

STATE OF GEORGIA)
COUNTY OF CHEROKEE)

RESOLUTION NO. 2013-R-013

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 January 2013 term of the Superior Court of Cherokee County issued certain Presentments filed and recorded April 15, 2013, in Jury Book 2, Page 445, with the Clerk of Superior Court of Cherokee County (the "Presentments"); and

WHEREAS, the Grand Jury in a previous interim presentment appointed a special committee to investigate and inquire into the Cherokee County Resource Recovery Development Authority (the "RRDA") and Ball Ground Recycling, LLC ("BGR") and into the purchase of land on Highway 92 by the Cherokee County Development Authority/Office of Economic Development from Jimmy Bobo (the "Investigation"); and

WHEREAS, in conducting its Investigation, the special committee interviewed Attorney Douglas Flint, the attorney for David and Jimmy Bobo, previous County Commissioner Jim Hubbard, Jimmy Bobo, and Cherokee County Board of Commission Chairman, L.B. "Buzz" Ahrens; 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; and

WHEREAS, in doing so, the Board of Commissioners specifically incorporates by reference its earlier Resolution No. 2012-R-012 and Resolution No. 2013-R-001 in response to the previous Grand Jury Presentments to the extent the Grand Jury has raised the same or similar issues as past Grand Juries.

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 11 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: *Mr. Jimmy Bobo moved his businesses, Cherokee Recycling and Woodtech, from Blalock Road and Highway 92 after numerous complaints about his business. Upon vacating the Blalock road site, the county discovered a mass of debris buried on this land. There was conflicting information provided to the Grand Jury regarding if this debris that was removed from the land was in fact unusable material.*

Response: The Board of Commissioners is unaware of any conflict of information provided to the Grand Jury as the Board is not privy to the Grand Jury testimony. However, the County notes that most of the wood debris discovered at the Blalock site was not actually removed. It was left on site per approval of Georgia Environmental Protection Division (“EPD”). Some of the debris was used for erosion control during construction. The remainder of the debris on site was used as fill for a low area of the site, which allowed two additional soccer fields to be constructed.

Finding: *Conflicting information was provided to the Grand Jury as to how the final price for the purchase of the property now known as Ball Ground Recycling was derived. To date, no records from Bank of North Georgia have been provided to the Grand Jury.*

Response: The Board of Commissioners is unaware of any conflict of information provided to the Grand Jury as the Board is not privy to the Grand Jury testimony. However, the County states that it has attempted to obtain documentation from Bank of North Georgia and Mr. Bobo concerning the determination of the final purchase price for the Ball Ground Recycling project land, including information concerning the purchase price and any purchase money loans related to the parcels of land bought by BG Land, LLC in 2006 which make up the Ball Ground Recycling project land conveyed to the RRDA on October 5, 2007. The Bank of North Georgia would not respond to the County’s informal request in the absence of a court subpoena or permission from the customer whose bank records were sought. Mr. Bobo and his numerous entities (including Ball Ground Recycling, LLC and BG Land, LLC) have also not produced these documents, despite numerous informal requests and a formal request as part of the discovery process while Ball Ground Recycling, LLC’s bankruptcy case was still pending.

Finding: *According to the information provided to this Grand Jury, there was no separate real estate attorney representing Cherokee County during the bond process.*

Response: This is correct, however, bond counsel had within his firm, a tax partner and a real estate partner that were working on the bond transaction and the closing of the property.

Finding: *The Certificate Designating Consulting Architect provided to the Grand Jury showed that the RRDA and Ball Ground Recycling jointly selected Sheffer and Grant, Architects, P.C. as the consulting architect for the bond on September 1, 2007.*

Response: While the document known as the Certificate Designating Consulting Architect speaks for itself as to its content and meaning, the County notes that the RRDA approved Sheffer and Grant Architects, P.C. as the consulting architect for the project, but that Mr. Jimmy Bobo actually *selected* Sheffer and Grant Architects, P.C. for the project. Moreover, on page 2 of the Lease Agreement "Consulting Architect" is defined as "the architect employed by the Lessee .. and designated to act on behalf of Issuer [RRDA] by written certificate..."

Finding: *There is currently no sign or other indication located at the Ball Ground Recycling Site to indicate that the land is for lease or sale.*

Response: This is correct as the County has not anticipated that this specialized facility was likely to be sold or leased based on someone driving by and seeing the sign. However, the County is willing to post a sign on the property.

Finding: *To date, there is no indication that all of the members of the current Board of Commissioners have visited the Ball Ground Recycling site.*

Response: With respect to any possible Grand Jury testimony on this point, Chairman Ahrens was the only current member of the Board of Commissioners who was asked to testify. As such, this information would not have been readily available to the Grand Jury based upon personal knowledge.

Finding: *To date, no draw documents or supporting documents have been provided to the Grand Jury by the Bank of New York.*

Response: The County's Finance Department, the County Attorney's Office and the previous bankruptcy counsel all requested these documents from the Bank of New York (which is now the Bank of New York Mellon following a merger). Varying responses were received, indicating that a search was underway and another indicating that this backup information was not retained by the bank. Based upon another follow-up inquiry to the Bank of New York Mellon to track down this historical data, the Bank recently produced documents that confirm that the draw request documents already provided to the Grand Jury by the County are the extent of the documents found in the Bank of New York Mellon's files. In other words, there are no additional documents in the possession of the Bank of New York Mellon that are not already in the possession of the Grand Jury.

Finding: *To date, there is still no lessee for the Ball Ground Recycling site and the County continues to pay \$100,000 per month to the Bank of New York.*

Response: This is accurate. At any one time, the County and RRDA have about three prospects with whom discussions are underway.

Finding: *The Grand Jury is unaware if Cherokee County has an existing policy in regards to how contractor requests for payments in county projects are handled.*

Response: There is county policy on this issue that has been extensively discussed by the County Manager in previous appearances by the Grand Jury. The County Manager provided a detailed packet to the previous Grand Jury regarding the project selection and delivery method used for the Cherokee County Administration Building and Conference Center Project as an example of a large county construction project (refer to flowchart attached hereto as Exhibit "A") and the policies associated with such a county construction project. Copies of the Design-Build RFP, Contract and other documents were provided to the Grand Jury.

Finding: *According to the information provided to this Grand Jury, the Cherokee County Development Authority/Office of Economic Development (CCDA/OED) purchased 53 acres on James Dupree and Highway 92 from one of the Bobo Companies, BG Land, for \$5.5 million on August 31, 2009 funded by a note from Sun Trust Bank. As a part of the sale of that property, Jimmy Bobo agreed to move his Woodtech operation to the Ball Ground Recycling Facility and remove all the mulch he had on-site. The CCDA/OED also purchased an adjoining 42 acre lot called the "Tyson Tract" for \$1.9 million on November 30, 2010. Of those 100 acres, 53 have been declared an Opportunity Zone by the state Department of Community Affairs. The 100 acres will become the Cherokee 75 Corporate Park.*

Response: The Board of Commissioners cannot speak to all of the terms associated with the sale of property from Jimmy Bobo to the CCDA/OED as it was not directly involved. However, the Board notes only that to the extent the County was involved, there was an agreement dated February 22, 2005, in which relocation was discussed. A copy of this agreement is attached hereto as Exhibit "B".

2. Response to Presentment 11 Recommendations

Recommendation 1: *The Grand Jury recommends that the Resource Recovery Development Authority (RRDA) meet bi-monthly in conjunction with the Board of Commissioners' meetings until such time as a lessee or purchaser is located for the Ball Ground Recycling site.*

Response to Recommendation 1: The County appreciates this suggestion and is pleased to advise that it has met and exceeded the recommendation by meeting monthly as of March, 2013. Additionally, the RRDA is free to call special meetings at any time in its discretion.

Recommendation 2: *The Grand Jury recommends that an outside real estate firm be engaged to find a lessee/purchaser for the Ball Ground Recycling site. Furthermore, the Grand Jury recommends that there be a sign placed immediately at the Ball Ground Recycling site to advertise that the site is for lease/sale.*

Response to Recommendation 2: The County and RRDA agree that the services of a marketing or brokerage company could be useful to their efforts to lease or sale the BGR site.

The County and the RRDA have already been working with a consultant who specializes in the industry associated with the function of the BGR facility, and who has brought several prospects. In that regard, the County and the RRDA have been working on development of a referral agreement that will formalize the existing relationship and form the basis for future agreements that will provide financial incentives to any firm or individual who can find a lessee, buyer, and/or operator.

Recommendation 3: *The Grand Jury recommends that the next Grand Jury appoint a citizen advisory committee to oversee all future transactions of the Resource Recovery Development Authority.*

Response to Recommendation 3: As of January 1, 2013, the RRDA majority was composed of citizens who are not elected members of the Cherokee County Board of Commissioners. Thereafter, as of July 1, 2013, two additional citizens will be added in replacement of the currently sitting commissioners, such that the RRDA will be made up entirely of non-commissioner citizens. The County believes that this provides the ultimate “citizen advisory committee” as it will be controlled by citizens. In addition, all meetings of the RRDA are required by law to be open to the public, affording additional opportunities for citizen oversight.

Recommendation 4: *The Grand Jury recommends that until a lessee or purchaser for the Ball Ground Recycling site is found, a report regarding the progress of locating a suitor be given to the public once a month during the scheduled BOC meetings.*

Response to Recommendation 4: The Board of Commissioners and the RRDA have made periodic announcements about progress and efforts towards locating a lessee, purchaser, and/or operator for the BGR site. However, the County would be pleased to make it a point to address this at least monthly during the regularly scheduled Board of Commissioner meetings as requested. The County notes that the updates will often need to be general in nature as the prospect entities typically demand confidentiality, which the County is willing to respect until such time as a deal appears to be forthcoming and the public process of review and approval must commence.

Recommendation 5: *The Grand Jury recommends that the current BOC visit the Ball Ground Recycling site to familiarize himself/herself with the property.*

Response to Recommendation 5: The Board of Commissioners appreciates and accepts this recommendation, and states that all commissioners either have visited the site or intend to do so. The Board of Commissioners further states that it believes it is important for the members of the newly constituted RRDA to visit the site as well, including those new members who will be added in replacement of the commissioner members as of July 1st.

Recommendation 6: *The Grand Jury recommends that the BOC engage the services of a real estate attorney for all future transactions involving the purchase or sale of land in lieu of using the services of the county attorney.*

Response to Recommendation 6: While the County suspects this recommendation stems from the concerns about the land acquisition aspects of the bond transaction, the County Attorney's office was not involved with, or charged to oversee, the land acquisition. In contrast, the County Attorney's office routinely handles buying and selling of property for the County and is fully capable of continuing to do so. Otherwise, unnecessary costs and duplication of efforts and information would be added to the County's land acquisition process.

Recommendation 7: *The Grand Jury recommends that in the future before the County enters into any intergovernmental agreement with a private individual or corporation, the County ensure the citizens are properly informed about the intergovernmental agreement by discussing the matter at a minimum of two public BOC meetings.*

Response to Recommendation 7: In the current transaction, there was no intergovernmental agreement with a private individual or private corporation. Instead, an intergovernmental agreement is one existing between two governmental entities, and in this case, it was between the County and the RRDA. The private party, BGR, is simply a party to a Lease Agreement and the recipient of funds as a result of the bond process, which process consisted of multiple public meetings, public hearings, and a publicly advertised bond validation hearing before the Superior Court at which citizens were invited to attend and voice their objections to the transaction. Nonetheless, as emphasized in previous responses to presentments, the County has no intention of embarking upon another bond transaction with a private individual or corporation.

Recommendation 8: *The Grand Jury recommends that all county employees that answer directly to the BOC have an annual job performance review to ensure compliance with the professional oath of honor that each signed.*

Response to Recommendation 8: The County Manager and County Clerk are the only employees who report directly to the Board of Commissioners. The Chairman has conducted job performance reviews in the past, and routinely addresses performance issues as they arise using his best judgment and drawing upon years of executive management experience to decide when such reviews have been pertinent. The County is pleased to accept this recommendation and adopt an annual review process that is consistent with reviews of all other employees.

Recommendation 9: *The Grand Jury recommends that at least two signatures be required for all checks written in an amount over \$500,000. The Grand Jury further recommends that all draw requests on all public projects in an amount over \$500,000 be submitted to the entire BOC for approval. Furthermore, the Grand Jury recommends that before any approval of any draw request is made, all of the supporting documents required by the contract be attached to the draw request.*

Response to Recommendation 9: The Board of Commissioners accepts the recommendation, and indeed, currently exceeds the recommendation with its current practices and policies. Specifically, all checks over \$500,000.00 require two signatures. Additionally, all

contracts involving purchases over \$25,000.00 are submitted to the Board of Commissioners for approval.

With respect to construction projects, which currently are primarily related to the Parks Bond projects, the Project Manager reviews all invoices submitted by the contractor, which are signed off on by the architect, and then the Project Manager submits the invoice to the Budget Liaison involved in the project. Finally, the project invoice is submitted to the CFO for final approval, resulting in the involvement of three people for the Parks Bond construction projects.

The Board of Commissioners further refers the Grand Jury to the Cherokee County Purchasing Ordinance that further detail procedures utilized by the County for such things as purchasing, bids, and approvals.

Recommendation 10: *The Grand Jury recommends that the BOC request the Bank of New York to produce to the BOC any and all draw requests and supporting documents submitted to the Bank of New York for release of bond funds to Mr. Jimmy Bobo.*

Response to Recommendation 10: This has been done and it has been confirmed that the Bank of New York Mellon has no other documents in its files over and above what has already been provided to the Grand Jury by the County.

Recommendation 11: *The Grand Jury recommends that no future grand jury investigate the Ball Ground Recycling matter any further until the forensic audit is completed.*

Response to Recommendation 11: The County appreciates this recommendation and agrees. The forensic audit was commenced in large part due to the request of the Grand Jury and former District Attorney, and under their guidance as to selection of the auditor and the process for the audit. As such, it is anticipated that the results of the forensic audit will answer the concerns and questions of the Grand Jury far more effectively and comprehensively than any continued piecemeal testimony and production of documents could do.

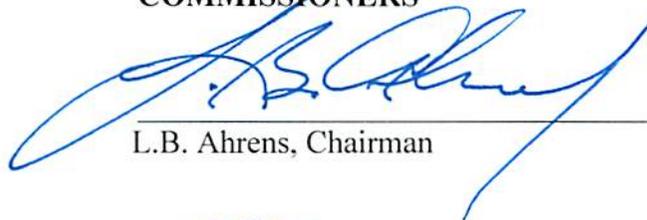
Recommendation 12: *The Grand Jury recommends that the District Attorney file a motion seeking an order of the Court to release all documents and information obtained during the investigation of the RRDA and Ball Ground Recycling by the May 2012 Grand Jury, the September 2012 Grand Jury and the January 2013 Grand Jury if any future grand jury votes to investigate the RRDA and Ball Ground Recycling.*

Response to Recommendation 12: The County appreciates this recommendation and agrees that it would be highly desirable to avoid the duplicative efforts that have been necessary with previous Grand Juries.

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 21st day of May, 2013.

**CHEROKEE COUNTY BOARD OF
COMMISSIONERS**



L.B. Ahrens, Chairman

ATTEST:



Christy Black, County Clerk



Exhibit A

Flowchart of Project Selection & Delivery Method

Cherokee County Administration Building & Conference Center

Exhibit A

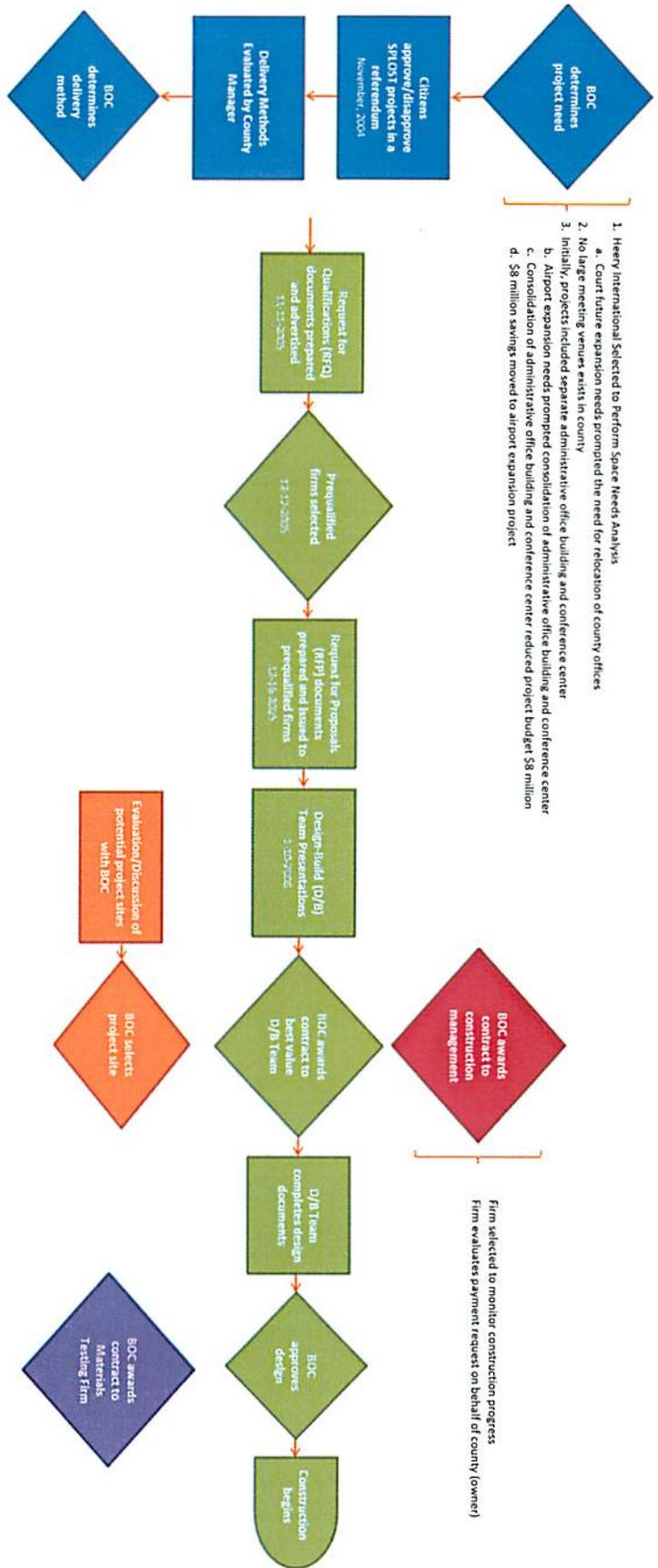


Exhibit B

STATE OF GEORGIA
COUNTY OF CHEROKEE

AGREEMENT

Whereas, Cherokee County, Georgia ("Cherokee") is the owner and Lessor of a certain tract of property located on Blalock Road in Cherokee County, at which certain land-filling activities were at one time carried out by Cherokee, and,

Whereas, Cherokee Recycling, LLC ("CR") has occupied a portion of the Blalock Road property owned and leased by Cherokee, both as a subtenant of Cherokee Clean and Beautiful Commission, Inc., and later as a tenant of Cherokee County, and,

Whereas, the rental payments due and paid by CR to Cherokee have been difficult and cumbersome to calculate, and,

Whereas, CR has at the request of Cherokee performed extensive earthworks, debris removal and processing on the site it occupies, as well as on other property owned by Cherokee adjacent to the site occupied by CR, and,

Whereas, Cherokee received substantial benefit for the work performed by CR and CR has not received compensation for such work, and,

Whereas, CR's business activities are a public service to the citizens of Cherokee County, and,

Now therefore, for and in consideration of the mutual covenants, promises, provisions and payments provided for by this agreement, the parties hereby agree to the following:

1.

The Lease Agreement between Cherokee County and CR is hereby terminated upon the following conditions and under no circumstances 24 months from the undersigned date.

- i. Upon final execution and approval by Cherokee of the termination of CR's lease, the rental otherwise due from CR to Cherokee under the current pending lease shall abate for the subsequent 24 months;
- ii. CR shall process all wood material on the premises and remove it from the premises using all legal means available including grinding and thermal reduction;
- iii. CR shall dress and grass all disturbed areas within the leased premises;
- iv. CR shall be permitted to remove all of its stored materials and topsoil without financial liability to Cherokee;
- v. CR shall designate to Cherokee its replacement location and Cherokee shall in good faith take all such steps as may be necessary to accommodate the relocation and development of CR's operations at such replacement site. Such steps shall include, but not be limited to, the zoning of the property to a zoning classification permitting the processing, storage and disposal of inert waste, so long as the property is eligible for said re-zoning in compliance with the Cherokee County Comprehensive Land Use Plan and Cherokee County Future Land Use Map;
- vi. Cherokee County shall encourage and approve any request of the Cherokee County Development Authority for the issuance of an Industrial Revenue Bond, and shall act as guarantor to induce sale of such bonds in order to facilitate the acquisition, development and relocation of CR's facilities;

JB

- vii. Cherokee shall waive all applicable impact fees for expansion of other CR's business at the relocation site as well as the expansion of other CR or affiliated company facilities in Cherokee County that would result in the creation of additional jobs in Cherokee County.

2.

Notwithstanding the provisions of paragraph 1 above, commencing January 1, 2005 and continuing for the next 24 months, the lease rate otherwise payable by CR to Cherokee for the premises presently leased to CR shall be set at a fixed rate of \$2500.00 per month. No additional rent shall be due and any and all reports submitted to the Environmental Protection Division of the Georgia Department of Natural Resources shall also be provided to the County.

3.

Should CR's efforts to relocate fail due to the actions of the Board of Commissioners of Cherokee County or the Development Authority of Cherokee County the parties shall negotiate a new, long term lease arrangement for the same site currently leased by CR from Cherokee County similar to the lease under which CR presently operates, but which will also include provisions relating to the following:

- i. Initial lease term of not less than 10 years, with no less than two, five year options to renew;
- ii. Fixed rental rate of \$2,500 per month for the first sixty months, \$3,000 per month for the following sixty months and commensurate increases for each renewal term;
- iii. Modest rent set-off for the purpose of improving streetscape and landscape and creek crossing and erosion control;
- iv. CR shall have the option to perform additional grading on the premises and to remove soil from the site if necessary and for the grading plan submitted by CR previously and approved by Cherokee County.

4.

This Lease Agreement in relation to the leasehold interest in the Blalock Road property, shall not be transferable by either party to any other party, person, organization, entity or corporation without the consent of Cherokee County.

This 22 day of February, 2005.

Board of Commissioners of Cherokee County

ATTEST:

Sheila R. Corbin
Sheila Corbin, County Clerk

By:

J. Michael Byrd
J. Michael Byrd, Chairman

Cherokee Recycling, LLC

By:

[Signature]

ATTEST:

[Signature]