

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

Blue Sheet No. 20041186

**1. REQUESTED MOTION:**

**ACTION REQUESTED:** Approve and authorize the Chairman's signature on a Release for the ST-AUS Surety Bond held by the County during the term of the Lee County / ST-AUS contract term.

**WHY ACTION IS NECESSARY:** The contract and the lawsuit between Lee County and ST-AUS have been concluded. The ST-AUS Surety should be released.

**WHAT ACTION ACCOMPLISHES:** Releases the ST-AUS Surety from any future obligation to Lee County.

**2. DEPARTMENTAL CATEGORY:**  
COMMISSION DISTRICT # CW

*C12A*

**3. MEETING DATE:**

*09-21-2004*

**4. AGENDA:**

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

**5. REQUIREMENT/PURPOSE:**  
(Specify)

- STATUTE §125.01, F.S.
- ORDINANCE
- ADMIN. CODE
- OTHER

**6. REQUESTOR OF INFORMATION:**

A. COMMISSIONER \_\_\_\_\_  
 B. DEPARTMENT County Attorney  
 C. DIVISION General Services  
 BY: David M. Owen  
 Chief Assistant County Attorney  
*[Signature]*

**7. BACKGROUND:**

On July 27, 2004, Lee County and ST-AUS settled Lee County Case No. 01-11758-CA-WCM, and released each other from any and all future liability to one other.

On August 25, 2004, the Lee County / ST-AUS lawsuit was dismissed with prejudice by the Circuit Court, thereby ending the suit and the relationship between ST-AUS and Lee County.

(BACKGROUND CONTINUED - NEXT PAGE)

**8. MANAGEMENT RECOMMENDATIONS:**

**9. RECOMMENDED APPROVAL:**

Approve the Release and authorize the Chairman to sign same.

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
N/A	N/A	N/A	N/A	<i>[Signature]</i> 9/8/04	OA	OM	RISK	GG	<i>[Signature]</i>
					<i>9/8/04</i>	<i>9/8/04</i>	<i>9/8/04</i>	<i>9/8/04</i>	

**10. COMMISSION ACTION:**

- \_\_\_\_\_ APPROVED
- \_\_\_\_\_ DENIED
- \_\_\_\_\_ DEFERRED
- \_\_\_\_\_ OTHER

CO. ATTY. 9/15/04  
FORWARDED  
TO CO. ADMIN.  
*[Signature]*

RECEIVED BY  
COUNTY ADMIN:  
*9/8/04*  
*3:25 pm SWI*  
COUNTY ADMIN  
FORWARDED TO: *RK*  
*9/9/04*  
*240*

*25*

**BACKGROUND:** (Continued)

Subsequently, the Surety to ST-AUS for the Performance Bond posted by ST-AUS for the benefit of the County during the contract term (American Home Assurance Company), has requested that it be formally released by the County from its bond obligation.

In light of the settlement of the lawsuit between the Parties, the dismissal of the lawsuit with prejudice by the Court and the executed Releases between the Parties, it is both appropriate and reasonable to release the Surety to ST-AUS.

The proposed action is normal and ordinary in the course of settlements of contractual disputes when the Parties have finalized the Resolution.

Reply to  
**James L. Nulman**  
Direct Dial Number 239.337.8424  
E-Mail: james.nulman@henlaw.com

September 7, 2004

**VIA HAND DELIVERY**

David Owen, Esq.  
Lee County Attorneys' Office  
2133 Second Street  
Fort Myers, FL 33901

Re: Severn Trent-Avatar Utility Services, LLC v. Lee County  
Case No. 01-11750-CA-WCM

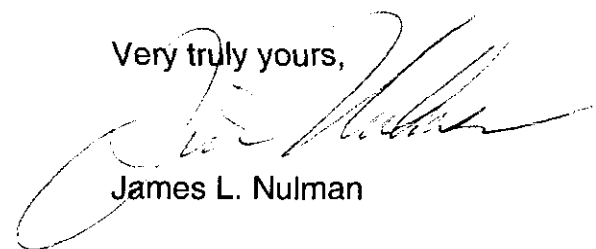
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RECEIVED BY  
LEE CO. ATTORNEY

Dear David:

As we recently discussed, enclosed please find a proposed Release pursuant to which Lee County would release ST Environmental Services, Inc. and American Home Assurance Company (and STAUS as successor to STES) for any and all claims arising out of or relating to the Performance Bond. I would appreciate it if you would please present this to the Board of County Commissioners and return the executed Release to me. Of course, if there is any question whatsoever about this, or if I can provide any assistance in having it executed by the Board, please let me know. Otherwise, I would appreciate your letting me know the date on which it will be brought before the Board so that I can advise my clients as to when they may reasonably expect to receive the executed Release.

Thank you again for your courtesy and cooperation in this matter.

Very truly yours,



James L. Nulman

JLN/bb

Enclosure

cc: Dana Kaas (w/encl.) (Via Telecopier)

## **RELEASE**

As used herein, the term "Releasor" means, **LEE COUNTY, FLORIDA**, and also means its 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 **ST ENVIRONMENTAL SERVICES, INC., its successor, SEVERN TRENT-AVATAR UTILITY SERVICES, LLC, and AMERICAN HOME ASSURANCE COMPANY**. 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 and all Claims arising out, resulting from, or referring or relating to, that certain Performance Bond, Surety Bond No. 15-50-62, issued on May 15, 1995 by ST Environmental Services, Inc., as

principal, and American Home Assurance Company, as Surety, in favor of the Lee County Board of County Commissioners, Lee County, Florida, as Obligee.

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

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:

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

**LEE COUNTY, FLORIDA by Lee County  
Board of County Commissioners**

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

By: \_\_\_\_\_  
John Albion, Chairman

STATE OF FLORIDA )  
COUNTY OF LEE )

THE FOREGOING INSTRUMENT was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2004, by John Albion, as Chairman of Lee County Board of County Commissioners, who is personally known to me or has produced \_\_\_\_\_ as identification and did not take an oath.

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

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

Case No. 01-11750-CA-WCM

**ORDER OF DISMISSAL WITH PREJUDICE**

THIS MATTER having come before the Court upon the Stipulation of the parties,  
and the Court being otherwise duly advised in the premises,

IT IS HEREBY ORDERED that this entire action be, and the same hereby is,  
dismissed with prejudice, all parties to bear their own attorneys' fees and costs.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this  
25 day of Aug., 2004.

S/ WILLIAM C. McIVER  
William C. McIver  
Circuit Judge

Pursuant to Rule 1.080, service of the foregoing  
Order has been made by U.S. Mail this 25  
day of Aug., 2004, upon:

John Renner, Esq.  
James L. Nulman, Esq.

S/ CYNTHIA L. SACKETT

By: \_\_\_\_\_  
Judicial Assistant

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR  
LEE COUNTY, FLORIDA CIVIL ACTION

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

Case No. 01-11750-CA-WCM

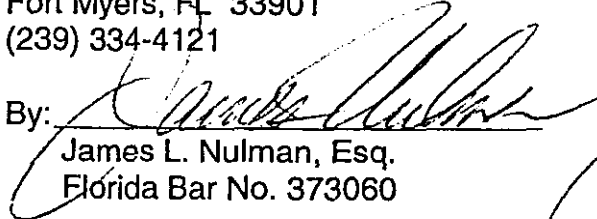
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LEE CO. ATTORNEY

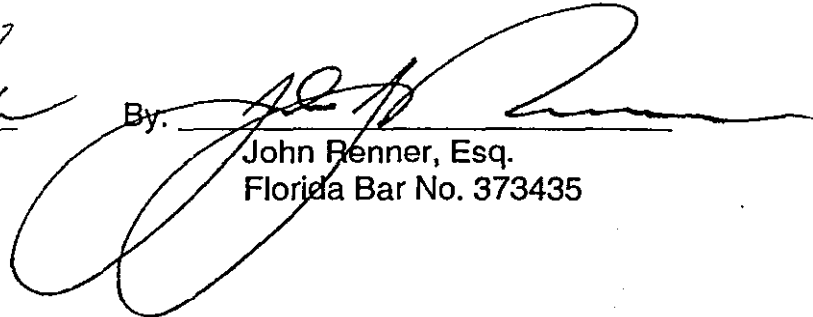
**STIPULATION FOR ENTRY OF ORDER OF DISMISSAL WITH PREJUDICE**

Plaintiff, SEVERN TRENT-AVATAR UTILITY SERVICES, LLC, Defendant, LEE COUNTY, FLORIDA, and Third Party Defendant, SEVERN TRENT, PLC, having amicably resolved all claims and disputes in the above-captioned matter, hereby stipulate to the entry of an Order dismissing this action with prejudice, with all parties to bear their own attorneys' fees and costs.

HENDERSON, FRANKLIN, STARNES &  
HOLT, P.A.  
Attorneys for Severn Trent-Avatar Utility  
Services, LLC and Severn Trent, PLC  
1715 Monroe Street  
Fort Myers, FL 33901  
(239) 334-4121

LEE COUNTY ATTORNEY'S OFFICE  
Attorneys for Lee County  
P.O. Box 398  
Fort Myers, Florida 33902-0398  
(239) 335-2236


By:   
James L. Nulman, Esq.  
Florida Bar No. 373060

By:   
John Renner, Esq.  
Florida Bar No. 373435

**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. 

**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

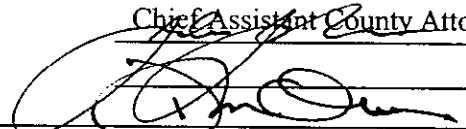
**6. REQUESTOR OF INFORMATION:**

**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.

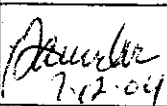

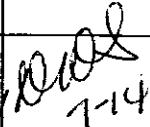
**(BACKGROUND CONTINUED - NEXT PAGE)**

**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
 7-12-04	N/A	N/A	N/A	 7/13/04	OA 7/13/04	OM 7/14/04	RISK 7/14/04	GC 7/14/04 

**10. COMMISSION ACTION:**

APPROVED J/c 7/9/04

DENIED

DEFERRED

OTHER

RECEIVED BY COUNTY ADMIN: <u>JL</u>
<u>7/13/04</u>
<u>10:00am SL</u>
COUNTY ADMIN FORWARDED TO: <u>PL</u>
<u>7-14-04</u>
<u>7/14/04</u>



**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.