

RESOLUTION NO. 2003-5

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING THE SECOND AMENDMENT TO AGREEMENT BETWEEN THE CITY OF MARATHON AND SEVERN TRENT ENVIRONMENTAL SERVICES, INC., AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Marathon, Florida (the “City”) and Severn Trent Environmental Services, Inc. (the “Consultant”) entered into an Agreement for Administrative, Finance and Community Services dated August 22, 2000 (the “Agreement”); and

WHEREAS, the City and the Consultant amended the terms of conditions of the Agreement on March 13, 2001 (the “Amendment”); and

WHEREAS, the City and the Consultant desire to further amend the terms of the Agreement by entering into a Second Amendment to Agreement for Professional Services (the “Second Amendment”).

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AS FOLLOWS:

Section 1. **Recitals.** The above recitals are true and correct and are incorporated herein by this reference.

Section 2. **Approval of Agreement.** The Second Amendment to Agreement for Professional Services between the City of Marathon, Florida and Severn Trent Environmental Services, Inc. in substantially the form as the attached as Exhibit “A” is approved. The City Attorney is authorized to finalize the Agreement to incorporate any changes directed by the City Council and the Mayor is authorized to execute said Agreement on behalf of the City.

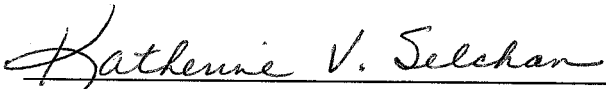
Section 3. **Effective Date.** This Resolution shall become effective immediately upon its adoption.

PASSED AND ADOPTED this 15th day of October, 2002.



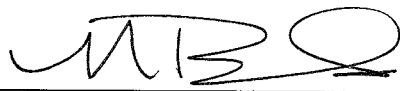
JOHN BARTUS, MAYOR

ATTEST:



KATHERINE V. SELCHAN
CITY CLERK

APPROVED AS TO LEGAL SUFFICIENCY



CITY ATTORNEY

592001\Resolutions\Approval of Amendment to Severn Trent Agreement

SCANNED

10/23/02 #6670 KS✓

EXHIBIT "A"

AGREEMENT BY AND BETWEEN
SEVERN TRENT ENVIRONMENTAL SERVICES
AND
THE CITY OF MARATHON

THIS AGREEMENT, by and between the CITY OF MARATHON, a municipal corporation organized and existing under the laws of the State of Florida, (hereinafter referred to as "CITY"), and SEVERN TRENT ENVIRONMENTAL SERVICES, Florida (hereinafter referred to collectively as SEVERN TRENT,

WITNESSETH:

WHEREAS, the City is desirous of maintaining a high level of competent professional and economically feasible contract administrative, finance and community services in conjunction and harmony with its fiscal policies of sound, economical management, and

WHEREAS, SEVERN TRENT has agreed to render to the CITY a continuing high level of professional contract services and the CITY is desirous of contracting for such services upon the terms and conditions hereinafter set forth,

WHEREAS, CITY is desirous of providing these daily services through a contractual relationship with SEVERN TRENT.

NOW THEREFORE, in consideration of the sums hereinafter set forth and for other good and valuable considerations, the receipt and legal sufficiency of which are hereby acknowledged, it is hereby agreed as follows:

ARTICLE I
SERVICES

1.1 The above recitals are true and correct; the preamble hereinabove is incorporated in this Agreement by reference.

1.2 SEVERN TRENT shall provide to CITY for the term hereinafter set forth, as the same may be extended in accordance with the provisions hereof, competent professional, administrative, finance and community services, within and throughout the corporate limits of CITY to the extent and in the manner hereinafter described.

1.3 The CITY hereby engages SEVERN TRENT for the services described in Exhibit A, attached hereto and incorporated herein by reference.

1.4 Service shall mean comprehensive, contract services provided in accordance with the proposed services attached hereto as Exhibit A.

1.5 The parties recognize that the services provided for under this Agreement are intended to provide flexibility to the CITY in order to meet the challenges of the CITY. Therefore, SEVERN TRENT shall provide the staffing levels and assignments for the above stated personnel to provide professional, competent services to the CITY consistent with the spirit and intent of this Agreement. SEVERN TRENT shall enact a drug free workplace program for all of its staffing requirements outlined herein, and shall comply with all Federal, State Laws and Local Ordinances for the work performed under this Agreement.

1.6 In addition to the foregoing, SEVERN TRENT agrees to provide CITY all services to fulfill the obligations of SEVERN TRENT under this contract.

1.7 SEVERN TRENT shall insure that all CITY equipment shall be maintained, at the expense of the CITY, in a reasonable, prudent and safe manner to obtain maximum life expectancy.

1.8 PROVIDED, FURTHER, except as otherwise hereinafter specifically set forth, as directed by the City, such professional services shall encompass all those duties and functions of the type coming within the jurisdiction of and customarily rendered by municipal departments in accordance with the Charter of the CITY, and the Statutes of the State of Florida.

ARTICLE II **MAINTENANCE OF ABILITY**

SEVERN TRENT shall furnish to and maintain for the benefit of the CITY, without additional cost therefor, all necessary labor, supervision, equipment, excluding vehicles and communication facilities necessary and proper for the purpose of performing the services, duties and responsibilities set forth and contemplated herein and as necessary to maintain the level of service to be rendered hereunder.

ARTICLE III
ADDITIONAL SERVICES

3.1 SEVERN TRENT shall provide to the CITY, upon the request of the City Manager and the availability of resources, such additional services as may from time to time be needed at the discretion of the CITY.

3.2 The cost of such services shall be borne by the CITY and shall be payable in such amounts and in such a manner as may be determined by mutual agreement, upon each occurrence.

ARTICLE IV
EMPLOYMENT RESPONSIBILITY

~~4.1 All personnel employed by SEVERN TRENT in the performance of such services, functions and responsibilities as described and contemplated herein for the CITY shall be and remain SEVERN TRENT employees.~~

4.1~~2~~ SEVERN TRENT shall be responsible for all insurance benefits, compensation and/or any status or right during the course of employment with SEVERN TRENT. Accordingly, the CITY shall not be called upon to assume any liability for or direct payment of any salaries, wages, contribution to pension funds, insurance premiums or payments, workers compensation benefits under Chapter 441, F.S. or any other amenities of employment to any SEVERN TRENT personnel performing services, duties and responsibilities hereunder for the benefit of said CITY and the residents thereof of any other liabilities whatsoever, unless otherwise specifically provided herein. SEVERN TRENT is and shall be in the performance of all work, services and activities under this contract, an independent contractor and not an employee, agent or servant of the City.

ARTICLE V
EMPLOYMENT; RIGHT OF CONTROL

5.1 SEVERN TRENT in conformance with standards established by CITY shall have and maintain the responsibility for and control of the rendition of the services, the standards of performance, the discipline of personnel and other matters incident to the performance of the services, duties and responsibilities as described and contemplated herein.

5.2 The City shall have the right to require SEVERN TRENT to transfer personnel out of the City of Marathon, pursuant to this paragraph and Section 5.4 below.

5.3 SEVERN TRENT shall have the discretion to transfer or reassign any personnel out of the City of Marathon for the following reasons:

1. Situations where an employee requests a transfer in order to accept a promotion or special assignment which has been offered to him or her by SEVERN TRENT upon his or her special education qualifications or career path.
2. Disciplinary reasons.
3. Failure of an employee to meet SEVERN TRENT performance standards.
4. At the request of the employee.

In the event SEVERN TRENT transfers or reassigns any employee for the above stated reasons, SEVERN TRENT shall provide the City with prompt written notice of such transfer or reassignment and explain the basis of the reassignment.

5.4 In any case not specified above, the City must concur prior to any transfer of personnel out of the City of Marathon, which concurrence shall not be unreasonably withheld.

5.5 Any personnel, transferred or reassigned out of the CITY, pursuant to this Article, shall not occur without first filling the vacated position as authorized by the City, which shall not be unreasonably withheld.

ARTICLE VI CONSIDERATION

6.1 Effective October 1, 2002, the CITY shall pay to SEVERN TRENT, in consideration for the above stated services and responsibilities for the period starting October 1, 2002 August 22, 2000 through December 31, 20012 September 30, 2003, the following sums: of the amounts contained in Exhibit A, attached hereto and made a part hereof. Thereafter, for each Fiscal Year, beginning October 1, 2000, the compensation amount payable to SEVERN TRENT under the Terms and Conditions of this Agreement shall be outlined in the Budget of the City of MARATHON. SEVERN TRENT shall be entitled to

1. For Administrative, Finance and Base Information Technology: \$112,500.
2. For Community Services: \$12,500.
3. For existing on-site personnel; salary times multiplier of 1.65 for full time personnel and salary times multiplier of 1.35 for part-time personnel.
4. Reimbursement for actual costs of copying, telephone calls, faxes, and courier services.

6.2 For services provided during any monthly extension of the Term as specified in Article XII, Severn Trent shall be paid the following sum:

1. For Administrative, Finance and Base Information Technology: \$37,500.
2. For Community Services: \$4,167.
3. For existing on-site personnel; salary times multiplier of 1.65 for full time personnel and salary times multiplier of 1.35 for part-time personnel.
4. ~~4~~—Reimbursement for actual costs of copying, telephone calls, faxes, and courier services.

6.3 All payments to Severn Trent for services provided under the Amended Agreement shall be placed on the City Council agenda and approved by the City Council prior to issuance of a check(s).

ARTICLE VII
CITY MANAGER

7.1 The CITY MANAGER shall, among other specified duties, act as liaison between the CITY and SEVERN TRENT.

7.2 ~~The selection of the CITY MANAGER as that term is specified in Section 7 of the City Charter at the commencement of this Agreement shall be Craig Wrathell James DeCocq and upon any vacancy thereafter shall be at the absolute discretion of the City. In no event shall SEVERN TRENT have the right to remove the selected CITY MANAGER without the consent of the City. In the event of a vacancy in the position of the CITY MANAGER, SEVERN TRENT agrees to make such selections in good faith and in the best interest of the CITY. The City shall have the opportunity to interview each of the candidates. In the event these candidates are unacceptable, SEVERN TRENT and CITY will work jointly and cooperatively toward identifying an acceptable candidate.~~

7.3 In the event the CITY becomes dissatisfied with the performance of the CITY MANAGER, the CITY, may in its discretion, provide notification to SEVERN TRENT. Thereafter, representatives of SEVERN TRENT and the CITY shall meet to discuss possible remedies of the problems experienced by the CITY. The CITY MANAGER agrees to act in good faith in resolving any problems experienced by the CITY. Notwithstanding, the foregoing, the City may remove the CITY MANAGER at any time, without cause. SEVERN TRENT and CITY hereby acknowledge and agree that the selected CITY MANAGER is a material obligation under this contract and in the event that the selected CITY MANAGER is removed for any reason, then CITY shall have the right to either terminate this contract or to require SEVERN TRENT to assign this contract to another firm so designated by the CITY.

7.4 Notwithstanding the provisions of Paragraphs 7.1, 7.2 and 7.3, at any time during the Term of this Agreement, the City Council may appoint an Acting or Permanent City Manager as specified in Section 7 (2) (D) of the City Charter who shall not be an employee of Severn Trent. Upon the appointment of the Acting or Permanent City Manager, James DeCocq shall no longer serve as the City Manager, but shall remain as a management liaison to the Acting or Permanent City Manager.

ARTICLE VIII
INDEMNIFICATION

SEVERN TRENT shall indemnify and save harmless and defend the CITY, its officers, agents, servants and employees from and against any claim, demand or cause of action arising out of sole negligence or intentional act, error or omission of SEVERN TRENT, its officers, agents, servants or employees in the performances of services under this Agreement, whether direct or indirect and from and against any orders, judgments, or decrees which may be entered thereon and from and against all costs, damages of every

kind and nature, attorney's fees, expenses and liabilities incurred in and about the defense of any such claim and investigation thereof. To the extent permitted by law, the CITY shall hold harmless SEVERN TRENT, its officers, agents, servants or employees from and against any claim, demand or cause of action arising out of the sole negligence or intentional act, error or omission of CITY, its officers, agents, servants or employees in the performance of services under this Agreement, whether direct or indirect and from and against all costs, damages of every kind and nature, attorney's fees, expenses and liabilities incurred in and about the defense of any such claim and investigation thereof.

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ARTICLE IX
INSURANCE

SEVERN TRENT shall maintain, in addition to those policies of insurance required and contemplated in Article IV hereof, policies of liability, automobile, excess automobile, in the amounts hereinafter described:

9.1 General Liability \$1,000,000/\$2,000,000

9.2 Automobile Liability \$1,000,000

9.3 SEVERN TRENT shall maintain the respective policies of liability, automobile, and excessive automobile throughout the term of this Service Agreement, as the same may be extended in accordance with the provisions hereof.

9.4 SEVERN TRENT shall provide CITY with a copy of current respective policies of insurance required hereunder, and renewals thereof, in order that the CITY may keep such copies on file for the benefit of the public inspection of the citizenry of CITY.

9.5 The costs of all policies of insurance required hereunder shall be the obligation of SEVERN TRENT and the CITY shall in no way be responsible therefor.

9.6 SEVERN TRENT shall provide CITY with a Certificate of Insurance listing CITY as a Certificate Holder for the respective insurance required hereunder.

9.7 Should any of the required insurance policies be modified before the expiration date of this Agreement, and unless otherwise agreed, SEVERN TRENT will provide at least thirty (30) days prior written notice to the CITY.

9.8 CITY shall pay for and maintain its own comprehensive general liability insurance or maintain a self-insuring fund for the term of this Agreement in the amount determined by CITY to adequately insure the CITY'S liability assumed herein, but in no event shall such coverage be less than the amount of statutory waiver of sovereign immunity. In the event such coverage is modified, in any regard, before the expiration date of this Agreement, and unless otherwise agreed, CITY will provide at least thirty (30) days prior written notice to SEVERN TRENT.

ARTICLE X
INDEPENDENT CONTRACTOR

SEVERN TRENT for the purposes of this Service Agreement, is and shall remain an independent contractor; not an employee, agent, or servant of the City of Marathon.

ARTICLE XI
TERM

This Service Agreement shall remain in full force and effect commencing ~~August 22, 2000, October 1, 2002~~ nunc pro tunc and ending ~~September 30, December 31, 20023~~, (the "Term") all dates inclusive, unless this Service Agreement be otherwise extended or terminated in accordance with the terms hereof.

ARTICLE XII
EXTENSION OF TERM OPTION TO RENEW

This Agreement shall be ~~automatically renewed for a three (3) year period at the expiration of the initial term. The CITY agrees to furnish SEVERN TRENT notice of its intent not to renew this Agreement not less than sixty (60) days prior to the expiration of this Agreement.~~ Upon mutual written Agreement of the parties, Upon written Notice from the City dated 15 days prior to the expiration of the Term (including the monthly Term), the Term specified in Article XI may be extended on a monthly basis for a period not to exceed three (3) months.

ARTICLE XIII
TERMINATION

13.1 ~~SEVERN TRENT may terminate this Service Agreement at its discretion either with or without cause, by giving written notice thereof to CITY; provided, however, that such termination shall not be effective until the one hundred and eightieth (180) day after the receipt thereof by CITY.~~

13.2 ~~CITY may terminate this Service Agreement at its discretion either with or without cause, by giving ten (10) business days written notice thereof to SEVERN TRENT; provided, however, that such termination shall not be effective until the sixtieth (60) day after the receipt thereof by SEVERN TRENT. In the event the City Council terminates the Agreement prior to the expiration of the Term, Severn Trent shall be paid the sums specified in Article VI.~~

13.3 In the event of termination by the City, Severn Trent ~~either party, the other~~ party shall render such aid, coordination and cooperation as might be required for an expeditious and efficient termination of service.

ARTICLE XIV
TRANSITION

14.1 In the event of the termination or expiration thereof, SEVERN TRENT and CITY shall cooperate in good faith in order to effectuate a smooth and harmonious transition from SEVERN TRENT to CITY, or to any other person or entity CITY may designate, and to maintain during such period of transition the same high quality services otherwise afforded to the residents of the CITY pursuant to the terms hereof. ~~In the event of such termination or expiration and in the further event that the CITY is unable to provide the same level of services at the time of such termination or expiration, the, then pending term of this Agreement shall be deemed automatically extended for a period of sixty (60) days or until CITY is capable, in its sole discretion, of rendering such service, which ever occurs sooner.~~

14.2 ~~The remuneration to be paid to SEVERN TRENT during the transition period shall be based upon the actual cost of providing such services during the transition period, but shall not exceed the prorata cost of the most recent contract. Nothing in this Agreement shall be construed to prohibit any existing Severn Trent employee from seeking employment directly with the City. Upon expiration or termination of this Agreement, the City shall hire all existing on-site Severn Trent personnel at their salary and position as of July 9, 2002, including approved salary adjustments of four percent (4%) as budgeted in the City's 2002-03 budget and accrued and unused leave as of the effective date of the City's hiring of such employee.~~

ARTICLE XV
EQUIPMENT APPRAISAL AND TRANSFER PROVISION

15.1 In the event of termination or upon the expiration of this Agreement, CITY shall have the option to purchase from SEVERN TRENT any piece of equipment, directly attributable to or in use by SEVERN TRENT in the City of Marathon at the time of such termination in connection with the services contemplated herein.

15.2 The purchase price for such equipment shall be determined by mutual agreement of the parties as to the fair market value of such equipment.

15.3 Upon the exercise by the CITY of its option to possess the subject equipment, SEVERN TRENT shall convey within ten (10) days or upon such other mutually agreed time, all of its rights, title and interest, thereto, to the CITY by Bill of Sale Absolute or Certificate of Title, as applicable.

ARTICLE XVI

AUTHORITY TO EXECUTE; NO CONFLICT CREATED

16.1 SEVERN TRENT by execution hereof does hereby represent to CITY that SEVERN TRENT has full power and authority to make and execute this Service Agreement, to the effect that:

16.1.1 It's making and execution hereof shall create a legal obligation upon SEVERN TRENT ENVIRONMENTAL SERVICES of Florida which shall be legally binding upon SEVERN TRENT ENVIRONMENTAL SERVICES of Florida.

16.1.2 The same shall be enforceable by the CITY according and to the extent of the provisions hereof.

16.2 Nothing herein contained or any obligation on the part of SEVERN TRENT to be performed hereunder shall in any way be contrary to or in contravention of any policy of insurance or surety bond required of SEVERN TRENT ENVIRONMENTAL SERVICES pursuant to the laws of the State of Florida.

16.3 The City's Mayor and Attorney, by their respective executions hereof, do each represent to SEVERN TRENT that they, collectively, have full power and authority to make and execute this Service Agreement on behalf of the City of Marathon, pursuant to the Resolution of the City Council of the CITY.

16.4 Nothing herein contained is intended in any way to be contrary to or in contravention of the Charter of the City of Marathon and the Laws of the State of Florida, and to the extent such conflict exists, the CITY and SEVERN TRENT shall be mutually relieved of any obligations of such conflict.

16.5 In the event of any litigation arising from this Agreement, venue shall be in Monroe County, Florida.

ARTICLE XVII
NOTICE

All notice required hereunder shall be by first class mail, except that any Notice of Termination shall be mailed via U.S. Mail, return receipt requested and any notice required hereunder shall be addressed to the party intended to receive same at the following addresses:

17.1 CITY: John Bartus, Robert K Miller, Mayor
 City of Marathon
 ~~10045-55-1090~~ Overseas Highway
 Marathon, Florida 33050

CITY: City Attorney
Weiss Serota Helfman Pastoriza & Gedes, P.A.
2665 South Bayshore Drive
Suite 420
Miami, Florida 33133

17.2 SEVERN TRENT: SEVERN TRENT ENVIRONMENTAL SERVICES

Attention: JAMES P. WARD
Severn Trent Environmental Services
210 N. University Drive Suite ~~701-304~~
Coral Springs, Florida 33071

ARTICLE XVIII
ASSIGNABILITY

SEVERN TRENT shall not assign any of the obligations or benefits imposed hereby or contained herein, unless upon the written consent of the City Council of the CITY, which consent must be evidenced by a duly passed Resolution.

ARTICLE XIX
ENTIRE AGREEMENT; AMENDMENT

The parties acknowledge, one to the other, that the terms hereof constitute the entire understanding and agreement of the parties with respect hereof. No modification hereof shall be effective unless in writing, executed with the same formalities as this Agreement is executed.

ARTICLE XX
BINDING EFFECT

This Agreement shall inure to the benefit of and be binding upon the respective parties' successors.

ARTICLE XXI

ATTORNEY'S FEES / Waiver of Jury Trial 21.1. In the event that either party to this Agreement institutes litigation to enforce the terms or conditions of this Agreement, the prevailing party shall be entitled to reimbursement of reasonable costs and attorneys fees (including trial and application fees) from the other party. 21.2 Each party to this Agreement knowingly and irrevocably waives his/her right to a jury trial in any Civil Proceedings arising out of this agreement.

(Signature Page Follows)

AGREEMENT BY AND BETWEEN SEVERN TRENT ENVIRONMENTAL SERVICES OF BROWARD COUNTY, FLORIDA AND THE CITY OF MARATHON FOR CONTRACT ADMINISTRATIVE SERVICES.

IN WITNESS WHEREOF, the parties hereto have caused their respective agents to execute this instrument on their behalf, at the times set forth below.

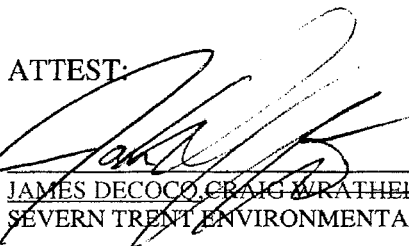
SEVERN TRENT ENVIRONMENTAL SERVICES



JAMES P. WARD, VICE PRESIDENT - OPERATIONS
SEVERN TRENT ENVIRONMENTAL SERVICES

November 15, 2002
DATE

ATTEST:



JAMES DECOCO, CRAIG WRATHELL, CITY MANAGER
SEVERN TRENT ENVIRONMENTAL SERVICES

November 13, 2002
DATE

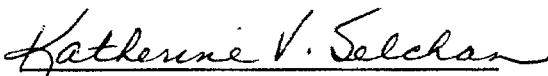
CITY OF MARATHON



JOHN BARTUS, ROBERT K. MILLER, MAYOR

November 13, 2002
DATE

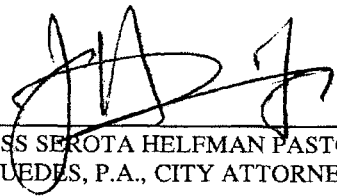
ATTEST:



KATHERINE V. SELCHAN
CITY CLERK

Approved as to form and legal
sufficiency subject to execution
by the parties:

BY:



WEISS SEROTA HELFMAN PASTORIZA
& GUEDES, P.A., CITY ATTORNEY

11/13/02

DATE