

State of Florida



CORRESPONDENCE
12/15/2022
DOCUMENT NO. 12058-2022

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: December 15, 2022

TO: Adam Teitzman, Commission Clerk

FROM: Major Thompson

RE: 20220064 - Application for transfer of water and wastewater facilities of Tymber Creek Utilities, Inc., water Certificate No. 303-W, and wastewater Certificate No. 252-S to CSWR-Florida Utility Operating Company, LLC, in Volusia County

Please place the attached correspondence from Scott Buckwald, in the above-referenced docket file on the Correspondence side.

Thank you.

MRT/crv

From: [Major Thompson](#)
To: [Chasity Vaughan](#)
Subject: FW: Docket No. 20220064-WS Scott Buckwald
Date: Thursday, December 15, 2022 9:18:52 AM
Attachments: [Fully Executed Settlement Agreement.pdf](#)

V/R,
MRT

From: Scott Buckwald <s324b@bellsouth.net>
Sent: Wednesday, December 14, 2022 5:21 PM
To: Major Thompson <MThompso@psc.state.fl.us>
Subject: Docket No. 20220064-WS Scott Buckwald

Attn: Major Thompson

Re: Docket No. 20220064-WS

I am responding to you as per your letter to me dated November 29, 2022 concerning the application for sale and transfer of services of Tymber Creek Utilities to CWSR-FL in Volusia County. I am requesting an administrative hearing in order to resolve and complete two items that must be accomplished prior to the sale. The first item which was the topic of my letter to the Public Service Commission was to address damage that was done to our association owned road because of a waste water pipe failure. Tymber Creek Utilities did a half hearted attempt of a repair that was completely unacceptable and the road continues to collapse. They used a couple of railroad ties and a couple of bags of concrete. We have addressed this with them of several occasions with no positive response. I feel they are trying to complete this sale prior to having to spend any money and thus the new owner would not have any responsibility and neither would they, leaving the HOA financially responsible. The second item is a stipulated settle agreement from 2011 between the Tymber Creek HOA and Tymber Creek Utilities. The HOA filed suit against TCU to force them to repair and upgrade some of the underground utilities that had deteriorated over time. The settlement agreement was a ten year plan to repair and upgrade the system that was to start in 2012. Tymber Creek Utilities was to provide to the HOA a signed and sealed certification of what repairs had been done each year. I was on the board of directors at that time and was involved in the settlement. Later I left the board and have not been able to verify that this agreement has been upheld. This agreement is binding upon successors, heirs, representatives, and assigns. Earlier this year I rejoined the board of directors. The HOA board and myself would like to see that TCU completed all items spelled out in this agreement for inspections and repair prior to the sale and transfer. I am attaching a copy of the settlement agreement with this e-mail. I look forward to hearing from you in this matter.

Let me know if you need any other information.

Regards,

Scott Buckwald
324 Groover Creek Crossing
Ormond Beach, FL 32174
s324b@bellsouth.net
386-451-1682

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

TYMBER CREEK HOMEOWNERS
ASSOCIATION, INC.

Petitioner,

v.

DOAH CASE NO. 10-8863
OGC CASE NO. 10-2468

TYMBER CREEK UTILITIES, INC., &
STATE OF FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION

Respondents.

STIPULATED SETTLEMENT AGREEMENT

This Stipulated Settlement Agreement ("Settlement" or "Agreement") is made and entered into this 10th day of October, 2011, by and between TYMBER CREEK HOMEOWNERS ASSOCIATION, INC., a Florida corporation (hereafter "TCHOA"), and TYMBER CREEK UTILITIES, INC., a Florida corporation regulated by the Florida Public Service Commission (hereafter "TCU"). TCHOA and TCU shall be hereafter collectively referred to as the "PARTIES."

RECITALS

1. TCHOA filed a Petition for Formal Hearing pursuant to Section 120.569, Florida Statutes, challenging the Florida Department of Environmental Protection's (hereafter "FDEP") issuance of Domestic Wastewater Facility Permit no. FLA 011193-003 dated August 16, 2010 (the "Permit"), to TCU authorizing TCU to continue to operate a domestic wastewater treatment plant.

2. The PARTIES met and have discussed and negotiated in good faith to resolve their differences over the issuance of the Permit.

3. All PARTIES now wish to resolve all pending appeals and challenges in the above-styled cause.

ACCORDINGLY, in consideration of the above-stated Recitals, the receipt and sufficiency of which are acknowledged by the PARTIES hereto, the PARTIES agree as follows:

SECTION 1. RECITALS. The above Recitals are true and correct and form a material part of this Stipulated Settlement Agreement.

SECTION 2. TCU OBLIGATIONS. TCU agrees to do the following:

(1) TCU has prepared a "Capital Improvement Programs and Cost Documentation," which is attached to and incorporated in this Stipulated Settlement Agreement as Exhibit "A;" provided however that those items listed in Year 3 designated as MH 22 to CO 23 and MH 22 to MH 21 shall be performed in Year 1. TCU agrees that within thirty (30) days after the dismissal of this matter and the entry of a final order closing the Division of Administrative Hearings ("DOAH") case file, whichever last occurs, it shall implement the schedule contained in Exhibit "A" hereof. Year 1 shall be 2012, and each sequentially numbered year shall correspond to the following calendar year, with Year 2 being 2013, and ending with Year 10 being 2021; provided, however, that those two items in Year 3 listed above shall be accomplished in Year 1.

(2) TCU has previously performed a test using a standpipe assembly constructed by TCU that demonstrated that no leak is occurring in the force main

from the lift station into the headworks of the domestic wastewater treatment plant. TCHOA agrees that no further action is required regarding the issue of the force main leak, and further agrees that it will not object or otherwise challenge the appropriate modification, extension, or deletion of dates contained in condition VI.1 so long as such modifications, extensions, or deletions are consistent with and not in conflict with the terms of this Stipulated Settlement Agreement.

(3) TCU shall provide an engineering certification to TCHOA by its engineer of record that the proposed repairs contained in items (1) and (2) above are adequate to repair the system and in accordance with good industry practice.

(4) Should there be any documented sewage backup or release from any facilities owned and operated by TCU, TCU shall immediately investigate such backup and release utilizing appropriate professionals. Any documented deficiencies in TCU's system shall be addressed within a reasonable time so that the backup or release does not recur. TCU shall report any such leaks to the FDEP in writing in accordance with state regulation.

(5) Within thirty (30) days following completion of an item contained in Exhibit "A" or at the end of each calendar year under the schedule provided in Exhibit "A," (whichever last occurs), TCU shall provide to TCHOA through its engineer a signed and sealed certification that the facility repairs for that year have been inspected and have been completed in a good and workmanlike manner, and that there are no recurring leaks into or out of the repaired facilities.

(6) TCU agrees to operate, maintain, and repair the facilities covered by the Permit in compliance with the applicable Florida Department of Environmental Protection permit conditions and requirements.

(7) Within twelve (12) months from the date this matter is dismissed with prejudice, TCU further agrees to clean and video inspect the remainder of the vitrified clay pipelines contained within Phase One of the Tymber Creek development that have not been previously video inspected. TCU agrees to make a copy of the video report available to TCHOA. If TCU finds anything requiring repair during the video inspection, then that repair would be added to year 10 of the schedule, unless TCU's engineer determines that an emergency repair is needed. If so, then the emergency repair will be accomplished as directed by TCU's engineer.

SECTION 3. TCHOA OBLIGATIONS; NOTICE OF VOLUNTARY DISMISSAL OF PETITIONS WITH PREJUDICE. TCHOA agrees as follows:

(1) TCHOA agrees to immediately file a Notice of Voluntary Dismissal with Prejudice and request to relinquish jurisdiction to the Department with the Division of Administrative Hearings and the Administrative Law Judge in TYMBER CREEK HOMEOWNERS ASSOCIATION, INC. v. TYMBER CREEK UTILITIES, INC. AND STATE OF FLORIDA, DEPARTMENT OF ENVIRONMENTAL PROTECTION, DOAH Case No. 10-8863,

(2) TCHOA agrees it shall file no further administrative or judicial lawsuits or otherwise participate in any judicial or administrative proceeding related to the facilities owned by TCU and permitted pursuant to the Permit so

long as the TCU complies with the terms of this Stipulated Settlement Agreement.

(3) TCHOA agrees that it shall not provide financial assistance to any person, firm or corporation for purposes of litigating with TCU or participating in any administrative or judicial forum related to challenging or in any way interfering with the Permit,

(4) Should TCHOA initiate or participate in any such form or proceedings as described above, the dismissals provided for in this Stipulated Settlement Agreement shall be deemed to create the rebuttable presumption of improper purposes.

SECTION 4. COOPERATION. Neither Party nor entity referenced above shall take any action or refrain from taking any action in a manner which is inconsistent with the intent and spirit of this Stipulated Settlement Agreement.

SECTION 5. EFFECTIVE DATE. This Stipulated Settlement Agreement shall become effective upon execution by counsel for all parties.

SECTION 6. RELEASE OF CURRENT CLAIMS FOR SANCTIONS, ATTORNEYS' FEES, COSTS, OR OTHER LOSSES. In consideration for execution of this Stipulated Settlement Agreement and Dismissal with Prejudice of all pending actions, all parties agree not to seek sanctions, attorneys' fees, costs, or other losses incurred in all proceedings to date of execution of this Stipulated Settlement Agreement.

SECTION 7. ENFORCEMENT. Any party to this Stipulated Settlement Agreement and Notice of Voluntary Dismissal with Prejudice shall be able to

seek specific performance of its terms by suit in the Circuit Court of the Seventh Judicial Circuit of Florida. In any action for specific performance of this Stipulated Settlement Agreement and Notice of Voluntary Dismissal with Prejudice, the prevailing party shall be awarded its attorneys' fees and costs.

SECTION 8. BINDING UPON SUCCESSORS. This Stipulated Settlement Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, heirs, parent corporations, subsidiaries affiliates, representatives, and assigns.

SECTION 9. REPRESENTATION OF AUTHORITY TO BIND THE PARTIES. The signature by any person to this Stipulated Settlement Agreement and Notice of Voluntary Dismissal shall be deemed a personal warranty by that person that he or she has full power and authority to bind an incorporation, partnership, or other business or public entity for which he/she purports to act.

IN WITNESS WHEREOF, the PARTIES hereto have executed this Stipulated Settlement Agreement on the date first above written.



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Attorneys for Respondent
TYMBER CREEK UTILITIES, INC.

- 3-ft short liner at 160.8 ft from MH 22
 - One lateral reinstatement
4. MH 22 to MH 21 - 8-inch VCP (along Shallow Creek Ford)
 - Grout the complete distance of 220 LF
 - 3-ft short liner at 27.6 ft from MH 22

Year 4

Root intrusions and multiple cracks were observed in pipes between MH 28 to MH 29 and MH 29 to CO 30 along Becontree Ct. It was also a concerned area in the hydraulic analysis conducted in 2009 engineering report. Therefore, these pipes are recommended to be repaired in Year 3 as follows:

1. MH 29 to CO 30 - 6-inch VCP (along Becontree Ct.)
 - Grout and root cut the complete distance of 125 LF
 - 3-ft short liner at 47.4 ft from MH 29
2. MH 29 to MH 28 - 8-inch VCP (along Sandy Spring Rd.)
 - Grout and root cut the complete distance of 185 LF
 - 3-ft short liner at 62.8 ft from MH 29
 - 3-ft short liner at 96.2 ft from MH 29

Year 5

1. General Cleaning

Visual inspection and cleaning of the collection system should be performed on a routine basis, not just in response to complaints or blockages. In an effort to ensure that all of the lines are routinely cleaned within a reasonable period of time, we suggest TCU should clean the entire system every five years.

Year 6

Along Shallow Creek Ford, 430 LF of 8-inch VCP between MH 21 to MH 19 is recommended to have grout repair in Year 6.

1. MH 21 to MH 20 - 8-inch VCP (along Shallow Creek Ford)
 - Grout the complete distance of 270 LF
 - 3-ft short liner at 152.9 ft from MH 21
2. MH 20 to MH 19 - 8-inch VCP (along Shallow Creek Ford)
 - Grout the complete distance of 160 LF

Year 7

In Year 7, the 6-inch VCP between MH 22 to CO 35 along Wicksfield Ct. will be lined at five spots where cracks were observed.

1. MH 22 to CO 35 – 6-inch VCP (along Wicksfield Ct.)
 - 3-ft short liner at 9.4 ft from MH 22
 - 3-ft short liner at 21.6 ft from MH 22
 - 2-ft short liner at 44 ft from MH 22
 - 4-ft short liner at 149.1 ft from MH 22
 - 3-ft short liner at 153.6 ft from MH 22

Year 8

In Year 8, 239 LF of 8-inch VCP along Shallow Creek Ford between MH 19 and MH 18 and 140 LF of 8-inch VCP between MH 18 and drop MH 17 along Sandy Spring Rd. will be grout repaired.

1. MH 19 to MH 18 - 8-inch VCP (along Shallow Creek Ford)
 - Grout the complete distance of 239 LF
2. MH 18 to MH 17 - 8-inch VCP (along Sandy Spring Rd.)
 - Grout the complete distance of 140 LF

Year 9

In Year 9, 212 LF 8-inch VCP between MH 17 and MH 36 and a short distance of 65 LF 8-inch VCP between MH 36 and MH 16 along Creeksbridge Ct. will be grouted.

1. MH 17 to MH 36 - 8-inch VCP (along Creeksbridge Ct.)
 - Grout and root cut the complete distance of 212 LF
2. MH 36 to MH 16 - 8-inch VCP (along Creeksbridge Ct.)
 - Grout and root cut the complete distance of 65 LF

Year 10

1. General Cleaning

As stated above, every 5 years, general cleaning of the collection system is recommended.

Table 2-2 summarizes the costs for annual maintenance and repairs. **Figure 2-1** depicts locations of these repairs by years. During 10 years, routine operation and maintenance (O&M) of the collections system are also recommended. A successful O&M program for a wastewater collection system provides many benefits including:

**Table 2-2 10-year Wastewater Collection System Additional Operational Costs @
November 2010 (without Overheads)**

Year 9					
Item	Descriptions	Quantity	Unit	Unit Price	Total Cost ⁽¹⁾⁽²⁾
1	Point Repair	1	LS	\$ 6,309.00	\$ 6,309.00
Total (Rounded)					\$ 6,310.00
Year 10					
Item	Descriptions	Quantity	Unit	Unit Price	Total Cost ⁽²⁾
1	Cleaning and TV Inspection	1	LS	\$ 12,536.43	\$ 12,536.43
Total (Rounded)					\$ 12,540.00

(1): Assuming one way mobilization will be absorbed in the 10 hour day rate, therefore, one high pressure sewer cleaner is \$1,600.00 per day.

(2): TCU does not own the service laterals on the private property of each resident/customer. The point of connection is the property line. The property owner has the responsibility to maintain their service laterals---use of RootX foam or Roto-Rooter or other activities may be required.

