather, based on the provisions of the lease between BGR and the RRDA, BGR had an “estate for years” interest in the project which is tantamount to a fee simple ownership interest in a private asset until the end of the lease term or upon BGR defaulting under the lease. See DeKalb County Bd. of Tax Assessors v. W.C. Harris & Co., 248 Ga. 277, 282 S.E.2d 880 (1981). As a result of this project not falling under the definition of a “public works construction” project, the project was not subject to the Georgia Local Government Public Works Construction Law during the lease term and prior to the termination of the lease. It was a private project, whereby the County’s sole role was limited to the issuance of bonds and the guarantee of same with the promise of economic development and ultimate ownership of assets only in the event of default.

The Board of Commissioners routinely follows procurement procedures under its own local regulations and state law for county construction projects. Currently, the County even has a designated employee responsible for oversight of county construction projects. However, none of these procedures applied to this private project as it was conceived and contemplated under the governing bond documents and state law. The Board of Commissioners once again states its commitment that it does not intend to ever again participate in such a private project.

Finding: *The Grand Jury found that the assets of the RRDA were not carried on the Cherokee County ledger books from 2007 until present and thus were not subject to audit.*

Response: The County properly reported the assets of the RRDA according to the Governmental Accounting Standards Board criteria. A letter from the professional accounting firm of Mauldin & Jenkins, which also serves as the County's auditors, is attached here to as Exhibit "C", and explains the appropriate nature of the County's actions. Moreover, the County has repeatedly won the GFOA Distinguished Budget Presentation Award and the GFOA Excellence in Financial Reporting Award.

Finding: *The Grand Jury found that in 2009 the Cherokee Office of Economic Development (COED) purchased from Mr. Bobo et al, a 53 acre site at Highway 92 & James Dupree Road at a cost of \$5,273,730.*

Response: The referenced acquisition by the COED is not directly related to the RRDA project and involves the independent COED. The acquisition of property from the Bobos on Highway 92 is not part of the RRDA transaction and is only remotely and indirectly related to it.

2. Response to Presentment 15 Recommendations

Recommendation 1: *The Grand Jury recommends that Cherokee County Board of Commissioners (BOC) not limit the cost of the forensic audit of the RRDA/BGR matter. A comprehensive audit may require more than the \$75,000 currently authorized.*

Response to Recommendation 1: It is common for the Board of Commissioners to adopt a contract with a cap, not to exceed amount, or a set price. The Board of Commissioners is concerned that to have no cost controls at the outset would be fiscally irresponsible. Indeed, based upon the available information (which has yet to be entirely complete or forthcoming from the Bobo entities), the Board of Commissioners fears that it will be criticized for the monies spent on the audit when/if the audit is incapable of revealing the transaction details that are expected given the missing documentation that is under the control of the Bobo entities. The Agreement with McClendon & Associates includes an automatic \$25,000 approval limit above the initial \$75,000, and the Agreement can be further amended beyond that limit if the auditor determines in her discretion that more work is necessary. Notably, in the County Manager's Agenda request concerning this item, the County Manager indicates that if the "scope of work should require additional funds, a request will be submitted to the Board for approval." A copy of this Agenda request is attached hereto as Exhibit "D".

Recommendation 2: *The Grand Jury recommends that the BOC pay the cost to publish the full and complete results of said audit in the county legal organ and in the Cherokee Ledger News as soon as the results are presented.*

Response to Recommendation 2: Given the technology available, the County would intend to save the thousands of dollars associated with publishing the full audit (which is expected to be voluminous) in newspapers because it feels it wasteful to do otherwise. As a

practical matter in light of the cost to publish the full and complete results of the audit and any exhibits thereto in the legal organ and Cherokee Ledger News, and given the widespread use and access to public information via the internet, the Board directs that the full and complete results of the audit be published on the transparency page of the County's official website with a hard copy of the full and complete audit to be maintained in the County's office to be made available for public inspection and copying, subject to all applicable Georgia laws concerning any confidential or privileged information that may be contained within said audit report and all laws under Georgia's Open Records Act.

Answering further, the Board of Commissioners notes that in Presentment 12 (unrelated to the RRDA/BGR matter), the Grand Jury recommends that the Cherokee County legal organ be changed to include both the Cherokee Tribune and The Cherokee Ledger/News. The Board informs the Grand Jury that the decision associated with selection of a county legal organ is not within the purview of the County Board of Commissioners, but instead is a decision made by law by the Sheriff, the Clerk of Court, and the Probate Court Judge. Moreover, there are specific legal criteria that must be met for a newspaper to be designated as a legal organ, and the Board of Commissioners is unaware that both papers meet those legal requirements. Finally, such a change would at least double the expenses associated with publication when budgets are already tight and internet access is available at all times on the County's transparency page.

Recommendation 3: *The Grand Jury recommends that any investigation conducted pursuant to the aforementioned forensic audit be pressed to the fullest extent.*

Response to Recommendation 3: The Board of Commissioners shares this same intention and goal. The Board has retained a professional forensic auditor who was recommended by the District Attorney and the special committee, and also conducted its independent diligent search of available candidates through the County's request for proposal procedures. Therefore, there is no reason to believe that the audit will not be "pressed to the fullest extent" or otherwise thorough and professional.

Recommendation 4: *The Grand Jury recommends that the BOC continue its civil suit against Mr. Bobo et al.*

Response to Recommendation 4: The civil lawsuit is pending and continuing. To clarify this Recommendation, the Board does not have control over whether the pending civil lawsuit will be determined by the Court to be successful on the merits and cannot guarantee any success on the merits to the Grand Jury or the public-at-large, however, the County and RRDA have every intention of pursuing the litigation to the fullest extent available.

Recommendation 5: *The Grand Jury recommends that the BOC / RRDA continue the previous May 2012 Grand Jury Recommendation to add equal number of nonelected citizen members to the RRDA who are not county employees.*

Response to Recommendation 5: As of January 1, 2013, three citizen members represent a majority of the RRDA board with Chairman Ahrens and Commissioner Johnston or

Nelms to be the remaining members of the RRDA board on a temporary basis until the date that all five members of RRDA's board will be citizens appointed at-large. As reflected in prior meeting minutes of the Board, no later than July 1, 2013, all five members of the RRDA board will be composed of citizens appointed at-large.

Recommendation 6: *The Grand Jury recommends that the County Administration include the complete assets of the RRDA on the county books and subject those assets to complete and routine audits.*

Response to Recommendation 6: As a result of the RRDA's lease with BGR being terminated, RRDA assets will be recorded on the County books and subject to the upcoming audit. Depending upon new contract terms to be entered into concerning RRDA's assets and subject to accounting rules and regulations, those assets may or may not remain on the County books. Please see response to finding above indicating that the County's practices have been in compliance with Governmental Accounting Standards Board criteria and Exhibit "C".

Recommendation 7: *The Grand Jury recommends that the January 2013 Grand Jury continue the investigation and fact finding into the RRDA / BGR matter.*

Response to Recommendation 7: The Board will leave the continuance of any investigation and fact finding into the RRDA/BGR matter in the discretion of the District Attorney. However, the Board of Commissioners notes that it is undertaking the forensic audit as directed by the Grand Jury with the forensic auditor recommended by the former District Attorney and special committee of the Grand Jury. As such, any continued investigation prior to the completion of the forensic audit would seem to be unproductive and/or duplicative.

Recommendation 8: *The Grand Jury recommends that the January 2013 Grand Jury investigate the circumstances surrounding the Cherokee Office of Economic Development's purchase of 53 acres at Highway 92 & James Dupree Road from Mr. Bobo et al.*

Response to Recommendation 8: The acquisition of property from the Bobos on Highway 92 is not part of the RRDA transaction and is only remotely and indirectly related to it. But the Board welcomes and will fully support the Grand Jury's review of that transaction.

Recommendation 9: *The Grand Jury recommends that those Recommendations of the previous May 2012 Grand Jury that have not been accomplished be continued.*

Response to Recommendation 9: The Board incorporates by reference its previous Resolution adopted September 18, 2012 responding to the Findings and Recommendations of the May 2012 Grand Jury as if fully set forth herein. To the extent any of those previous Recommendations have not been fully accomplished as of this date, the Board will continue its efforts to follow said Recommendations, subject to the response to those Recommendations as is or may be set forth in the September 18, 2012 Resolution of the Board and the instant Resolution of the Board.

Recommendation 10: *The Grand Jury recommends that BOC employees be held accountable and or disciplined for their actions in the RRDA / BGR matter.*

Response to Recommendation 10: The Board does not agree that the Grand Jury has uncovered any facts that would justify the disciplining of any County employees. The Grand Jury has also not indicated any specific facts, conduct, actions or omissions of any particular County employees that would warrant disciplinary action. Additionally, while the Board fully respects the efforts of the Grand Jury in investigating the facts and circumstances of the RRDA / BGR matter, the Board respectfully submits that it is not within the province of the Grand Jury to be involved in directing or recommending disciplinary action with regard to the County's employees, as such matters are left to the discretion and judgment of managerial and supervisory personnel of the County to ensure compliance with all applicable personnel rules and regulations. To the extent the discontent of the Grand Jury is directed toward the County Manager for his reliance upon the Architect's Certifications, as stated above, that was the manner in which the project was contemplated and memorialized by bond counsel. The County Manager worked within the confines of those pertinent transaction documents.

Recommendation 11: *The Grand Jury recommends that the citizens of Cherokee County be diligent in their oversight of their elected officials.*

Response to Recommendation 11: This Recommendation is directed to the citizens of the County and the Board recognizes the importance of citizen input and participation in County government and affairs. The citizens of this County have been and continue to exercise diligence in overseeing the actions of their elected officials through such actions that include, but are not limited to, participation in public comments and forums, communications with their elected officials, participation in open meetings, and participation in regular and special elections of public officials.

Recommendation 12: *The Grand Jury recommends that before any new real estate is purchased by any entity of Cherokee County government that an appraisal, by a licensed appraiser independent of purchaser or seller, be performed to assure that Cherokee County is paying market prices.*

Response to Recommendation 12: This Recommendation is already followed by the County government as a matter of standard operating procedure.

Recommendation 13: *The Grand Jury recommends that ALL new capital assets purchased by Cherokee County be immediately added to the county ledger books.*

Response to Recommendation 13: This Recommendation is already followed by the County government as a matter of standard operating procedure.

Recommendation 14: *The Grand Jury recommends that research be done to ensure that all current county capital assets are presently carried on the county ledger books.*

Response to Recommendation 14: The County government already has auditors who annually review the County books to ensure that capital assets are properly recorded and carried on the county ledger subject to all applicable laws and accounting regulations applicable to county governments. Moreover, the County has repeatedly won both the GFOA Distinguished Budget Presentation Award and the GFOA Excellence in Financial Reporting Award.

BE IT FURTHER RESOLVED THAT, the Board of Commissioners thanks the Grand Jury for its service and stands ready to take the steps outlined or continue the steps outlined in this Resolution in furtherance of the Grand Jury's Recommendations.

SO RESOLVED this 8th day of January, 2013.

CHEROKEE COUNTY BOARD OF COMMISSIONERS



L.B. Ahrens, Chairman



ATTEST:



Christy Black, County Clerk

EXHIBIT "A"

APPLICATION NO:
PERIOD TO:
ARCH. PROJECT #

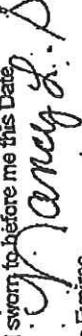
TO (Owner): Cherokee County Resource Recovery Development Authority
FROM (Contractor): Ball Ground Recycling, LLC
CONTRACT FOR: Development of Site and Physical Plant
CONTRACT DATE

- 1. ORIGINAL CONTRACT SUM 18,461,800
- 2. Net change by Change Orders (Interest Income) 160,528
- 3. CONTRACT SUM TO DATE (Line 1 + 2) 18,622,328
- 4. TOTAL COMPLETED & STORED TO DATE 14,662,744
- 5. RETAINAGE (Column G on G703) 0
- (There is no retainage payment is for work complete payment in arrears only) 0
- 6. TOTAL EARNED LESS RETAINAGE 14,662,744
- 7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificates) 12,023,181
- 8. CURRENT PAYMENT DUE 2,639,563
- 9. BALANCE TO FINISH PLUS RETAINAGE (Line 3 less Line 5) 3,959,584

CHANGE ORDER SUMMARY		ADDITIONS	DEDUCTIONS
Change Orders approved in previous months by Owner			
Approved this month Number	Date Approved		
TOTALS			

Net Change by Change Orders
The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by their Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR:  Ball Ground Recycling, LLC
Date: 11/14/08

State of Georgia County of Cherokee
Subscribed and sworn to before me this Date 11/14/2008
Notary Public:  Nancy L. Pagan
My Commission Expires: July 23, 2009
NOTARY PUBLIC - GEORGIA
My Commission Expires July 23, 2009

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising the above application, the Architect certifies to the Owner that to the best of the Architect's knowledge; information and belief the Work has progressed as indicated, the quality of the work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED: 2,639,563
(Attach explanation if amount certified differs from the amount applied for.)

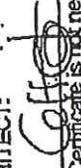
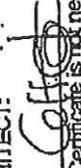
ARCHITECT: 
By:  Date: 11/14/08
This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

EXHIBIT “B”

"Bond Documents" means, collectively, this Lease Agreement, the Indenture, and the Contract.

"Bond Fund" means the fund created in Section 602 of the Indenture and referred to herein.

"Bondholders" means the Persons in whose names any of the Bonds are registered on the books kept and maintained by the Trustee as bond registrar.

"Bond Resolution" means the resolution or resolutions adopted by the Governing Body of the Issuer authorizing the issuance and sale of the Series 2007 Bonds and the provision of the security therefor.

"Bonds" means the Series 2007 Bonds and all series of Additional Bonds from time to time authenticated and delivered under the Indenture.

"Bond Year" means the twelve-month period beginning on July 2 of each calendar year and ending on July 1 of the next succeeding calendar year.

"Building" means those certain buildings and all other facilities and improvements constituting part of the Project, which are or will be located on the Premises.

"Code" means the Internal Revenue Code of 1986, as amended.

"Completion Date" means the date of completion of the acquisition, construction, and installation of the Project, as that date shall be certified as provided in Section 4.07 hereof.

"Construction Contracts" means the contracts between the Issuer and the general contractor for the construction of the Building and the contracts between the Issuer and suppliers of materials and Equipment.

"Consulting Architect" means the architect or architectural firm or construction management firm at the time employed by the Lessee on behalf of the Issuer and designated to act on behalf of the Issuer by written certificate furnished to the Trustee, containing the signature of such person or the signature of a partner or officer of such firm, and signed on behalf of the Issuer by the Chairman or Vice Chairman of the Governing Body. The Consulting Architect shall be registered and qualified to practice under the laws of the State and shall not be a full-time employee of the Issuer or the Lessee.

"Continuing Disclosure Agreement" means the Continuing Disclosure Agreement, dated the date hereof, between the Lessee and the Trustee, as originally executed and as it may be amended from time to time in accordance with the terms thereof.

"Contract" means the Intergovernmental Solid Waste Contract, dated the date hereof, between the Issuer and the County, as the same may be amended from time to time in accordance with the provisions thereof, under the terms of which the County agreed (1) to make payments to the Issuer in amounts sufficient to enable the Issuer to pay the principal of, premium, if any, and interest on the Bonds when due, to the extent rental payments derived from the Project are

deposited into the Net Proceeds Account of the Project Fund. Any amounts recovered by way of penalties or damages, whether liquidated or actual, for delays in completion by a contractor shall be deposited in the General Account of the Bond Fund.

The Lessee covenants to cause the Building to be constructed without material deviation from the Plans and Specifications and the Construction Contracts and warrants that the construction of the Building in accordance with the Plans and Specifications will, when supplemented by the Equipment, result in a facility suitable for use by the Lessee as a recycling facility and that all real and personal property provided for therein is necessary or appropriate in connection with the Project. The Lessee may make changes in or additions to the Plans and Specifications; provided, however, changes in or additions to the Plans and Specifications that are material shall be subject to the prior written approval of the Consulting Architect and the Issuer.

The Lessee shall not permit any mechanics' or materialmen's or other liens to be perfected or remain against the Project for labor or materials furnished in connection with the construction of the Project, provided that it shall not constitute an Event of Default hereunder if such a lien is filed if the Lessee notifies the Issuer of the existence of such lien and if the Lessee in good faith promptly contests such lien in accordance with the provisions of Section 6.08 of this Lease Agreement. The Lessee agrees, on behalf of the Issuer, to complete the acquisition, construction, and installation of the Project as promptly as practicable and with all reasonable dispatch after the date of issuance of the Series 2007 Bonds.

Section 4.02. Agreement to Issue the Series 2007 Bonds; Application of Proceeds. In order to provide funds for payment of the Costs of the Project and related costs, the Issuer agrees that it will sell and cause to be delivered to the Underwriter the Series 2007 Bonds in the aggregate principal amount of \$18,145,000 and will thereupon (i) deposit in the General Account of the Bond Fund from the proceeds of the sale of the Series 2007 Bonds the amount specified in Section 701 of the Indenture, which shall constitute a credit on the payment of Basic Rent related to the Series 2007 Bonds as specified in Section 5.03 hereof, (ii) deposit in the Issuance Cost Fund from the proceeds of the sale of the Series 2007 Bonds the amount specified in Section 701 of the Indenture, (iii) deposit in the Debt Service Reserve Fund from the proceeds of the sale of the Series 2007 Bonds the amount specified in Section 701 of the Indenture, (iv) deposit in the Series 2007A Account of the Project Fund the remaining proceeds of the sale of the Series 2007A Bonds, and (v) deposit in the Series 2007B Account of the Project Fund the remaining proceeds of the sale of the Series 2007B Bonds.

Section 4.03. Application of Moneys in the Project Fund. The Issuer shall in the Indenture authorize and direct the Trustee to use the moneys in the Project Fund for the following purposes (but for no other purposes):

(a) payment of (i) the cost of the preparation of Plans and Specifications (including any preliminary study or planning of the Project or any aspect thereof), (ii) the cost of acquisition, construction, and installation of the Project and all construction, acquisition, and installation expenses required to provide utility services or other facilities and all real or personal properties deemed necessary in connection with the Project (including development, architectural,

(l) all proceeds of the Bonds remaining in the Project Fund on the Completion Date (hereinafter referred to as "Surplus Money"), less amounts retained or set aside to meet costs not then due and payable or which are being contested, shall be used to redeem Bonds; if Bonds are not then redeemable or are redeemable only at a call premium or penalty or are redeemable only in an amount in excess of the Surplus Money, such Surplus Money shall be placed in the Redemption Account of the Bond Fund by the Trustee and used for the redemption of Bonds on the earliest possible redemption date on which there is no call premium or penalty and, until such redemption date and until such time as the Bonds are redeemable in an amount in excess of the Surplus Money, used to pay principal on serial Bonds, if any; the portion of the annual principal payment due on serial Bonds that may be paid from the Surplus Money is an amount which bears the same ratio to the annual principal amount due that the total Surplus Money bears to the face amount of the Bonds Outstanding; the amount so placed in the Redemption Account of the Bond Fund may be invested as permitted by Section 4.12 hereof to produce a yield that is not greater than the yield on the Bonds to which such moneys relate.

Section 4.04. Disbursements from the Project Fund.

(a) Subject to compliance by the Lessee with all of the terms, provisions, and conditions of this Lease Agreement, including, but not limited to, the applicable conditions for disbursements set forth in this Section 4.04, the Issuer shall pursuant to the Indenture cause the Trustee to disburse sums in the Project Fund to the Lessee or to the appropriate payee for "non-construction costs and fees," as hereinafter defined, in one or more disbursements in accordance with the following procedures:

(i) At the time of issuance of a series of Bonds, and with respect to requests subsequent to the initial request for a disbursement at the time of issuance of a series of Bonds, not less than five (5) banking days before the date on which the Lessee desires a disbursement, but not more frequently than monthly and in an amount not less than \$10,000, the Lessee shall submit to the Trustee a disbursement request in the form attached hereto as Exhibit C, accompanied by an itemization of non-construction costs and fees in such detail as the Issuer shall require, and the accuracy of such cost and fee itemization shall be certified by the Lessee. The disbursement request must be signed by the Authorized Lessee Representative and the Authorized Issuer Representative.

(ii) For purposes of this Section 4.04, the term "non-construction costs and fees" shall include all costs and fees properly incurred and payable prior to and until the Completion Date in connection with the issuance and sale of a series of Bonds, the acquisition, construction, and installation of the Project, and the performance of all transactions contemplated by the Bond Documents other than the costs and fees that are properly payable to the appropriate contractors pursuant to the Construction Contracts.

(iii) A disbursement request for non-construction costs and fees submitted in accordance with the foregoing procedure need not comply with and shall not be subject to the requirements of paragraphs (b), (d), or (e) of this Section 4.04.

(b) Subject to compliance by the Lessee with all of the terms, provisions, and conditions of this Lease Agreement, including, but not limited to, the conditions for disbursements set forth in this Section 4.04, the Issuer will pursuant to the Indenture cause the Trustee to disburse sums in the Project Fund to the Lessee or to the appropriate contractor under the Construction Contracts for "construction costs and fees" as hereinafter defined in several disbursements in accordance with the following procedures:

(i) Not less than five (5) banking days before the date on which the Lessee desires a disbursement, but not more frequently than monthly and in an amount not less than \$10,000, the Lessee shall submit to the Trustee an application for payment in the form of American Institute of Architects Document G702, Application and Certificate for Payment, and American Institute of Architects Form G703, Continuation Sheets, showing by trade the cost of work on the Project and the cost of materials incorporated into the Project or stored on the Premises, all to the date stated in the Application and Certificate for Payment. The Application and Certificate for Payment must be signed by the Authorized Lessee Representative, the Authorized Issuer Representative, and the appropriate contractor under the Construction Contracts and must be approved by the Consulting Architect. The cost break-down included in the Application and Certificate for Payment shall show the percentage of completion of each line item on the Lessee's detailed estimate of Project costs as submitted to the Trustee, and the accuracy of the cost breakdown shall be certified by the Lessee and the appropriate contractor under the Construction Contracts, or, as to any items not within the scope of a general contract, by the contractors directly responsible to the Lessee for such items.

(ii) The completed construction on the Project shall be reviewed (at the time each Application and Certificate for Payment is submitted) by the Consulting Architect, and the Consulting Architect shall certify to the Trustee as to (A) the cost of completed construction, (B) the percentage of completion, and (C) compliance with the Plans and Specifications.

(iii) The Consulting Architect shall determine the "maximum allowable disbursement" by adding to the cost of completed construction to date (as determined by the Consulting Architect on the basis of its review of the Application and Certificate of Payment and cost breakdown) any allowable non-construction disbursements related to the Project.

(iv) Subject to the requirements of paragraph (i) of this Section 4.04, the disbursement to be made by the Trustee shall not exceed the "maximum allowable disbursement" as determined under (iii) above less: (A) the percentage of the cost of completed construction specified in the Construction Contracts to be retained hereinafter referred to as the "Retainage" and (B) the amounts previously retained by the Trustee. The Retainage (but in no event more than the balance in the Project Fund less amounts retained or set aside to meet costs not then due and which are being contested) under the general Construction Contract or under any other Construction Contract shall be disbursed by the Trustee only after

(A) such contract shall have been performed to the satisfaction of the Lessee, as evidenced by the signature of the Authorized Lessee Representative on the final Application and Certificate for Payment, (B) the certificate and report or endorsement of the title insurance required by subsection (f)(iii) of this Section 4.04, (C) the Trustee shall have received from the contractor under such Construction Contract a lien waiver or an affidavit to the effect that such contractor and all of its subcontractors and suppliers of labor and materials have been paid in full (which lien waiver or affidavit must be in form and substance sufficient as a matter of law to dissolve all liens or claims of lien for labor or service performed or rendered and materials supplied or furnished, in connection with the construction and installation of the Project), (D) with respect to the general Construction Contract, the Lessee or the general contractor shall have exhibited to the Trustee the final certificates of approval from the various governmental authorities having jurisdiction over the construction and operation of the Project, including a final certificate of occupancy or a temporary certificate of occupancy for the Building, and other necessary operating permits, and the certificate of the board of fire underwriters acting in and for the locality in which the Project is situated along with a certificate of the Lessee that the same constitute all the certificates of approval necessary for operation of the Project, and (E) with respect to the general Construction Contract, the Lessee shall have delivered to the Trustee the certificate of completion described in Section 4.07 of this Lease Agreement.

(v) The Trustee shall have five (5) banking days from receipt of the fully executed Application and Certificate for Payment within which to fund each Application and Certificate for Payment.

(vi) For purposes of this Section 4.04, the term "construction costs and fees" shall include all costs and fees properly incurred and payable to the appropriate contractors pursuant to the Construction Contracts.

(vii) Nothing contained in subsection (a) herein shall be construed as preventing the Trustee from disbursing sums in the Project Fund to the appropriate payee for non-construction costs and fees if the request for a disbursement is submitted to the Trustee in accordance with the requirements of subsection (b) herein, provided, however, that the Trustee may not disburse sums in the Project Fund to the appropriate payee for construction costs and fees except pursuant to the submission of a request for a disbursement in accordance with the requirements of such subsection (b).

(viii) Notwithstanding any other term or provision set forth herein, the Trustee shall not be required to disburse more than once each month, and the Trustee shall limit the total amount disbursed from the Project Fund at any time to an amount which, when deducted from the total amount in the Project Fund, leaves a balance to be disbursed that is equal to the cost of completion of the Project (including all remaining non-construction expenses) plus the Retainage.

(c) Notwithstanding any other terms and provisions set forth herein, the Trustee may, in its discretion and with the prior written approval of the Lessee, make all disbursements or any disbursement directly to the Lessee, or to subcontractors, laborers, materialmen, or persons furnishing labor, services, or materials used or to be used on or in the construction of the Project (including authorized extras) or to any combination of them. Any such disbursement shall be deemed to have been made to the Lessee or for its account.

(d) The execution of each Application and Certificate for Payment submitted for disbursements relating to construction costs and fees by the Lessee shall constitute the certification, warranty, and agreement of the Lessee as follows:

(i) the Project is free and clear of all Liens except Permitted Encumbrances;

(ii) all evidence, statements, and other writings required to be furnished under the terms of this Lease Agreement are true and omit no material fact, the omission of which may make them misleading;

(iii) all moneys previously disbursed have been used solely to pay for Costs of the Project, and the Lessee has written evidence to support this item of warranty; and

(iv) all bills for labor, materials, and fixtures used, or on hand and to be used, in the construction of the Project have been paid, and no one is asserting a lien with respect thereto, except Permitted Encumbrances.

(e) The Lessee covenants and agrees that, upon the written request of the Issuer from time to time, but in no event more frequently than once a month, it will furnish to the Issuer, within 15 days of the request, evidence that is reasonably satisfactory to the Issuer (including, but not limited to, certificates and affidavits of the Lessee or the Consulting Architect or any contractor or such other person as the Issuer may reasonably require) showing (i) the value of construction existing at that time, (ii) that all outstanding claims for labor, materials, fixtures, furnishings, equipment, and other work have been paid or provided for in accordance with the requirements of this Lease Agreement, (iii) that there are no Liens outstanding or unpaid other than Permitted Encumbrances, (iv) that the Lessee has substantially complied with all of the Lessee's obligations hereunder, (v) that all construction has been done without material deviation from the Plans and Specifications, and (vi) that the performance and labor and material payment bonds required by this Lease Agreement are in full force and effect.

(f) Except for the initial disbursement at the time of issuance of any series of Bonds, the Trustee shall not make any disbursement from the Project Fund unless each and all of the conditions precedent set forth below shall have been met and complied with in full:

(i) if the disbursement is for "construction costs and fees," the Lessee shall have furnished to the Trustee evidence that the Builder's Risk - Completed Value Form insurance required by Section 4.01 hereof is in full force and effect;

(ii) at the time of each disbursement the Trustee shall not have notice of an Event of Default;

(iii) at the time of each disbursement the Lessee shall deliver to the Trustee a certificate and report of title or endorsement of the title insurer that the Project is free and clear of all Liens and exceptions of title except Permitted Encumbrances; and

(iv) at the time each disbursement is made pursuant to this Section 4.04 as a reimbursement to the Lessee, the Lessee shall deliver to the Trustee evidence satisfactory to the Trustee of contemporaneous or prior payment by the Lessee to the appropriate contractor or supplier under the Construction Contracts or other person of the amount then and theretofore approved for payment.

(g) Each disbursement request pursuant to this Section 4.04 shall constitute a representation by the Lessee that the moneys therein referred to have been or are to be used for one of the purposes set forth in Section 4.03 of this Lease Agreement and that none of the items for which payment is requested has formed the basis for any payment previously made from the Project Fund, to the best knowledge of the Lessee, and the Trustee shall be entitled to rely thereon and shall be held harmless by the Lessee for all liability in connection therewith.

(h) All disbursements (except the disbursement required to be made at the time of issuance of a series of Bonds in accordance with Section 4.04(a) of this Lease Agreement) shall be made within five (5) banking days after receipt by the Trustee of the completed Application and Certificate for Payment and shall be made at the office of the Trustee or at such other place as the Trustee may designate. If sufficient liquid funds are not available to the Trustee at the time of presentment of an Application and Certificate for Payment due to the particular form of investments of moneys held in the Project Fund or a lack of funds, payment of such Application and Certificate for Payment shall be delayed until liquid funds or additional funds sufficient to satisfy the requirements of this Section 4.04 are received by the Trustee.

(i) Except for Liens constituting Permitted Encumbrances, if any notice of lien shall be filed against the Project or any part thereof or if any interim title examination discloses any intervening Lien, the Issuer may suspend further disbursements from the Project Fund until such Lien shall have been discharged of record or proceedings to contest such Lien pursuant to Section 4.01 and Section 6.08 hereof shall have been instituted.

(j) The Trustee shall not make any disbursements from the Project Fund for Equipment unless the Trustee shall have first received copies of the bills of sale or other documentation evidencing that title to such Equipment has been taken in the name of the Issuer.

Section 4.05. Issuance Cost Fund. The Issuer shall in the Indenture authorize and direct the Trustee to use the moneys in the Issuance Cost Fund to pay Issuance Costs. The amounts held in the Issuance Cost Fund shall be disbursed by the Trustee to pay Issuance Costs upon receipt of a requisition, substantially in the form attached hereto as Exhibit D, executed by the Authorized Lessee Representative and the Authorized Issuer Representative setting forth the nature of the Issuance Costs to be paid and the name of the payee and certifying that the amounts

being paid are properly includable within the definition of Issuance Costs. Upon the date that is ninety (90) days after the date of issuance of a series of Bonds, all moneys remaining in the Issuance Cost Fund, if any, shall be deposited in the related series account of the Project Fund.

Section 4.06. Obligation of the Parties to Cooperate in Furnishing Documents; Trustee Reliance. Upon payment of any expenses of the Issuer incurred in connection therewith pursuant to Section 5.03 hereof, the Issuer agrees to cooperate with the Lessee in furnishing to the Trustee the documents referred to in this Article that are required to effect payments out of the Project Fund and the Issuance Cost Fund, and the Issuer agrees to cause such orders to be directed to the Trustee as may be necessary to effect payments out of the Project Fund and the Issuance Cost Fund in accordance with this Article. Such obligation of the Issuer is subject to any provisions of the Indenture requiring additional documentation with respect to payments and shall not extend beyond the moneys in the Project Fund and the Issuance Cost Fund available for payment under the terms of the Indenture. In making any such payment from the Project Fund and the Issuance Cost Fund, the Trustee may rely on any such orders and certifications delivered to it pursuant to this Article.

Section 4.07. Establishment of Completion Date. The Completion Date shall be evidenced to the Trustee by a certificate of substantial completion listing the items to be completed or corrected, if any, and the amounts to be withheld therefor, signed by the Authorized Lessee Representative and approved by the Consulting Architect stating that, except for amounts retained by the Trustee for Costs of the Project not then due and payable, (i) construction of the Project has been completed without material deviation from the Plans and Specifications and all labor, services, materials, and supplies used in such construction have been paid or provided for, (ii) all other facilities necessary in connection with the construction of the Project have been constructed, acquired, and installed without material deviation from the Plans and Specifications and all costs and expenses incurred in connection therewith have been paid or provided for, (iii) according to the "as built" survey of the Premises or a certificate of the surveyor, the Building does not encroach on any other property or violate any setback or sideline requirements applicable to the Premises, and (iv) a certificate of occupancy for the Project has been issued by appropriate local governmental authorities. Notwithstanding the foregoing, such certificate may state that it is given without prejudice to any rights against third parties that exist at the date of such certificate or that may subsequently come into being. The Consulting Architect shall certify the matter covered by clauses (i) and (ii) above. It shall be the duty of the Lessee to cause the certificate contemplated by this Section to be furnished as soon as the construction of the Project shall have been substantially completed.

Section 4.08. Lessee Required to Pay Costs of the Project in Event Project Fund Insufficient. In the event the moneys in the Project Fund available for payment of the Costs of the Project shall not be sufficient to pay the costs thereof in full, the Lessee agrees to complete the acquisition, construction, and installation of the Project and to pay all that portion of the Costs of the Project as may be in excess of the moneys available therefor in the Project Fund. The Issuer does not make any warranty, either express or implied, that the moneys which will be paid into the Project Fund and which, under the provisions of this Lease Agreement, will be available for payment of the Costs of the Project, will be sufficient to pay all the costs that will be incurred in that connection. The Lessee agrees that if after exhaustion of the moneys in the Project Fund the Lessee shall pay any portion of the Costs of the Project pursuant to the

provisions of this Section, it shall not be entitled to any reimbursement therefor from the Issuer or from the Trustee or from the owners of any of the Bonds, nor shall it be entitled to any diminution of the rents payable under Section 5.03 hereof. The obligation of the Lessee to complete the construction of the Project shall survive any termination of this Lease Agreement.

Section 4.09. Authorized Lessee and Issuer Representatives and Successors. The Lessee and the Issuer, respectively, shall designate, in the manner proscribed in Section 1.01 hereof, the Authorized Lessee Representative and the Authorized Issuer Representative. In the event that any person so designated and his alternate or alternates, if any, should become unavailable or unable to take any action or make any certificate provided for or required in this Lease Agreement, a successor shall be appointed in the same manner.

Section 4.10. Enforcement of Remedies Against Contractors and Subcontractors and their Sureties and Against Manufacturers. The Lessee covenants that it will take such action and institute such proceedings as shall be necessary to cause and require all contractors and subcontractors and material suppliers to complete their contracts diligently in accordance with the terms of such contracts, including, without limitation, the correction of any defective work, with all expenses incurred by the Lessee in connection with the performance of its obligations under this Section to be considered part of the Costs of the Project referred to in Section 4.03 hereof. The Issuer agrees that the Lessee may, from time to time, in its own name, or in the name of the Issuer, take such action as may be necessary or advisable, as determined by the Lessee, to ensure the construction of the Project in accordance with the terms of the Construction Contracts and the Plans and Specifications, to ensure the peaceable and quiet enjoyment of the Project for the Lease Term, and to ensure the performance by the Issuer of all covenants and obligations of the Issuer under this Lease Agreement, with all costs and expenses incurred by the Lessee in connection therewith to be considered as part of the Costs of the Project referred to in Section 4.03 hereof. All amounts recovered by way of penalties, damages, whether liquidated or actual, refunds, adjustments, or otherwise in connection with the foregoing prior to the Completion Date, less any unreimbursed legal expenses incurred to collect the same, shall be paid into the Project Fund to be applied to payment of the Costs of the Project and, after the Completion Date, shall be disbursed pursuant to the provisions of Section 4.03(k) of this Lease Agreement.

The Lessee covenants that it will take such action and institute such proceedings as shall be necessary to cause and require any manufacturers of the Equipment and any dealer to fulfill their warranties and contractual responsibilities diligently in accordance with the terms of any purchase and installation contracts, including, without limitation, the correction of any defective parts or workmanship, with all expenses incurred by the Lessee in connection with the performance of its obligations under this Section to be considered part of the Costs of the Project referred to in Section 4.03 hereof. The Issuer agrees that the Lessee may, from time to time, take such action as may be necessary or advisable, as may be determined by the Lessee, to ensure the conformity of the Equipment to the specifications therefor, with all costs and expenses incurred by the Lessee in connection therewith to be considered as part of the Costs of the Project referred to in Section 4.03 hereof.

Section 4.11. No Agency Relationships. The Issuer does not assume the duties of the contractor or architect of the Project and shall be under no obligation to construct or supervise

the construction of the Project or to make any inspections of the improvements related thereto, and it is further understood and agreed that any inspection by the Issuer or its agents of the Project, whether paid for by the Lessee, is for the sole purpose of protecting the title of the Issuer to the Project, and the Lessee shall not be entitled to claim any loss or damage against the Issuer or its agents or employees for the failure of the Issuer's agents or employees to properly discharge their responsibilities to the Issuer.

Section 4.12. Investment of Funds and Accounts. Subject to Article VIII of the Indenture and Section 4.13 hereof, any moneys held as a part of the Bond Fund, the Project Fund, the Issuance Cost Fund, the Debt Service Reserve Fund, or as reserves in connection with contested liens or any other special trust funds shall be invested or reinvested by the Trustee at the written direction of the Authorized Lessee Representative in such Permitted Investments as may be designated by the Lessee. The Trustee may make any and all such investments through its own bond or investment department or through its broker-dealer affiliate.

The investments so purchased shall be held by the Trustee and shall be deemed at all times a part of the Bond Fund and the accounts therein, the Project Fund and the accounts therein, the Issuance Cost Fund, the Debt Service Reserve Fund, or the trust account described in the preceding paragraph, as the case may be, and the interest accruing thereon and any profit realized therefrom shall be credited as provided in Section 802 of the Indenture, and any losses resulting from such investments shall be charged to such fund or account therein and paid by the Lessee.

Section 4.13. Special Investment Covenants. The Issuer and the Lessee each covenant that it will not directly or indirectly use or permit the use of any proceeds (as defined in the Regulations) of any Tax-Exempt Bonds or any other funds of the Issuer or the Lessee, or take or omit to take any action, or direct the Trustee to invest any funds held by it, in such manner as will, or allow any "related person" (as defined in Section 144(a)(3) of the Code) to enter into any arrangement, formal or informal, as will, cause any Tax-Exempt Bonds to be "federally guaranteed," as such term is used and defined in Section 149(b) of the Code, or to be "arbitrage bonds" within the meaning of Section 148 of the Code, and any Regulations proposed or promulgated in connection therewith. To that end, the Issuer and the Lessee shall comply with all requirements of Section 149(b) and Section 148 of the Code to the extent applicable to any Tax-Exempt Bonds. In the event that at any time the Issuer or the Lessee is of the opinion that for purposes of this Section 4.13 it is necessary to dispose of any investment or to restrict or limit the yield on any investment held under the Bond Documents or otherwise, the Issuer or the Lessee, as the case may be, shall so instruct the Trustee in writing.

Section 4.14. Calculation and Payment of Rebate Amount. The Lessee agrees to appoint and pay a Rebate Calculator to calculate and determine the Rebate Amount, if any, as required by Section 148(f) of the Code and any Regulations proposed or promulgated in connection therewith. All calculations and determinations made by a Rebate Calculator shall be accompanied by the opinion of a Rebate Calculator that such calculations and determinations have been made in accordance with the requirements of Section 148(f) of the Code. The Lessee agrees to pay to the United States Treasury for and on behalf of the Issuer the amount determined by the Rebate Calculator to be due to the United States Treasury before the due date specified by the Rebate Calculator. The Lessee agrees to hold the Issuer and the Trustee harmless against and

EXHIBIT “C”



December 21, 2012

To: Janelle Funk, CFO - Cherokee County Board of Commissioners

From: James Bence, CPA - Mauldin & Jenkins, LLC

Re: Ball Ground Recycling, LLC

Per your request, Mauldin & Jenkins, LLC is providing this memo in response to your inquiry regarding the following:

1. why Mauldin & Jenkins, the County's auditors, did not audit Ball Ground Recycling, LLC's assets in prior years, and
2. the proper reporting of these assets in financial statements.

Ball Ground Recycling, LLC ("lessee") and the Resource Recovery Development Authority, concurrent with the time of the issuance of the Solid Waste Disposal Revenue Bonds, entered into a lease agreement. The terms of the lease agreement called for the lease to make monthly rental payments to the Resource Recovery Development Authority (RRDA) commencing September 1, 2007 through July 1, 2037.

Under the Governmental Accounting Standards Board (GASB) Statement No. 62, the criteria for determining a capital lease are:

- (1) the lease transfers ownership of the property to the lease by the end of the lease term;
- (2) the lease contains a bargain purchase option;
- (3) the lease term is equal to 75 percent or more of the estimated economic life of the leased property; or
- (4) the present value at the beginning of the lease term of the minimum lease payments, excluding that portion of the payments representing executory costs such as insurance and maintenance to be paid by the lessor, including any gain thereon, equals or exceeds 90 percent of the excess of the fair value of the leased property to the lessor at the inception of the lease.

As determined by management of the County, the lease term of thirty (30) years was determined to be greater than 75% of the estimated economic life of the leased assets and was originally recorded as a capital lease. Consequently, in a capital lease, the lessor will not report a capital asset, but instead it will record a receivable to the RRDA. The lessee will report the capital assets and a capital lease payable. That is the authoritative manner in which a capital lease transaction should be reported.

Similar to any environment, there is no valuation of the assets held as collateral to the lessor, only the continued valuation of the capital lease receivable. Just like a financial institution does not report and value collateral on borrowings even though such assets act as collateral, the County did not report and value the collateral securing the capital lease receivable. Auditors do not audit assets that are not recorded.

The only asset for the RRDA was a capital lease receivable, which was properly recorded; however, the lessee ultimately defaulted for which the County had to take ownership of the security interests. At the time of default coupled with the County taking possession and ownership of the collateral assets, the County will report the current, fair value of the related capital assets and write-off or remove the capital lease receivable.

Mauldin & Jenkins, LLC

EXHIBIT “D”

**Cherokee County, Georgia
Agenda Request**

SUBJECT: Forensic Audit - McClendon & Associates
SUBMITTED BY: Jerry W. Cooper, County Manager

MEETING DATE: December 4, 2012

COMMISSION ACTION REQUESTED:

Engage McClendon & Associates to perform a forensic audit related to the BGR/Boho Project in the amount not to exceed \$75,000.

FACTS AND ISSUES:

McClendon & Associates was identified as one of four (4) forensic audit firms recommended by the Grand Jury to be considered by the Board of Commissioners, and one of two (2) forensic audit firms recommended by the Georgia Bureau of Investigations. The general direction for the forensic audit:

- The Board of Commissioners and county management will be included as subjects of the audit.
- Although employed by the Board of Commissioners, the auditor will also seek and take direction from the District Attorney.
- The period covered by the audit will be 2005 through present.

The estimated cost for the forensic audit is \$75,000. If the scope of work should require additional funds, a request will be submitted to the BOC for approval.

BUDGET:

Budgeted Amount:	\$0	Account Name:	Professional Services
Amount Encumbered:	\$0	Account #:	
Amount Spent to Date:	\$0		
Amount Requested:	\$75,000		
Remaining Budget	\$75,000		

Budget Adjustment Necessary: Yes No Note: If yes, please attach budget amendment form

Include \$50,000 revenue from recent settlement and \$25,000 from reserves.

Contract Approval Required: Yes No

ADMINISTRATIVE RECOMMENDATION:

Engage the services of McClendon & Associates and authorize approval of standard professional services agreement and payment of retainage in the amount of \$25,000.

REVIEWED BY:

DEPARTMENT HEAD: _____

AGENCY DIRECTOR: _____

COUNTY MANAGER: _____