

IN THE CHANCERY COURT OF THE FIRST JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI

BEST A TRUE COPY

AUG 19 2010

EDDIE JEAN CARR, CHANCERY CLERK

BY \_\_\_\_\_ CASE NO. \_\_\_\_\_

0-2010-1385

JACKSON WATER PARTNERSHIP

VS.

CITY OF JACKSON, MISSISSIPPI

**ORDER GRANTING PRELIMINARY INJUNCTION**

THIS CAUSE came on for hearing on August 19, 2010, on the request of the Plaintiff, Jackson Water Partnership ("JWP") for preliminary injunction against the Defendant, the City of Jackson, Mississippi ("City") and the Court having heard and considered the same finds as follows:

1. The Defendant received advance notice of the hearing and was present and represented by counsel.
2. The Court has jurisdiction of the parties and the subject matter of this suit.
3. On November 10, 2008, the City awarded JWP the contract to provide the City with wastewater treatment services. A binding written contract (the "Agreement") was subsequently signed by the Parties which provided an effective date of November 16, 2008.
4. The written Agreement with the Plaintiff, does not expire until midnight October 16, 2013.
5. Since the execution the Agreement by the Parties on November 16, 2008, JWP has complied with and performed all of its obligations under the Agreement; is not current in default; and, has not committed any known material breach of any term or condition contained in the Agreement.
6. The Agreement provides that it may only be terminated by the City for cause.

7. JWP has made a showing that these matters involve issues of fundamental fairness and due process, and further that JWP is threatened with and will suffer real, imminent and irreparable injury and harm if the City is allowed to unilaterally terminate or modify the terms of the written Agreement, or attempt in any way to require JWP to cease its performance under the Agreement, without JWP first having the opportunity to be heard.

8. Pending the entry of a final judgment being rendered in this action, in order to preserve the status quo between the parties and to prevent Plaintiff from suffering imminent and irreparable damages, the City should be enjoined and prevented from either terminating its Agreement with JWP or taking any action to remove or preclude JWP from performing its

obligations under the Agreement, including, but not limited to entering into a wastewater contract for wastewater services with any other party or entity including United Water.

9. A Bond or other security acceptable to the City in the amount of \$~~500.00~~<sup>1,000.00</sup> shall be required by the Plaintiff for the issuance of this Preliminary Injunction.

NOW, THEREFORE, the City of Jackson, Mississippi, its agents, servants and employees are hereby commanded and ordered and required to cease, desist and refrain from unilaterally terminating or modifying the terms of the subject written Agreement between the Parties, or attempting in any way to require JWP to cease its performance under the Agreement pending a final decision in this case or such other modification of this Order as the Court may make.

SO ORDERED, this the 19<sup>th</sup> day of August, 2010.

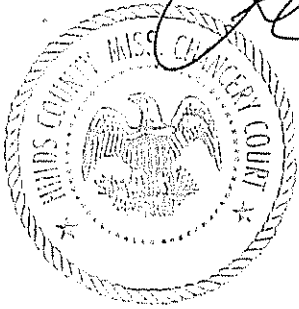
  
CHANCELLOR

Date and Hour of Issuance:

8/19/10

By:

2:35 a.m.



STATE OF MISSISSIPPI  
 HINDS COUNTY  
 EDDIE JEAN CARR, Clerk of the Chancery Court in and for the  
 above-mentioned County and State do hereby certify that the  
 foregoing  
 is a true and correct copy as appears on record in my office.  
 Given under my hand and official seal of office  
 this the 19 day of August, 2010  
 EDDIE JEAN CARR, Chancery Clerk  
 D.C.

IN THE CHANCERY COURT OF THE FIRST JUDICIAL  
DISTRICT OF HINDS COUNTY, MISSISSIPPI

AUG 19 2010

JACKSON WATER PARTNERSHIP

EDDIE JEAN CARR, CHANCERY CLERK

VS.

BY  
CASE NO.

02010-1385  
TH

CITY OF JACKSON, MISSISSIPPI

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

COMES NOW, the Plaintiff, Jackson Water Partnership, by and through its counsel of record, and files this its Complaint for Declaratory and Injunctive Relief and in support thereof would show unto the Court the following, to-wit:

**I. PARTIES**

1. The Plaintiff, Jackson Water Partnership ("JWP"), is a joint venture between Severn Trent Environmental Services, Inc., and Garrett Enterprises, Inc.

2. The Defendant, City of Jackson, Mississippi, ("City") is subject to the jurisdiction of this Court by personal service on an agent authorized by appointment or by law to receive service of process pursuant to Rule 4 M.R.C.P.

**II. JURISDICTION AND VENUE**

3. This Court has subject matter jurisdiction of this action pursuant to Article 6, Section 159 of the Mississippi Constitution. The Complaint seeks relief, which is traditionally within subject matter jurisdiction of the Chancery Court including, inter-alia, a declaration of rights and injunctive relief.

4. The venue of this action is properly within Hinds County, Mississippi.

### III. PERTINENT FACTS

5. On November 10, 2008, the City awarded JWP the contract to provide the City with wastewater treatment services. A document titled "AGREEMENT FOR MANAGEMENT OPERATION SERVICES BY AND BETWEEN THE CITY OF JACKSON, MISSISSIPPI AND JACKSON WATER PARTNERSHIP FOR THE CITY OF JACKSON, MISSISSIPPI WASTEWATER TREATMENT FACILITIES (the "Agreement") was subsequently executed by the parties with an effective date of November 16, 2008. (Agreement, Exhibit "1").

6. Under the terms of the Agreement, it does not expire until midnight October 16, 2013. The Agreement further provides for three (3) additional five (5) year terms subject to the approval of both Parties.

7. In the time since November 16, 2008, JWP has fully complied with and performed all of its obligations under the Agreement. Furthermore, JWP is not currently in material breach of any term or condition contained in the Agreement.

8. The City's limited right to terminate is specifically covered by the Agreement. The Agreement provides as follows:

- a. The City "may terminate this Agreement at any time during its term or any renewal thereof **with cause.**" [emphasis added].
- b. "Prior to terminating the Agreement for cause, [the City] shall provide [JWP] with written notice of its intent to terminate the Agreement based on cause."
- c. The "Agreement may be terminated within sixty (60) days if there has been no cure or if such deficiencies cannot reasonably be remedied within the sixty (60) day period, or [JWP] is not diligently pursuing cure.

9. The City is currently in litigation with United Water Services, Inc. and United Water Services of Mississippi, LLC (collectively referred to as "United") in the Circuit Court of the First

Judicial District of Hinds County, Mississippi. United was a competitor of JWP for the contract to provide the City with wastewater treatment services. Aggrieved by the City's decision to award the contract to JWP, United filed a Bill of Exceptions and appealed the decision to the Circuit Court of Hinds County.

10. JWP attempted to intervene in the Circuit Court matter in order to protect its interests and rights under the Agreement. However, JWP's motion to intervene was denied. (Order Motion to Intervene, Exhibit "2").

11. Without affording JWP with the opportunity to protect its rights under the Agreement, the Circuit Court on June 9, 2010, entered an order reversing the City's decision to award the contract to JWP and rendering a decision in favor of United. (June 9, 2010 Order, Exhibit "3").

12. On June 18, 2010, the City filed a Motion to Reconsider, Alter, Amend and further requesting a stay. (City's June 18, 2010 Motion, Exhibit "4"). Thereafter on July 14, 2010, the Circuit Court entered an Order denying the City's Motion other than to order a stay until August 13, 2010, for the purpose of allowing the City to effectuate a transition of the Agreement to United. (July 14, 2010 Order, Exhibit "5").

13. On August 11, 2010, the City filed a Notice of Appeal thereby appealing the Circuit Court's Orders of June 9 and July 14. Meanwhile, on August 12, 2010 (four days before the Circuit Court's August 13 deadline and although the City's appeal would appear to have removed the Circuit Court's jurisdiction to the Mississippi Supreme Court), the Circuit Court conducted a hearing on a Motion filed by United to hold the City in contempt. During this hearing the Circuit Court threatened to hold the City in contempt, and denied the City's request for a stay.

14. On August 17, 2010, the City filed an Emergency Motion to Stay Judgment with the Mississippi Supreme Court. (Emergency Motion, Exhibit “6”).

15. Because of these ongoing events, and the probability that the Circuit Court has or will Order that the City immediately enter into a contract with United, it is necessary for JWP to obtain an expedited judicial determination of its various interests and rights under the Agreement that it currently has with the City. (Copy of proposed Order, Exhibit “7”).

#### **IV. REQUEST FOR DECLARATORY RELIEF**

16. Pursuant to Rule 57 of the Mississippi Rules of Civil Procedure, JWP hereby requests that this Court declare the rights, status, and other legal relations between JWP and the City under the Agreement, to specifically include, but not limited to, the following questions:

- a. Whether “cause” exists for the City of Jackson to terminate the Agreement with JWP; and,
- b. If cause exists whether the City can terminate and/or remove JWP as the operator without providing 60 days notice as required by the Agreement.

17. In accordance with Rule 57(b)(2) “a contract may be construed either before or after there has been a breach thereof.” The relief requested by way of declaratory judgment will terminate ongoing controversies between the Parties. The declaration of the rights of the Parties would be dispositive of one or more substantial issues that exist between them and reduce this litigation and prevent the necessity of other claims.

18. JWP requests a speedy hearing on this action for declaratory judgment and requests that it be advanced on the trial calendar pursuant to Rule 57(a), of the Mississippi Rules of Civil Procedure.

## V. REQUEST FOR INJUNCTIVE RELIEF

19. Pursuant to Rule 65, of the Mississippi Rules of Civil Procedure, this Court must enter a Preliminary Injunction enjoining, until further order of this Court, the City from terminating the Agreement with JWP or attempting to remove JWP without first complying with the express terms of the Agreement by establishing the existence of “cause” and providing the required “notice”. Such Preliminary Injunction should last until the completion of a trial on the merits.

20. Fundamental fairness and Due Process mandate the issuance of such an injunction to prevent irreparable harm and financial loss to JWP and the City. Judicial intervention is further necessary to protect the taxpayers from a substantial financial loss should the City be required to breach the Agreement. The likelihood of harm to the City is at most slight if the injunction is granted while the likelihood of harm to JWP if the preliminary injunction is not granted is clear, present and substantial.

21. Alternatively, JWP requests that this Court enter a Temporary Restraining Order.

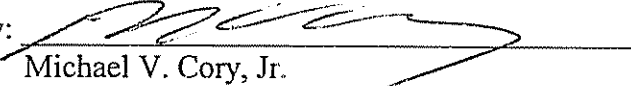
## VI. PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, JWP prays that upon a hearing of this Complaint and Request for Injunctive Relief, the Court will grant the following relief:

- a. A Preliminary Injunction in favor of JWP
- b. A declaration of the rights of the Parties under the Agreement.
- c. A final judgment declaring that cause does not exist for the City to terminate its contractual Agreement with JWP.
- d. Such other general or specific relief to which JWP is or would otherwise be entitled.

Respectfully submitted, this the 19<sup>th</sup> day of August, 2010.

JACKSON WATER PARTNERSHIP,  
Plaintiff

By:   
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