

STATE OF NORTH CAROLINA  
COUNTY OF GUILFORD

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
NO. 11-CVS- 9764

GATE CITY WASTE SERVICES, LLC

Plaintiff,

v.

CITY OF GREENSBORO and NANCY  
VAUGHAN and ZACK MATHENY, in  
their official capacities as members of the  
City of Greensboro City Council,

Defendants.

VERIFIED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE RELIEF

FILED  
11 SEP 15 11:03:54  
CLERK OF SUPERIOR COURT  
GREENSBORO, NC

Plaintiff, Gate City Waste Services, LLC, by and through the undersigned counsel, for its Complaint against Defendants City of Greensboro (“City”) and Nancy Vaughan and Zack Matheny in their official capacities as members of the City of Greensboro City Council (“City Council”), states as follows:

**NATURE OF ACTION**

1. This is an action for declaratory judgment pursuant to N.C. Gen. Stat. § 1-253, *et seq.* and Rule 57 of the North Carolina Rule of Civil Procedure to obtain a declaration of the respective rights and obligations of the parties under various statutory provisions relating to conflicts of interest of Defendants Vaughan and Matheny in connection with their participation in the consideration, debate and vote on the award of a contract by the City for municipal solid waste (“MSW”) management services (the “Contract”). This action further seeks injunctive relief enjoining Defendant Vaughan from voting on the award of the Contract.

## **PARTIES**

2. Gate City Waste Services, LLC (“Gate City”) is a North Carolina limited liability company.

3. Defendant City of Greensboro is a municipality existing under the laws of the State of North Carolina.

4. Defendant Nancy Vaughan (“Vaughan”) is a natural person, over 21 years of age, residing in Guilford County, North Carolina, who serves as a member of the City Council, and who is named in her official capacity.

5. Defendant Zack Matheny (“Matheny”) is a natural person, over 21 years of age, residing in Guilford County, North Carolina, who serves as a member of the City Council, and who is named in his official capacity.

## **JURISDICTION AND VENUE**

6. Jurisdiction over this cause of action is conferred upon this Court and by virtue of, *inter alia*, N.C. Gen. Stat. § 1-253, *et seq.*, the Declaratory Judgment Act.

7. Venue is proper in Guilford County pursuant to N.C. Gen. Stat. § 1-77 in that the cause of action alleged in this action arose in Guilford County.

## **FACTS**

### **The RFP Process**

8. The City of Greensboro (the “City”) owns and operates an approximately 1,000-acre landfill located east of U.S. Highway 29 at the east-end of White Street (the “White Street Landfill”). The White Street Landfill was first opened in the 1940s and has been expanded over time.

9. There are three (3) current and former operating waste disposal units, known as Phases I, II and III, within the boundaries of White Street Landfill. The City is currently permitted to operate Phases II and III pursuant to permits issued by the Department of Environment and Natural Resources (“DENR”).

10. The proposed Phases IV and V of the White Street Landfill include areas not within the legal description of an existing sanitary landfill as set forth in the permit for the existing sanitary landfill.

11. Since on or about January 1, 2007, with limited exceptions the City has not used the White Street Landfill for the disposal of MSW. Rather, since that time, the City has primarily managed its MSW through the Burnt Poplar Road Transfer Station (“Transfer Station”), which is also owned and operated by the City. MSW received at the Transfer Station is shipped to Uwharrie Environmental Regional Landfill in Montgomery County, North Carolina for disposal.

12. Beginning in or about May 2009, the City began to evaluate the costs associated with disposal of MSW at the White Street Landfill and with operating the Transfer Station.

13. The City has issued a series of Requests for Proposal (“RFPs”) to solicit proposals from the private sector to develop an MSW management program for the City, potentially including resuming landfill operations at the White Street Landfill.

14. Throughout this procurement process, Gate City and MRR Southern, LLC, which is the managing member of Gate City, have sought to provide MSW management services to the City and have been in competition for providing these services with, among other companies, Waste Industries USA, Inc. (“Waste Industries”).

15. In or about November 2009, the City issued its first RFP (the “First RFP”) soliciting proposals from the private sector “for the design, financing, permitting, development and operations of a long-term solid waste management infrastructure system.” The City intended the First RFP “to identify firms that can meet all of the City’s solid waste disposal requirements that will be consistent with its long-term objective to provide a safe and economically viable waste management system.”

16. Despite receiving responses from multiple companies, including MRR Southern, LLC and Waste Industries, and after months of consideration, the City Council abandoned pursuing the First RFP.

17. As discussed more fully below, upon information and belief, Ms. Vaughn did not participate in the City Council’s deliberations concerning the First RFP because she had determined and had been advised that she had a conflict of interest with respect to the First RFP due to her husband’s legal representation of Waste Industries.

18. Upon information and belief, Mr. Matheny participated in the City Council’s deliberations concerning the First RFP.

19. On or about January 13, 2011, the City issued another RFP (the “Second RFP”) again soliciting proposals from the private sector to develop “a long-term sustainable municipal solid waste management program that will address management of the City’s waste in an environmentally sound, economically viable and socially acceptable manner.” The Second RFP requested that proposals include a Master Plan that addressed a number of components, including “[u]tilization of the City’s current properties or assets, including those at the White Street Landfill, the City’s transfer station, or other City assets while minimizing impacts to the surrounding community.”

20. Again, multiple companies, including Gate City and Waste Industries, responded to the Second RFP. The City Council selected Gate City and Waste Industries as the most responsive proposers; however, the City Council suspended further action on the Second RFP after the Superior Court issued a preliminary injunction enjoining the City from selecting or approving a site for a new sanitary landfill that receives residential solid waste, including Phases IV and V of the White Street Landfill.

21. As discussed more fully below, upon information and belief, neither Vaughn nor Matheny participated in the City Council's deliberations concerning the Second RFP because of conflicts of interest. With respect to Mr. Matheny, he had determined and been advised that he had a conflict of interest with respect to the Second RFP because of his employer's relationship with one of the indirect owners of Gate City in an unrelated business transaction.

22. On or about July 20, 2011, the City issued a third RFP (the "Third RFP") soliciting proposals from the private sector to provide landfill operations support at Phases II and III of the White Street Landfill.

23. Again, multiple companies, including Gate City and Waste Industries, responded to the Third RFP.

24. In response to the Third RFP, on or about August 16, 2011, the City Council made a preliminary selection of Gate City as the most responsive proposer pursuant to N.C. Gen. Stat. § 143-129.2.

25. As with the Second RFP, upon information and belief, as a result of their ongoing conflicts of interest, neither Vaughn nor Matheny participated in the City Council's deliberations concerning the Third RFP and did not participate in the vote declaring Gate City the most responsive proposer.

26. Following its selection as the most responsive proposer, on or about September 7, 2011, Gate City sent a letter to the City proposing “additional solid waste management services that will enhance [its] original offering and provide additional revenue and/or cost savings to the City,” including “Option I Landfill Gas Project Development.” The letter further states, “Gate City Waste Services believes that there is a significant revenue source existing at the landfill in the unutilized gas from Phase 3 which is currently being flared and the additional gas which is under a limited length contract with Cone Mills.” A true and accurate copy of the September 7, 2011 letter is as Exhibit A.

27. Upon information and belief, the City currently provides some of the methane produced at the White Street Landfill at no cost to the International Textile Group, which operates in the former Cone Mills White Oak plant.

28. The City Council is scheduled to hold a public hearing on September 20, 2011, on whether to award a contract to Gate City for MSW management services pursuant to the Third RFP and then to vote on whether to award the Contract to Gate City.

**Conflicts of Interest – N.C Gen. Stat § 160A-75**

29. In determining whether a City Council member may vote on this contract award, N.C. Gen. Stat. § 160A-75 provides that no City Council member may be excused from voting “except upon matters involving the consideration of the member’s own financial interest or official conduct or on matters on which the member is prohibited from voting under G.S. 14-234, 160A-381(d), or 160A-388(e1). In all other cases, a failure to vote by a member who is physically present in the council chamber, or who has withdrawn without being excused by a majority vote of the remaining members present, shall be recorded as an affirmative vote.”

30. Thus, N.C. Gen. Stat. § 160A-75 requires a City Council member to vote on a matter unless a specified conflict of interest exists.

31. In determining whether Ms. Vaughan and Mr. Matheny may vote and participate in proceedings related to the Contract, various City attorneys have issued multiple, conflicting and inconsistent opinions. In each of the opinions issued by the City Attorney's office, the City Attorney failed to articulate and define the meaning of "financial interest" as used in N.C. Gen. Stat. § 160A-75. With regard to Ms. Vaughan, the City also has failed to identify the nature and extent of the relationship between Ms. Vaughn's husband and Waste Industries that gave rise to her conflict of interest.

#### **Vaughn's Conflict of Interest Saga**

32. From 1997 to 2001 and since 2009, Ms. Vaughan has served as a member of the City Council.

33. Ms. Vaughan's husband, Don Vaughan, is a licensed attorney practicing law in Guilford County. Upon information and belief, Mr. Vaughan's clients include Waste Industries and International Textile Group, and he has represented those clients in connection with their business dealings with the City, including Waste Industries' pursuit of a contract for MSW management services with the City. Because of these relationships and up until August 22, 2011, Ms. Vaughan determined that she had a conflict that precluded her from participating in the Council's deliberations relating to MSW management services and has recused herself from all proceedings related to three RFPs. In fact, before August 22, 2011, Ms. Vaughan did not vote or participate in any City Council meetings related to the three RFPs. As recently reported:

Vaughan was livid when it was implied at one meeting that she had a choice of whether to be recused or not. She said that she had a direct conflict and had been told that criminal charges could result from her voting on matters concerning the

landfill because her husband had a contract with International Textile Group to negotiate the methane gas contract with the city, as well as a contract with Waste Industries, which submitted a proposal to operate the landfill.

A true and accurate copy of the article *Yet Another Round of Musical Recusal Chairs*, Rhino Times, September 8, 2011 is attached as Exhibit B.

34. On April 27, 2011, then-City Attorney Rita Danish advised Ms. Vaughan by email that: “As you were previously advised, you have an actual conflict involving a direct benefit directly related to the contract. As such, this conflict is governed by all the applicable conflict statutes . . . . As such, this statute prohibits participating in any discussions. Your actual direct conflict is distinguished from the other possible council member conflicts currently under review . . . .” A true and accurate copy of the April 27, 2011 email is attached as Exhibit C.

35. Upon information and belief, the other council members Ms. Danish was referring to were Zack Matheny and Robbie Perkins.

36. In a memorandum dated July 9, 2011, Mr. Thomas Carruthers, then-acting City Attorney, noted the previous determination that Ms. Vaughan has a conflict of interest and stated: “Councilperson Vaughan possesses a conflict as well. Her husband is on retainer to legally represent Waste Industries. Her husband’s significant interest presents a conflict for Councilperson Vaughan.” In determining whether Ms. Vaughan, who was recused from deliberations relating to an earlier RFP relating to the Contract, could participate in proceedings relating to a subsequent RFP on the same general subject matter and potentially involving the same proposers, concluded that “[t]hese conflicts arose and cannot now be ignored. This bell cannot be un rung.” (emphasis added) Mr. Carruthers further represented that: “both Councilpersons [Vaughan and Matheny] relate they personally feel they are conflicted from voting on this RFP. This reason stated is that a vote against this RFP is a vote against the

economic interest with which they hold a conflict. They are constrained from voting against this RFP for this reason.” A true and accurate copy of the July 9, 2011 memorandum is attached as Exhibit D.

37. Despite these prior opinions, on August 22, 2011, after the City Council voted to enter contract negotiations with Gate City, Mr. Thomas Pollard, Interim City Attorney, advised Ms. Vaughan that she is not only free but required to vote on the contract award to Gate City following the September 20, 2011 public hearing. A true and accurate copy of the August 22, 2011 memorandum is attached as Exhibit E.

38. On August 24, 2011, Counsel for Gate City responded to Mr. Pollard’s surprising departure from the position taken by his predecessors, noting with regard to Ms. Vaughn’s conflict that until a contract has been awarded, Waste Industries remains a competitor of Gate City with a significant financial interest in preventing the award of the contract to Gate City. A true and accurate copy of the August 24, 2011 letter is attached as Exhibit F.

39. On August 31, 2011, Mr. Pollard reaffirmed his opinion that “there is no basis under G.S. 160A-75 to excuse Ms. Vaughan from voting on the award of a contract to Gate City.” A true and accurate copy of the August 31, 2011 letter is attached as Exhibit G.

40. Mr. Pollard’s opinion that Ms. Vaughan no longer has a conflict of interest is based on the premise that Waste Industries, and by extension Ms. Vaughan and her husband, no longer have a financial interest in the third RFP contract award because the City Council is now considering whether to make an award to Gate City, not Waste Industries. As set forth in a September 8, 2011 letter from Gate City’s counsel, this premise is flawed for several reasons. A true and accurate copy of the September 8, 2011 letter is attached as Exhibit H.

41. The City has been engaged in the development of a contract for MSW management services for over a year. Waste Industries has pursued and been under consideration for the contract throughout that process. Although Gate City was selected as the most responsive proposer to the Third RFP and is the party with whom the City is now in contract negotiations, the process is not complete and it is still entirely possible that the process could lead to an award to Waste Industries. There are many reasons that negotiations between the City and Gate City could falter, requiring the City to turn to another proposer, including Waste Industries. Moreover, the Council is holding a public hearing on September 20, 2011, on the very question of whether to make an award to Gate City. Members of the public are free to urge the Council at that hearing to make the award to Waste Industries instead of Gate City and the Council may still elect to do so. Alternatively, the Council could vote not to make the award to Gate City and to issue yet another RFP that would give Waste Industries another bite at the apple. Thus, because Ms. Vaughan has a financial interest in the award of a contract to Waste Industries, she remains disqualified from voting until the Contract has been awarded.

42. Upon information and belief, Ms. Vaughan has recently participated in City Council discussions concerning use of the White Street Landfill and other solid waste management issues. For example, upon information and belief, on or about August 23, 2011, following a regularly scheduled City Council meeting, Ms. Vaughan participated in discussions with other City Council members concerning use of the White Street Landfill and other solid waste management issues. A true and accurate copy of the article *Politics Rears Head at Briefing*, Rhino Times, August 25, 2011 is attached as Exhibit J.

43. Upon information and belief, Ms. Vaughan has represented that she will vote against awarding the Contract to Gate City. A true and accurate copy of the August 24, 2011

article entitled *Nancy Vaughan Allowed to Vote on White St. Landfill*, available at <http://www.myfox8.com/news/wghp-exclusive-nancy-vaughan-allowed-to-vote-on-white-st-landfill-20110824,0,2475979.story>, is attached as Exhibit I.

44. Upon information and belief, there has been no change in Ms. Vaughan's conflict of interest with regard to Waste Industries. Upon information and belief, Waste Industries remains a competitor for the contract and has a financial interest in seeing that the City Council does not award the Contract to Gate City. Further, upon information and belief, if the City Council does not award the Contract to Gate City or issues yet another RFP, Waste Industries would respond to the RFP and would compete for the contract, as it has in response to the first three RFPs.

45. Upon information and belief, Ms. Vaughan, as a result of her husband's ongoing representation of Waste Industries, will realize, or has a significant potential to realize, financial gain or loss as a result of a contract being awarded and therefore is required to recuse herself from voting and participating in proceedings relating to the Contract.

46. Permitting Ms. Vaughan to vote on the award of the Contract to Gate City is in violation of North Carolina law, including N.C. Gen. Stat. § 160A-75, and will work a serious, immediate and irreparable harm to Gate City.

#### **Matheny's Alleged Conflict of Interest**

47. Since 2007, Mr. Matheny has served as a member of the City Council.

48. Mr. Matheny works for Bell Partners, Inc., which has done some business with D.H. Griffin Companies ("D.H. Griffin"), which partly owns MRR Southern, LLC, which is the managing member of Gate City. Prior to Mr. Matheny's employment, Bell Partners and D.H. Griffin entered into a partnership for a development project in Atlanta, Georgia.

49. Responding to a request from Ms. Danish on behalf of the City, in a letter dated April 29, 2011, Irvin Hankins of the law firm of Parker Poe provided a formal legal opinion on whether Councilmembers Matheny and Perkins were eligible to vote on the Contract. A true and accurate copy of the April 29, 2011 letter is attached as Exhibit K.

50. In this legal opinion, Parker Poe concluded that a conflict of interest did not exist with respect to either council member and that neither was required to recuse himself from voting. With respect to Mr. Matheny, Parker Poe noted that his employer, Bell Partners, Inc., has done some business with D.H. Griffin Companies (“D.H. Griffin”), which partly owns MRR Southern, LLC, which is the managing member of Gate City. Prior to Mr. Matheny’s employment, Bell Partners and D.H. Griffin entered into a partnership for a development project in Atlanta, Georgia. As further noted by Parker Poe, Mr. Matheny’s “salary and other compensation are not tied to the outcome of the redevelopment project or the investment partnership with D.H. Griffin.” Further, “[n]either Council member Matheny, his spouse, nor Bell Partners is an investor in Gate City or MRR Southern or does business with Gate City, MRR Southern, [or D.H. Griffin].” Parker Poe found these connections to be “indirect and remote,” and therefore not requiring recusal.

51. Upon information and belief, the City Attorney’s office did not share this letter of Parker Poe’s opinion with the City Council.

52. For reasons that are unclear, Ms. Danish apparently sought a second informal opinion on this question from Ms. Frayda Bluestein of the UNC School of Government. Upon information and belief, in seeking such opinion Ms. Danish did not share the Parker Poe opinion with ms Bluestein. In a May 2, 2011 email to Ms. Danish, Ms. Bluestein communicated her opinion that Mr. Perkins did not have a conflict with respect to the Contract based on what she

understood to be remote business dealings with D.H. Griffin. With respect to Mr. Matheny, Ms. Bluestein determined that Mr. Matheny was precluded from voting on the Contract. Ms. Bluestein speculated (1) that Mr. Matheny's employer *may* have a significant interest in the success of his "business partner" with respect to the Contract, despite the fact that such partnership involved a one-time, limited transaction wholly unrelated to the Contract and that the employer has no relationship whatsoever to Gate City or the Contract, and (2) that Mr. Matheny *might* therefore be concerned that a vote against Gate City would be viewed negatively by his employer and that he *might* be personally at risk if his vote displeases his employer. Ms. Bluestein acknowledged that there is no evidence to support any of this speculation. Nevertheless, she concluded that Mr. Matheny has a conflict of interest that precludes him from voting on the Contract. A true and accurate copy of the May 2, 2011 email is attached as Exhibit L.

53. As discussed above, in a memorandum dated July 9, 2011, Mr. Thomas Carruthers, then-acting City Attorney, represented that: "both Councilpersons [Vaughan and Matheny] relate they personally feel they are conflicted from voting on this RFP. This reason stated is that a vote against this RFP is a vote against the economic interest with which they hold a conflict. They are constrained from voting against this RFP for this reason." A true and accurate copy of the July 9, 2011 memorandum is attached as Exhibit D.

54. Upon information and belief, neither Mr. Matheny nor his employer have a financial interest in or business dealings with Gate City, and there is no evidence that he would experience a financial benefit or detriment resulting from the City Council's action with respect to the Contract.

55. Upon information and belief, Mr. Matheny has no personal relationship or immediate family relationship with a proposer or potential awardee and, at most, has a highly attenuated business relationship with a potential awardee. Consequently, in contrast to Vaughn's direct conflict of interest through her husband in which she has a significant potential to realize financial gain or loss as a result of the award of the Contract, Matheny has no conflict of interest with respect to the award of the Contract, and is therefore not excused from voting by virtue of a conflict of interest.

56. Despite his indirect and remote relationship with Gate City, Mr. Matheny has represented that he will not vote on the Contract award. A true and accurate copy of the article *Matheny Won't Take Landfill Vote*, News & Record, April 28, 2011 is attached as Exhibit M.

**FIRST CLAIM FOR RELIEF**  
(Request for Declaratory Relief)

57. Plaintiff incorporates the allegations in the preceding paragraphs as if set forth fully herein.

58. There is a clear and existing controversy between Plaintiff and Defendants regarding whether Ms. Vaughan is permitted to vote and participate in the proceedings relating to the award of the Contract and whether Mr. Matheny is required to vote on this issue.

59. Plaintiff seeks to have the controversy resolved through a Declaratory Judgment under N.C. Gen. Stat. § 1-253 *et seq.* and Rule 57 of the North Carolina Rules of Civil Procedure.

60. Plaintiff respectfully requests that the Court declare that: (i) Ms. Vaughan has a "financial interest" within the meaning of N.C. Gen. Stat. § 160A-75 in the award of the Contract and therefore has a conflict of interest and is required to recuse herself from voting and

participating in the proceedings related to the award of the Contract; and (ii) Mr. Matheny has no “financial interest” within the meaning of N.C. Gen. Stat. § 160A-75 or any other conflict of interest in the award of the Contract and is therefore not excused from voting and participating in the proceedings relating to the award of the Contract.

**SECOND CLAIM FOR RELIEF**  
(Request for Permanent Injunction)

61. Plaintiff incorporates the allegations in the preceding paragraphs as if set forth fully herein.

62. Plaintiff will suffer irreparable harm by virtue of Defendant Vaughan’s actions if such actions are not enjoined. If Ms. Vaughan is not enjoined from voting on whether to award the Contract to Plaintiff, Plaintiff will suffer irreparable harm because the City Council may: (i) vote to not award the Contract to Plaintiff; (ii) decide to award the Contract to another entity; or (iii) take some other action with respect to the management of MSW that would permanently preclude the award of a contract to Gate City. Consequently, absent an order of this Court enjoining the actions of Defendant Vaughan, no adequate relief by way of monetary damages is available for the prevention of significant harm to Plaintiff.

63. The unlawful conduct of Defendant Vaughan justifies permanent injunctive relief because no adequate remedy at law exists.

64. Plaintiffs are entitled to an order enjoining Defendant Vaughan from the actions complained of, thereby preventing irreparable harm to Plaintiff.

**MOTION FOR TEMPORARY RESTRAINING ORDER**  
**AND PRELIMINARY INJUNCTION**

1. Plaintiff incorporates the allegations in the preceding paragraphs as if set forth fully herein.

2. Based on the allegations in the preceding paragraphs, Plaintiff moves, pursuant to N.C. R. Civ. P. 65(b), for a Temporary Restraining Order enjoining Defendant Vaughan from voting or participating in the proceedings related to the award of the Contract. Defendant Vaughan's wrongful acts as set forth above have caused, are causing and will continue to cause immediate and irreparable injury, loss and damage to Plaintiff.

3. Based on the allegations in the preceding paragraphs, Plaintiff moves, pursuant to N.C. R. Civ. P. 65(a), for a Preliminary Injunction pending a final trial on the merits, enjoining Defendant Vaughan from voting or participating in the proceedings related to the award of the Contract. Defendant Vaughan's wrongful acts as set forth above have caused, are causing and will continue to cause immediate and irreparable injury, loss and damage to Plaintiff.

4. The City Council has scheduled a public hearing for September 20, 2011 and will vote on whether to award the Contract to Gate City following this hearing.

5. Defendant Vaughan has represented that she will vote against awarding the Contract to Gate City.

6. Upon information and belief, Defendant Vaughan has a financial interest in the award of the Contract and therefore, pursuant to N.C. Gen. Stat. § 160A-75, is required to recuse herself from voting and participating in proceedings relating to the Contract.

7. Defendant Vaughan voting against the award of the Contract to Gate City prior to a final determination in this action would cause irreparable harm to Gate City in its efforts enter into a contract with the City to provide solid waste management services.

8. Gate City will suffer irreparable harm because in the interim the City Council may: (i) vote to not award the Contract to Plaintiff; (ii) decide to award the Contract to another

entity; or (iii) take some other action with respect to the management of MSW that would permanently preclude the award of a contract to Gate City.

9. A temporary restraining order and preliminary injunction are necessary to (i) preserve the status quo until the rights of the parties can be fully adjudicated by the Court, and (ii) prevent the irreparable harm that Gate City will suffer if such an order is not granted.

10. There is a likelihood of Plaintiff's success on the merits at the ultimate trial of this matter. Two former City attorneys have determined that Defendant Vaughan has a conflict of interest and is required to recuse herself from voting on the Contract. Upon information and belief, Ms. Vaughan herself has also represented that she has a conflict of interest with respect to awarding a contract related to operation of the White Street Landfill. The circumstances under which Ms. Vaughan recused herself from voting on the selection of a responsive proposer pursuant to N.C. Gen. Stat. § 143-129.2 have not changed.

11. The relevant equities between the parties are best served by enjoining the activities of Defendant Vaughan thereby maintaining the status quo pending the trial of this matter.

12. Plaintiff requests that the Court dispense with any security requirement because the restraint requested herein by Plaintiff will cause Defendant Vaughan no material damage.

13. Although Plaintiff seeks declaratory relief, no adequate relief other than injunctive relief is truly available and no adequate remedy at law is truly available. Unless enjoined, Defendant Vaughan's wrongful and unreasonable acts will cause further permanent and irreparable injury to Plaintiff.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Gate City Waste Services, LLC prays the Court as follows:

1. That the Court enter a Declaratory Judgment declaring that: (i) Defendant Vaughan has a “financial interest” within the meaning of N.C. Gen. Stat. § 160A-75 in the award of the Contract and is therefore excused from voting and participating in the proceedings related to the award of the Contract and required to recuse herself there from; and (ii) Defendant Matheny has no “financial interest” within the meaning of N.C. Gen. Stat. § 160A-75 or any other conflict of interest in the award of the Contract and is therefore not excused from participating in the proceedings related to the award of the Contract;

2. That the Court issue a Temporary Restraining Order and a Preliminary Injunction pending a final trial on the merits enjoining Defendant Vaughan from voting or participating in the proceedings related to the award of the Contract, so long as a conflict of interest exists with regard to her;

3. That a hearing on Plaintiff’s motion for a preliminary injunction be set within ten (10) days of the entry of a temporary restraining order;

4. That the Court issue a permanent injunction enjoining Defendant Vaughan from voting or participating in the proceedings related to the award of the Contract so long as a conflict of interest exists with regard to her;

5. That this Court dispense with any security requirement because the restraint requested herein by Plaintiff will cause Defendants no material damage;

6. That the Court tax all costs of this action against Defendants;

7. That the Court expedite a hearing in disposition of this matter;

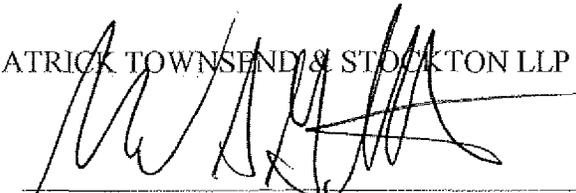
8. That a jury trial be had on all issues which may be tried by jury; and

9. That the Court order such other and further relief as it deems just and proper.

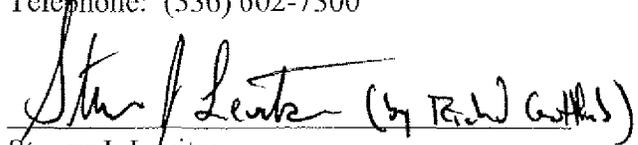
This is the 13th day of September, 2011.

KILPATRICK TOWNSEND & STOCKTON LLP

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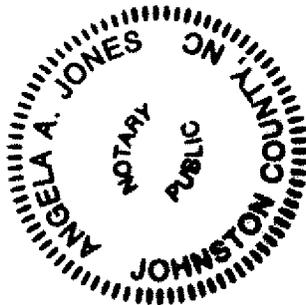
*Attorneys for Plaintiff*  
*Gate City Waste Services, LLC*

STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE ME, the undersigned authority, on this day personally appeared F. Norbert Hector, Jr., who, being by me first duly sworn, stated that he is an authorized agent and representative of the Plaintiff identified in the above and foregoing complaint, and that he has read such complaint, that the facts alleged therein are within his personal knowledge and are true and correct, or if not within his personal knowledge such facts have been assembled by authorized persons and counsel for Plaintiff, and he believes the facts stated therein are true.

SUBSCRIBED AND SWORN TO BEFORE ME, this 13<sup>th</sup> day of September, 2011  
to certify which, witness my hand and official seal.



*F. Norbert Hector, Jr.*  
F. NORBERT HECTOR, JR.

*Angela A. Jones*  
Notary Public

Printed Name of Notary: *Angela A. Jones*

My Commission Expires:

*May 18, 2013*