

**Lee County Board of County Commissioners  
Agenda Item Summary**

Blue Sheet No. 20040868

**1. REQUESTED MOTION:**

**ACTION REQUESTED:** Consider approval of the mediated settlement in the case of *Severn Trent - Avatar Utility Services, LLC v. Lee County*, Case No. 01-11758-CA-WCM, as reached between the Parties' representatives on June 24, 2004.  
Approve transfer from Lee County Utilities reserves of \$2,291,767. *rw*

**WHY ACTION IS NECESSARY:** Settlements of lawsuits involving the County must be approved by the Board of County Commissioners at a regularly scheduled Board of County Commissioners' meeting.

**WHAT ACTION ACCOMPLISHES:** Resolves all remaining contract issues between the Parties. **NO AD-VALOREM TAX DOLLARS ARE INVOLVED IN THE SETTLEMENT.**

**2. DEPARTMENTAL CATEGORY:**

COMMISSION DISTRICT # CW *A12D*

**3. MEETING DATE:**

*07-27-2004*

**4. AGENDA:**

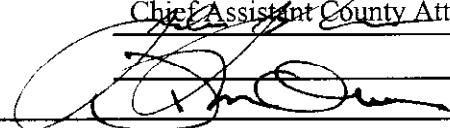
- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC
- WALK ON
- TIME REQUIRED:

**5. REQUIREMENT/PURPOSE:**

- (Specify)
- STATUTE §125.01, F.S.
  - ORDINANCE
  - ADMIN. CODE
  - OTHER Services Contract

**6. REQUESTOR OF INFORMATION:**

- A. COMMISSIONER
- B. DEPARTMENT County Attorney
- C. DIVISION Litigation / Gen. Svcs.
- BY: John J. Renner / David M. Owen  
Chief Assistant County Attorneys



**7. BACKGROUND:**

On February 1, 2001, Lee County brought its Utilities Operations & Maintenance functions back "in-house" from the ST-AUSI contract which ran from June, 1995 to and through January, 2001. Upon transition, and ninety (90) days thereafter, the County and ST-AUSI were to "true up" any monetary and service level differences. As of April 30, 2001, several differences between the Parties remained outstanding. On December 6, 2001, after several prior staff meetings by the Parties in an attempt to resolve their remaining differences, ST-AUSI brought the subject lawsuit. From approximately January, 2002 to May, 2004, the Parties engaged in discussions, discovery and refinement of the claims brought by ST-AUSI and the counterclaims of the County relative to the operations of the Utility System.

**(BACKGROUND CONTINUED - NEXT PAGE)**

**8. MANAGEMENT RECOMMENDATIONS:**

Approve the mediated settlement as articulated.

**9. RECOMMENDED APPROVAL:**

Approve the settlement and authorize the Chairman's execution of the Release.

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services			G County Manager
<i>7-12-04</i>	N/A	N/A	N/A	<i>7/9/04</i>	OA <i>7/13/04</i>	OM <i>7/14/04</i>	RISK <i>7/14/04</i>	GC <i>7/14/04</i>

**10. COMMISSION ACTION:**

- APPROVED
- DENIED
- DEFERRED
- OTHER

RECEIVED BY COUNTY ADMIN:	<i>RL</i>
	<i>7/13/04</i>
	<i>10:00am 367</i>
COUNTY ADMIN FORWARDED TO:	<i>RL</i>
	<i>7-17-04</i>
	<i>1/2/04</i>

**BACKGROUND:** (Continued)

On June 23 & 24, 2004 as part of the on-going settlement process, the Parties engaged in mediation with David Prolman, a local (Naples) mediator, in an effort to resolve the outstanding contract issues. Settlement was reached by the Parties on June 24, 2004. The terms and conditions of the mediated settlement are outlined in the "Memorandum of Settlement", attached.

The principal settlement points are these:

1. Both Parties will dismiss their claims under the lawsuit with prejudice twenty (20) days following Board of County Commissioners' approval; which means those claims can never be raised again by either side.
2. Both Parties will execute a General Release; which means that each Party releases the other from any and all liability arising out of the lawsuit.
3. The County will pay to ST-AUSI twenty (20) days after Board of County Commissioners' approval, the total sum of \$2,291,767.00 from the \$3,061,798.00 (includes interest) in contract funds which were retained by the County at the conclusion of the contract. The \$2,291,767.00 is being accepted by ST-AUSI as final settlement in full for all claims. The County will retain \$770,031.00.
4. Both Parties will bear their own attorney's fees and costs pursuant to the terms of the Operations Contract.

As the result of the review of the case by both sides during the mediation and the suggestions and guidance provided by the mediator, Administrative staff and the Attorney's office are recommending the Board's approval of the mediated settlement so as to amicably settle the disputed issues as the result of the expiration of the ST-AUSI services contract for the operations and maintenance of the County's Utility System from June, 1995 to January, 2001.

Funds are available in Account No. OD5360048700.504990. **NO AD-VALOREM TAX DOLLARS ARE INVOLVED IN THE SETTLEMENT.** All funds being paid to ST-AUSI pursuant to the Settlement Agreement are from County-retained funds under the contract.

# REQUEST FOR TRANSFER OF FUNDS

FUND NAME: Lee County Utilities DATE: 07/13/04 BATCH NO. \_\_\_\_\_

FISCAL YEAR: FY03-04 FUND #: 48700 DOC TYPE: YB LEDGER TYPE: BA

TO: Lee County Utilities Utilities - General  
 (DIVISION NAME) (PROGRAM NAME)

NOTE: PLEASE LIST THE ACCOUNT NUMBER BELOW IN THE FOLLOWING ORDER:  
 (EXAMPLE: )

ACCOUNT NUMBER	OBJECT NAME	DEBIT
OD5360048700.504990	Non-Reoccurring Expense	\$ 2,291,767
TOTAL TO:		\$ 2,291,767

FROM: Non-Departmental Reserves  
 (DIVISION NAME) (PROGRAM NAME)

ACCOUNT NUMBER	OBJECT NAME	CREDIT
GC5890148700.509910	Reserve for Contingencies	2,291,767
TOTAL FROM:		\$ 2,291,767

EXPLANATION: As approved in Bluesheet #20040868 on 7/27/04.

<p>DIVISION DIRECTOR SIGNATURE _____ DATE _____</p> <p>DBS: APPROVAL <input checked="" type="checkbox"/> DENIAL _____</p> <p>APPROVAL <input checked="" type="checkbox"/> DENIAL _____</p> <p>CO. ADMIN.: APPROVAL _____ DENIAL _____</p>	<p>DEPARTMENT DIRECTOR SIGNATURE _____ DATE _____</p> <p><i>Patricia Miller</i> <u>7/13/04</u></p> <p>OPERATIONS ANALYST SIGNATURE _____ DATE _____</p> <p><i>Shirley Kelly</i> <u>7/14/04</u></p> <p>BUDGET OPERATIONS MANAGER SIGNATURE _____ DATE _____</p> <p>CO. ADMIN. SIGNATURE _____ DATE _____</p>
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BCC APPROVAL DATE \_\_\_\_\_ BCC CHAIRMAN SIGNATURE \_\_\_\_\_

BA NO. \_\_\_\_\_ AUTH CODE \_\_\_\_\_ TRANS DATE \_\_\_\_\_

SEVERN TRENT-AVATAR, )  
UTILITY SERVICES, LLC., )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
LEE COUNTY, FLORIDA, )  
 )  
Defendant. )  
 )  
v. )  
 )  
SEVERN TRENT, PLC, )  
 )  
Third Party Defendant. )  
 )

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Case No. 01-11750-CA-WCM  
Date of Mediation: 6/23 and 6/24/04  
Mediator: David Prolman

**MEMORANDUM OF SETTLEMENT**

PURSUANT TO the Court's Order/Stipulation of the Parties, Mediation was conducted on the date above and the Parties have reached a settlement, as set forth below:

The terms of the Settlement are as follows:

1. This action has been amicably resolved and shall be dismissed with prejudice, as set forth below.
2. Defendant, Lee County, Florida ("Defendant") agrees to pay and Plaintiff, Severn Trent-Avatar Utility Services, LLC ("Plaintiff"), agrees to accept the sum of Two Million, Two Hundred Ninety-One Thousand, Seven Hundred Sixty-Seven and 00/100 Dollars (\$2,291,767.00) in full and final settlement of all claims.
3. Within Twenty (20) days of The Lee County Board of County Commissioner approval, the Defendant shall pay the agreed upon settlement sum to



Plaintiff and the Plaintiff shall execute and deliver to Defendant, a full and final release and stipulation for dismissal with prejudice. Defendant shall execute and deliver a full and final release (in favor of the Plaintiff and Third Party Defendant, Severn Trent PLC) and stipulation for dismissal with prejudice as to its Counterclaim and Third Party Complaint within the same twenty (20) days.

4. Each party shall bear its own costs and attorney's fees.


5. Defendant also covenants and agrees that it hereby waives and releases the surety that issued the performance bond (Surety Bond No. 15-50-62) of Plaintiff's performance, American Home Assurance Company, from any and all claims arising out of or related to the said performance bond and the contract to which it pertains.

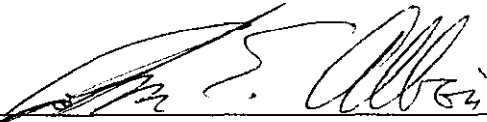
6. The releases described in paragraph 3 above shall be in the form attached hereto.

7. Defendant shall bring this matter before its Board of County Commissioners by or before 8/3/04.


SEVERN TRENT UTILITY  
SERVICES, LLC

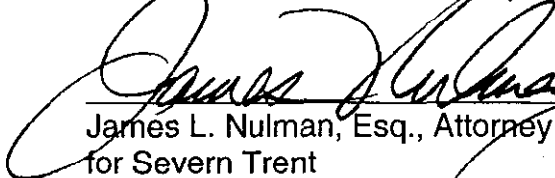
LEE COUNTY BOARD OF COUNTY  
COMMISSIONERS

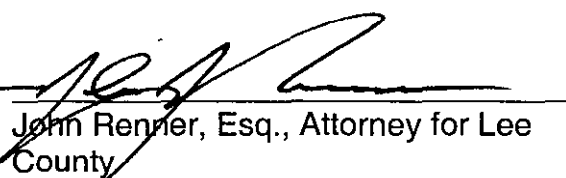
By:   
Dana Kaas, Vice President

By:   
John Albion, Chairman

SEVERN TRENT PLC

By:   
Dana Kaas, Authorized Rep.

  
James L. Nulman, Esq., Attorney  
for Severn Trent

  
John Renner, Esq., Attorney for Lee  
County

## RELEASE

As used herein, the term "Releasor" means, \_\_\_\_\_, and also means his/her/its/their successors and assigns (which, in the case of individuals, shall include personal representatives and heirs). When more than one person or entity is named as a Releasor, then all such persons and entities shall be deemed to be referred to by the term "Releasor" collectively, and jointly and severally.

As used herein, the term "Releasee" means \_\_\_\_\_. The term "Releasee" shall also mean the officers, directors, shareholders, partners (both limited and general), managers, members, employees, agents, servants and representatives of entities, and the personal representatives and heirs of individuals, as well as the successors and assigns of all of them. When more than one person or entity is named as a Releasee, then all such persons and entities shall be deemed to be referred to by the term "Releasee" collectively, and jointly and severally.

As used herein, the term "Claims" means any and all manner of action and actions, cause and causes of action, suits, debts, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, guarantees, warranties (whether based on statute, common law or otherwise), third party claims, variances, trespasses, damages, judgments, executions, claims and demands whatsoever, whether arising in tort, by contract, by virtue of statute, or otherwise, and whether in law or in equity, regardless of whether the same are known or unknown, suspected or unsuspected, patent or latent, or have yet accrued or not accrued as of the date of execution hereof, provided the same are based upon any act or omission that occurred or failed to occur prior to the date of execution hereof.

Both the Releasor and Releasee have voluntarily entered into this Release, and both have taken the opportunity to confer with counsel of their own choosing concerning the legal force and effect of this Release, and the Releasor understands that the Releasor is waiving and releasing the Claims defined herein.

For and in consideration of the sum of Dollars (\$10.00) and other good and valuable consideration, to the Releasor in hand paid by the Releasee, the receipt and adequacy of which are hereby acknowledged by the Releasor, the Releasor has remised, released, and forever discharged, and by these presents does remise, release, acquit, satisfy and forever discharge the said Releasee of and from any and all Claims which against the Releasee the Releasor ever had, now has, or which the Releasor hereafter can, shall or may have, for, upon or by reason of any matter, cause, or thing whatsoever, from the beginning of the world to the day of the date of these presents.

Handwritten signatures in black ink, appearing to be initials or names, located in the bottom right corner of the page.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this \_\_\_\_ day of \_\_\_\_\_, 2004.

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:

\_\_\_\_\_  
(Witness) [Corporation]

\_\_\_\_\_  
(Witness) By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF FLORIDA )  
COUNTY OF LEE )

THE FOREGOING INSTRUMENT was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2004, by \_\_\_\_\_, as \_\_\_\_\_ [officer title] of \_\_\_\_\_ a \_\_\_\_\_ corporation, on behalf of the corporation. He is personally known to me or has produced \_\_\_\_\_ as identification and did not take an oath.

\_\_\_\_\_  
\_\_\_\_\_, Notary Public  
Commission Expiration Date: \_\_\_\_\_  
Commission No: \_\_\_\_\_

**FOR INDIVIDUAL NOTARY:**

IN WITNESS WHEREOF, I have hereunto set my hand and seal this \_\_\_\_ day of \_\_\_\_\_, 2004.

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:

\_\_\_\_\_  
(Witness) [Individual Name]

\_\_\_\_\_  
(Witness)

STATE OF FLORIDA )  
COUNTY OF LEE )

THE FOREGOING INSTRUMENT was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2004, by \_\_\_\_\_, who



is personally known to me or has produced \_\_\_\_\_ as  
identification and did not take an oath.

\_\_\_\_\_, Notary Public  
Commission Expiration Date: \_\_\_\_\_  
Commission No: \_\_\_\_\_

A handwritten signature in black ink, appearing to be "D.A. Jones", located in the bottom right corner of the page.



INTEREST CALCULATION FOR - ST AUSI amount

Beg Date	End Date	Total Days	Interest Rate	Amount	Interest Earned
2/1/2001	3/1/2001	30	5.6291%	2,841,767.78	13,330.50
3/1/2001	4/1/2001	30	5.3205%	2,855,098.28	12,658.79
4/1/2001	5/1/2001	30	4.9683%	2,867,757.07	11,873.23
5/1/2001	6/1/2001	30	4.5263%	2,879,630.30	10,861.73
6/1/2001	7/1/2001	30	4.1248%	2,890,492.02	9,935.58
7/1/2001	8/1/2001	30	3.8560%	2,900,427.61	9,320.04
8/1/2001	9/1/2001	30	3.7119%	2,909,747.65	9,000.58
9/1/2001	10/1/2001	30	3.4453%	2,918,748.23	8,379.97
10/1/2001	11/1/2001	30	2.8385%	2,927,128.20	6,923.88
11/1/2001	12/1/2001	30	2.4107%	2,934,052.07	5,894.27
12/1/2001	1/1/2002	30	2.1084%	2,939,946.34	5,165.49
1/1/2002	2/1/2002	30	1.9625%	2,945,111.83	4,816.48
2/1/2002	3/1/2002	30	1.8948%	2,949,928.31	4,657.94
3/1/2002	4/1/2002	30	1.9322%	2,954,586.25	4,757.38
4/1/2002	5/1/2002	30	1.9454%	2,959,343.62	4,797.59
5/1/2002	6/1/2002	30	2.0268%	2,964,141.21	5,006.43
6/1/2002	7/1/2002	30	1.9561%	2,969,147.65	4,839.96
7/1/2002	8/1/2002	30	1.9090%	2,973,987.61	4,731.12
8/1/2002	9/1/2002	30	1.8849%	2,978,718.72	4,678.82
9/1/2002	10/1/2002	30	1.8919%	2,983,397.55	4,703.57
10/1/2002	11/1/2002	30	1.8946%	2,988,101.12	4,717.71
11/1/2002	12/1/2002	30	1.7992%	2,992,818.84	4,487.23
12/1/2002	1/1/2003	30	1.6206%	2,997,306.07	4,047.86
1/1/2003	2/1/2003	30	1.5128%	3,001,353.93	3,783.71
2/1/2003	3/1/2003	30	1.4989%	3,005,137.64	3,753.66
3/1/2003	4/1/2003	30	1.4546%	3,008,891.30	3,647.17
4/1/2003	5/1/2003	30	1.4809%	3,012,538.47	3,717.80
5/1/2003	6/1/2003	30	1.4682%	3,016,256.26	3,690.36
6/1/2003	7/1/2003	30	1.4389%	3,019,946.62	3,621.29
7/1/2003	8/1/2003	30	1.3270%	3,023,567.92	3,343.56
8/1/2003	9/1/2003	30	1.2842%	3,026,911.47	3,239.17
9/1/2003	10/1/2003	30	1.3018%	3,030,150.64	3,287.15
10/1/2003	11/1/2003	30	1.3097%	3,033,437.79	3,310.63
11/1/2003	12/1/2003	30	1.3305%	3,036,748.42	3,366.96
12/1/2003	1/1/2004	30	1.2564%	3,040,115.38	3,183.08
1/1/2004	2/1/2004	30	1.2246%	3,043,298.46	3,105.79
2/1/2004	3/1/2004	30	1.2161%	3,046,404.25	3,087.38
3/1/2004	4/1/2004	30	1.1814%	3,049,491.63	3,002.16
4/1/2004	5/1/2004	30	1.1902%	3,052,493.79	3,027.45
5/1/2004	6/1/2004	30	1.2102%	3,055,521.24	3,081.61
6/1/2004	7/1/2004	30	1.2538%	3,058,602.85	3,195.62
7/1/2004	7/28/2004	27	1.2538%	3,061,798.47	2,879.06

Sub-total: 222,909.76

from: Jill M.  
Finance 7/2/04