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May 6, 2011

COMMISSION
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Ms. Ann Cole
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Subject: Docket #100359-WS – Staff Assisted Rate Case for Tymber Creek Utilities – 2nd Filing of Additional Information for Staff Consideration Regarding Tymber Creek Utilities’ Land Lease for Wastewater Disposal

Dear Ms. Cole:

On behalf of Tymber Creek Utilities, Inc. (TCU), we present this second filing of additional information for Staff consideration regarding the appropriate rent amount associated with TCU’s land lease for wastewater disposal. Our first filing of additional information was related to a current appraisal of the land value in question. This second filing involves outstanding requests for information related to this issue as well as actual transactional value for similar land which is basically contiguous to the land in question. TCU requests that the cost recovery of the current land lease, using appropriate costs related to the wastewater percolation ponds, be included in the rates to be approved by the FPSC in the above listed Docket.

Our first filing of additional information outlined how the FDEP had required TCU to provide additional wastewater disposal due to revised land application loading limitations and updated setback requirements. TCU hired Quentin L. Hampton Associates (QLH) to provide options and to design, permit and construct/implement the chosen solution. It was determined that the least cost option for increasing wastewater disposal capacity was to lease the 3.6 acres of land adjacent to the WWTF. In the Staff Report dated March 9, 2011 for the above referenced docket, on page 12, staff determined that the appropriate rent for the land in question should be the annual rate of return based on the utility’s current capital structure, times the original cost of the land in service. The Staff Report is included as **Attachment A**. Staff noted that this methodology was from page 10 of Order No. PSC-04-1264-PAA-SU, a copy of which is included as **Attachment B**. On page 10 of Order No. PSC-04-1264-PAA-SU, under the heading “j. Rents – (740)”, Staff states that “In the utility’s last rate case, a pro forma adjustment of \$49,432 was made to plant for the purchase of land to construct additional percolation ponds. The utility has chosen not to purchase the land but to rent it at \$6,480 from a related party. We find that the appropriate rent amount for the land shall be the annual rate of return, based on the utility’s current capital structure, times the original cost of the land in service.” Our review of

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filings for TCU shows that prior to the 2004 filing, the last rate case was Docket No. 950647, which was a water only filing. Therefore, Staff's statement from the 2004 order was not correct. The rate filing prior to Docket No. 950647 was Docket No. 900501. Detailed information for that docket is not available from the PSC web-site and has been requested from Staff. Therefore, it is impossible for GAI to track the pro forma adjustment discussed by Staff in Order No. PSC-04-1264-PAA-SU. The fact of the matter is that TCU did not purchase the land in question. While Staff suggests the value of the land should be the \$49,432 discussed with regards to the pro forma adjustment, the land was never bought and placed into utility service. GAI has requested from Staff the PSC rule that Staff is relying on to use the \$49,432 as a cost basis of the land for the lease agreement. Typically, the original cost of land when placed into utility service is relative to land purchased.

Attachment C is a Stipulated Order of Taking as to Parcel Nos. Pond 3 and 813 by Volusia County. This is from Case No. 2009-35369-CICI in the Seventh Circuit Court for Volusia County. The Pond 3 property is six (6) acres that is contiguous to and has the same zoning as the 3.6 acres whose lease price is in question in this Docket. Page 2 of 6 of the Order of Taking in paragraph 5 it states that the amount that should be deposited regarding the six (6) acres is \$798,000.00. This equates to \$133,000 per acre. Using this amount in the instant case would find a land value of \$478,800 for the 3.6 acres for the percolation ponds. This transactional price of like land to the 3.6 acres represents a value of approximately 25% less than the appraisal submitted in our first provision of additional information. This amount is still substantially greater than the amount determined by staff which is a total of \$49,432 or \$13,731 per acre for the 3.6 acres.

Attachment D is a copy of the current lease for the 3.6 acres for the \$3,700 per month as supported in our first filing of additional information in this Docket. We would urge Staff to consider not only the appraised value of the land in question but also the fact that the transactional value of similar land supports a lease payment substantially greater than is being proposed by Staff.

The leasing of the 3.6 acres from an affiliated party is the least cost option to the utility for the wastewater disposal capacity it needs. This should also be considered by Staff. Absent an appropriate return on the value of the land, the landowner could sell the land and the utility would then be forced into implementing a more costly solution to the needed wastewater disposal.

We urge staff to consider the current information provided in our first and second filing of additional information when proposing an appropriate recovery of rent expenses and we look forward to receiving the information on the pro forma adjustment by Staff regarding the \$49,432 as well as the rule citation used by staff regarding leased property costs being held to when the land was originally placed into service.

Very truly yours,

GAI Consultants, Inc.



Gerald C. Hartman, P.E., BCEE, ASA
Vice President



Tony Isaacs
Utility Management Consultant

Attachments

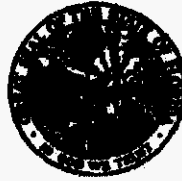
- Attachment A Cover and Page 12 Staff Report dated March 9
- Attachment B Cover and Page 10 of Order No. PSC-04-1264-PAA-SU
- Attachment C Stipulated Order of Taking as to Parcel Nos. Pond 3 and 813
- Attachment D Current Lease

- Cc: Patti Daniel (FPSC)
Bart Fletcher (FPSC)
Avy Smith (FPSC)
Shannon Hudson (FPSC)
Stanley Shirah
Thomas Cloud, Esq.
Robert Dodrill, CPA

ATTACHMENT A

COMMISSIONERS:
ART GRAHAM, CHAIRMAN
LISA POLAK EDGAR
RONALD A. BRISÉ
EDUARDO E. BALBIS
JULIE L. BROWN

STATE OF FLORIDA



GENERAL COUNSEL
S. CURTIS KISER
(850) 413-6199

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Public Service Commission

March 8, 2011

Mr. Stan Shirah
Tymer Creek Utilities, Incorporated
1951 W. Granada Boulevard
Ormond Beach, Florida 32174

**Re: Staff-Assisted Rate Case for Tymer Creek Utilities, Incorporated in Volusia County,
Docket No. 100359-WS**

Dear Mr. Shirah:

This will confirm that Commission staff will hold a customer meeting at the Ormond Beach Performing Arts Center on April 6, 2011, starting at 6:00 p.m. We ask that, if at all possible, you or another knowledgeable representative of the Utility attend the meeting in order to answer customer questions. The location of the meeting will be the:

Ormond Beach Performing Arts Center
399 N. U.S. Hwy. 1
Ormond Beach, FL 32174

A draft customer meeting notice is enclosed. Please note the date has been left blank so that you can fill in the date that the notice is sent to the customers. As required by Rule 25-22.0407(9)(b), Florida Administrative Code (F.A.C.), the utility shall provide, in writing, a customer meeting notice to all customers within its service area no less than 14 days and no more than 30 days prior to the date of a customer meeting.

Given that the Utility previously failed to mail out the customer notices, it is imperative that the Utility comply with the rule stated above. Please furnish me with a copy of the notice, as reproduced at the time it is distributed to your customers, together with a cover letter indicating the exact date(s) on which the notice was mailed or otherwise delivered to the customers. In addition, please provide a signed affidavit stating the date the customer meeting notice was mailed out. We have enclosed a sample cover letter, and affidavit for you to reference.

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with additional invoices for leak repairs totaling \$726. Staff has increased the amount reported for water by \$726 to reflect this amount. The Utility provided staff with an invoice for chlorine tank repairs of \$5,000. Staff has amortized the \$5,000 over 5 years, and increased this account by \$1,000 for wastewater. The Utility also provided staff with an invoice for videography of wastewater lines of \$5,000. Likewise, staff has amortized this amount over five years and increased this account by \$1,000 for wastewater. Steve Fryson, the meter reader for Tymber Creek, has requested a \$25 increase in his \$175 monthly fee. Staff believes this amount is reasonable. Accordingly, staff has increased this account by \$300 for water (\$25 x 12 months). Staff has also increased this account by \$300 for wastewater based on invoices for leak repairs completed by Steve Fryson. The Utility's contract water operator, Steve Woodman requested a \$100 increase in his monthly fee due to increased DEP monitoring requirements. Mr. Woodman's current monthly fee is \$500. Staff has increased this account by \$1,200 (\$600 x 12 months - \$500 x 12 months) to reflect Mr. Woodman's fee. Finally, staff has amortized the cost of a \$1,300 fence installation over 5 years and increased this account by \$260. Staff net adjustments to this account result in an increase of \$2,226 (\$726 + \$300 + \$1,200) for water and \$27,856 (\$25,296 + \$1,000 + \$1,000 + \$300 + \$260) for wastewater. Staff recommends contractual services - other expense of \$14,651 (\$12,425 + \$2,226) for water and \$36,647 (\$8,791 + \$27,856) for wastewater.

Rents (640/740) - The Utility recorded \$3,662 for water and \$17,082 for wastewater in this account. Based on the audit report, Tymber Creek's total office rent is \$7,324. Tymber Creek recorded \$3,662 for both water and wastewater for office rent. As previously stated, staff believes a 25 percent allocation to water and 75 percent allocation to wastewater is appropriate. This results in office rent of \$1,831 for water and \$5,493 for wastewater. Accordingly, staff has decreased the amount reported for office rent by \$1,831 for water and increased wastewater by \$1,831. Tymber Creek recorded \$13,420 for land rent. In the Utility's last rate case, the Commission determined the appropriate rent amount for land should be the annual rate of return, based on the Utility's current capital structure, times the original cost of the land in service.⁵ The original cost of the land in service is \$49,432, and based on the Utility's current capital structure, the rate of return is 7.77 percent. Accordingly, the appropriate land rent is \$3,841 (\$49,432 x 7.77 percent). Therefore, staff has decreased this account for wastewater by \$9,579 to reflect the appropriate land rent. After the completion of the audit, the Utility submitted an invoice for an excavation rental of \$405. Staff has increased this account by \$405 for water to reflect this amount. Staff recommends rent expense of \$2,236 for water (\$3,662 - \$1,831 + \$405) for water and \$9,334 (\$17,082 + \$1,831 - \$9,579) for wastewater. **Agreed**

Update to reflect FDEP required leased percolation pond site

Original Parcels Only

Transportation Expenses (650) - Tymber Creek recorded \$260 for water in this account. The Utility's records substantiated a transportation expense of \$182 for water. Accordingly, staff has decreased this account by \$78. Staff recommends transportation expense of \$182 for water.

Insurance Expenses (655/755) - The Utility recorded \$100 for water and \$2,300 for wastewater in this account. Staff has allocated 50 percent to each system and increased water by \$1,100 and decreased wastewater by \$1,100 for this account. Staff recommends insurance expense of \$1,200 for water and \$1,200 for wastewater.

⁵ See Order No. PSC-04-1264-PAA-SU, at p. 10.

ATTACHMENT B

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Application for staff-assisted rate case in
Volusia County by Tymber Creek Utilities.

DOCKET NO. 040300-SU
ORDER NO. PSC-04-1264-PAA-SU
ISSUED: December 21, 2004

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON

ORDER GRANTING TEMPORARY RATES IN THE EVENT OF PROTEST
AND
NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING INCREASE IN RATES AND CHARGES

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that, except for the four-year rate reduction and the approval of temporary rates in the event of a protest, the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

I. Background

On April 5, 2004, Tymber Creek Utilities (Tymber Creek or utility) applied for a staff-assisted rate case for its wastewater system only. Tymber Creek is a Class C water and wastewater utility serving 447 water and 415 wastewater customers in Volusia County. For the wastewater system, the total gross revenues were \$147,334 and total operating expenses were \$163,863 in the 2003 annual report.

The utility was certificated on April 6, 1978. The utility has applied for numerous price index rate adjustments. In 1990, the utility filed for a staff-assisted rate case to adjust its rates and charges for both the water and wastewater systems. By Order No. 24206, issued March 7, 1991, in Docket No. 900501-WS, In Re: Application for a staff-assisted rate case in Volusia County by Tymber Creek Utilities, the wastewater rates were increased and the water rates were unchanged. In 1995, the utility filed for a staff-assisted rate case for its water system only. By Order No. PSC-97-0096-FOF-WS, issued January 27, 1997, in Docket No. 950647-WS, In Re: Application for staff-assisted rate case in Volusia County by Tymber Creek Utilities, the utility was granted an increase for its water system.

accordance with Rule 65-522.600, F.A.C. The utility is not in compliance status because it did not submit the ground water monitoring reports for all quarters of 2003. In order to be in compliance with DEP's requirements, it will cost \$1,150 per quarter or \$4,600 per year to perform the DEP's required ground water monitoring tests for the six wells. Adding these two costs together, we calculate the testing expense to be \$7,250 (\$2,650 + \$4,600). We have reclassified the remaining \$2,134 to Account No. 731.

i. Contractual Services - Other - (736)

The utility recorded \$12,343 to this account during the test year. However, we have adjusted this account to properly classify expenses as follows:

1. reclassified \$950 of billing expense to Account No. 730;
2. reclassified \$200 of accounting fees to Account No. 731;
3. reclassified \$1,987 for labor related to plant additions to Account No. 370;
4. increased this account by \$1,412 for labor and maintenance reclassified from Account No. 720; and
5. increased this account by \$1,487 to reclassify maintenance expense from Account No. 711.

Also, we have removed \$59 for interest paid on an unpaid invoice. Based on these adjustments we calculate contractual services - other for the test year to be \$12,046.

j. Rents - (740)

The utility recorded \$9,490 in this account during the test year. In the utility's last rate case, a pro forma adjustment of \$49,432 was made to plant for the purchase of land to construct additional percolation ponds. The utility has chosen not to purchase the land but to rent it at \$6,480 from a related party. We find that the appropriate rent amount for the land shall be the annual rate of return, based on the utility's current capital structure, times the original cost of the land in service. Using the approved rate of return of 8.78%, we determine rent for the land to be \$4,340 ($\$49,432 \times 8.78\%$). Therefore, we have decreased this account by \$2,140 ($\$6,480 - \$4,340$). However, the utility has requested that the rent expense be increased by \$12 per month to reflect current market rental rate on office space. We have determined the amount requested to be below market value and to be reasonable, and have made a pro forma adjustment to increase this account by \$144 ($\12×12).

The utility paid \$250 for sales tax during the test year. Pursuant to Rule 12A-1.070(19)(a), F.A.C., the lease or rental of real property or a license fee arrangement to use or occupy real property between related "persons," in the capacity of lesser/lessee is subject to tax. The current sales tax, as of November 1, 2004, is 6.5% for Volusia County. Based on our approved rent expense, the sales tax on rent is \$471 ($\$7,244 \times 6.5\%$), and we have increased this account for sales tax by \$221 ($\$471 - \250), for a total rent expense of \$7,715 for the test year.

ATTACHMENT C

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
IN AND FOR VOLUSIA COUNTY, FLORIDA

COUNTY OF VOLUSIA, a political
subdivision of the State of Florida,

CASE NO.: 2009-35369-CICl

Petitioner,

Parcel Nos.: Pond 3 and 813

v.

J. STANLEY SHIRAH; SOUTHERN BELL
TELEPHONE AND TELEGRAPH COMPANY
k/n/a AT&T; SHERIFF GUINDI; and CITY OF
ORMOND BEACH; and, if alive, or dead, any
unknown spouses, heirs, devisee, grantees,
creditors, lienors and all parties claiming
interest by, through, under or against a
respondent named in this action, and all
persons having or claiming to have any right,
title or interest in the property herein
described,

Respondents.

STIPULATED ORDER OF TAKING AS TO PARCEL NOS. POND 3 and 813

THIS CAUSE came before the Court on the parties' Joint Motion for Order of Taking as to Parcel Nos. Pond 3 and 813, and the Court having reviewed the Joint Motion and finding that there are no disputed issues of law or fact to be resolved by the Court, it is, therefore,

ORDERED and ADJUDGED as follows:

1. That the Court has jurisdiction over the subject matter and the parties.
2. That the pleadings are sufficient and the Petitioner is properly exercising its delegated authority.

3. That the taking is reasonably necessary for a public purpose.
4. That the estimate of value filed in this cause by the Petitioner was made in good faith, and based upon a valid appraisal.
5. That the following sums of money shall be deposited into the Registry of this Court within twenty (20) days of the date of this Order:

<u>Parcel No.</u>	<u>Amount</u>
Pond 3	\$798,000.00
813	\$ 1,000.00

6. Upon the making of said deposit, fee simple title to the following described parcel numbers Pond 3 and 813, shall be vested in the Petitioner, County of Volusia, and the property and interests to said properties shall be deemed to be condemned and taken for the use of the Petitioner.
7. That upon the deposit of the sum into the Registry of the Court, the right, title, or interest specified in the Petition in Eminent Domain as to Parcel No. Pond 3 shall vest in Petitioner. Parcel No. Pond 3 is more particularly described as follows:

**Parcel Number: Pond 3
Owner: J. Stanley Shirah
Tax ID:4125-00-00-0184**

A portion of lands currently owned by J. Stanley Shirah as recorded and described in Official Records Book 4638 Page 2697 of the Public Records of Volusia County, Florida lying in the Northeast 1/4 of the Northwest 1/4 of Section 25, Township 14 South, Range 31 East, Volusia County, Florida being more particularly described as follows:

Commence at the Northwest corner of said Section 25, thence run N 89°11' 24" E along the North line of Section 25 for a distance of 1396.36 feet to the POINT OF BEGINNING, said point also situated on existing easterly Right of Way line of Tymber Creek Road (RAW width varies) as shown on the Plat of Tymber Creek Phase 1 as recorded in Map Book 34 Page 98 of said Public Records; thence continue along said North line, N 89°11' 24" E a distance of 341.54 feet; thence

departing said North line run S 07°14'50" W a distance of 372.77 feet; thence S 38°53'54" E a distance of 80.58 feet; thence S 69°29'44" E a distance of 130.41 feet; thence S 81°15'52" E a distance of 70.27 feet; thence S 10°38'30" W a distance of 138.67 feet to a point of curvature of a curve concave northwesterly having a radius of 95.95 feet; thence run southwesterly along the arc of said curve through a central angle of 67°03'48" for an arc distance of 112.31 feet to a point of reverse curve concave southeasterly having a radius of 218.64 feet a chord bearing of S 65°30'22" W and a chord distance of 92.40 feet; thence run southwesterly along the arc of said curve through a central angle of 24°23'51" for an arc distance of 93.10 feet to a point of curvature of a non-tangent curve concave southwesterly having a radius of 400.00 feet, a chord bearing of N 58°55'17" W and a chord distance of 109.13 feet; thence run northwesterly along the arc of said curve through a central angle of 15°40'51" for an arc distance of 109.47 feet to the point of reverse curve of a curve concave northeasterly having a radius of 25.00 feet; thence run northwesterly along the arc of said curve through a central angle of 44°18'02" for an arc distance of 19.33 feet to a point of reverse curve of a curve concave southerly having a radius of 50.00 feet; thence run westerly along the arc of said curve through a central angle of 158°14'22" for an arc distance of 138.09 feet; thence S 89°17'57" W a distance of 141.82 feet to a point on the aforementioned easterly Right of Way line of Tymber Creek Road; thence N 00°42'03" W along said Right of Way line a distance of 686.39 feet to the POINT OF BEGINNING.

The above described parcel contains an area of 6.00 Acres.

8. That upon the deposit of the sum into the Registry of the Court, the right, title, or interest specified in the Petition in Eminent Domain as to PCE Parcel No. 813 shall vest in petitioner. PCE Parcel No. 813 is more particularly described as follows:

Parcel Number: 813 (PCE)
Owner: J. Stanley Shirah
Permanent access and maintenance easement.

A portion of lands currently owned by J. Stanley Shirah as recorded and described in Official Records Book 4638 Page 2697 of the Public Records of Volusia County, Florida lying in the Northeast 1/4 of the Northwest 1/4 of Section 25, Township 14 South, Range 31 East, Volusia County, Florida being more particularly described as follows:

BEGINNING at the Northwest corner of Parcel 151 Tymber Creek Phase 1 according to the Plat thereof as recorded in Map Book 34 Page 98 of said Public Records of Volusia County, thence S 10°38'30" W, along the west line of said Parcel 151, a distance of 140.00 feet to the point of curvature of a curve concave northwesterly, said curve having a radius of 135.95 feet; thence, continue along said west line of said Parcel 151 and along the west line of Parcel 150 of said Tymber Creek, Phase 1, run southwesterly along the arc of said curve, through a central angle of

67°03'48", an arc distance of 159.13 feet to a point of reverse curvature of a curve concave southeasterly, said curve having a radius of 178.64 feet; thence, run southwesterly along the arc of said curve, through a central angle of 16°01'30", an arc distance of 49.96 feet to a point of reverse curvature of a curve concave northerly, said curve having a radius of 25.00 feet; thence run westerly along the arc of said curve, through a central angle of 70°42'12", an arc distance of 30.85 feet to a point on the northerly line of Sandy Springs Road per aforesaid plat of Tymber Creek Phase 1, said point being a point of reverse curvature of a curve concave southwesterly, said curve having a radius of 400.00 feet; thence run northwesterly along the arc of said curve and the northerly line of said Sandy Springs Road, through a central angle 03°14'17", an arc distance of 22.61 feet to a point, said point being a point on a non-tangent curve concave southeasterly, said curve having a radius of 218.64 feet, a chord bearing of N 65°30'22" E, and a chord distance of 92.40 feet; thence, departing said northerly line, run northeasterly along the arc of said curve, through a central angle of 24°23'51", an arc distance of 93.10 feet to a point of reverse curvature of a curve concave northwesterly, said curve having a radius of 95.95 feet; thence run northeasterly along the arc of said curve, through a central angle of 67°03'48", an arc distance of 112.31 feet to the point of tangency; thence N 10°38'30" E, a distance of 138.67 feet; thence S 81°15'52" E, a distance of 40.02 feet to the POINT OF BEGINNING.

The above described parcel contains an area of 14146 sq.ft. or 0.32 Acres.

9. Parcel No. 813, a permanent construction easement ("PCE"), containing 14,146 sq. ft. or .32 acres more or less of land is being acquired for the purpose of construction and maintenance of a berm, slope and/or shoulder stabilization, together with a permanent access to maintain berm, slope, shoulder, and other work necessary during and for the road improvements and widening construction of Tymber Creek Road south of SR 40 to north of Peruvian Lane, in accordance with the plans and specifications prepared by the Public Works Department.

10. That the deposit of money into the Registry of the Court will secure the persons lawfully entitled to the compensation, which will be determined by final judgment of this Court. The right to full compensation for the property shall be vested in the persons lawfully entitled thereto, such compensation to be ascertained and awarded by final judgment herein.

11. That without further notice or order of this Court, the Petitioner shall be entitled to possession of the property designated as Parcel Nos. Pond 3 and 813 as of the date of the entry of this Stipulated Order of Taking as to Parcel Nos. Pond 3 and 813.

12. That the sum deposited into the Registry of the Court for Parcels Nos. Pond 3 and 813 can only be withdrawn from the Registry upon Motion and Notice to all parties and Order of the Court.

13. The County of Volusia shall file an updated Notice of Outstanding Taxes for the purpose of advising the Clerk of the Court and the parties of the amount of taxes due on Parcel No. Pond 3 through the date of the taking (the date of this order). The Clerk of the Court, upon receipt of said tax notice, is hereby ordered to issue a check to the County of Volusia for any and all delinquent taxes and pro-rata ad valorem taxes on said parcel through the date of this Order. Said sum shall be withheld from any disbursements made to the Respondent.

DONE AND ORDERED in Chambers in Daytona Beach, Volusia County, Florida this _____ day of December, 2009.

~~Richard S. Graham~~
RICHARD S. GRAHAM
CIRCUIT JUDGE

DEC 29 2009

SIGNED AND DATED


RS

HONORABLE RICHARD S. GRAHAM
CIRCUIT JUDGE


Conformed copies to:
Larry Smith, Esquire
J. Christy Wilson, III., Esquire

JOINT MOTION

The parties, by and through their undersigned counsel, respectfully move for entry of the foregoing Stipulated Order of Taking as to Parcel Nos. Pond 3 and 813, this 24th day of December, 2009.



LARRY SMITH, ESQUIRE
Deputy County Attorney
Florida Bar No. 113010
123 West Indiana Avenue
DeLand, FL 32720-4613
(386) 736-5950 / (386) 736-5990
Attorney for Petitioner



J. CHRISTY WILSON, III., ESQUIRE
Fla. Bar No.: 326161
WILSON, GARBER & SMALL, P.A.
437 North Magnolia Avenue
Orlando, FL 32801
(407)843-4321
Attorney for Respondent, Shirah

ATTACHMENT D

Modified 11/27/2010

LAND LEASE

THIS LAND LEASE (the "Lease") is modified this 17th day of November, 2010, by and between J STANLEY SHIRAH (the "Lessor"), 1951 W. Granada Blvd., Ormond Beach, Florida 32174, and Tymber Creek Utilities, Incorporated, a Florida Corporation (the Lessee), 1951 W. Granada Blvd. Ormond Beach, FL 32174

In consideration of the mutual covenants and obligations contained herein, the parties agree as follows:

1. **DESCRIPTION OF PREMISES.** Lessor does hereby lease to Lessee the following premises for the conduct of Lessee's business as a utility and the Lessee's need for additional percolation/retention area as herein described:

Vacant/Land owned by J. Stanley Shirah, located contiguous to Lessee's sewer treatment plant, approximately 3.6 acres for sewer plant effluent ponds.
2. **TERM.** This lease shall be for a term of one year renewable for 99 yrs from date of original lease January 3, 2005 so long as the terms herein are met by the Lessee and there is no change in use of the land commencing on January 1, 2011.
3. **USE.** Lessee shall use the leased premises on a non-exclusive basis as treated sewage effluent ponds in connection with its sewer plant, subject to the terms and conditions of this Lease, any modifications of use must be approved by Lessor along with a new lease agreement.
4. **RENT, UTILITIES AND TAXES.** For each of the first twelve months of the term, Lessee shall pay to Lessor, by the first day of each month, at Landlord's office, as rent for said premises for such month, the sum of **THREE THOUSAND SEVEN HUNDRED AND NO CENTS (\$3,700.00)** per month. Lessee shall also pay all sales tax applicable to Tenant in connection herewith. Furthermore, Lessee shall pay advalorem taxes as related to the property and maintain sufficient insurance to indemnify Lessor. Lessor shall be named on any pertinent insurance and must approve as sufficient. On the first day of each year the monthly rent shall increase five percent (5%) above previous year's rent or sixteen percent (16%) of ad valorem assessed value or ten percent (10%) of appraised value whichever is greater.
5. **MAINTENANCE.** Lessee shall be responsible for all maintenance and repair of the leased premises during the term of this Lease.
6. **PAYMENT OF TAXES.** Lessee shall pay a pro-rated share for all real estate taxes, assessments and charges which shall be assessed and levied upon the

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leased premises, or any part thereof, during the said term as they shall become due.

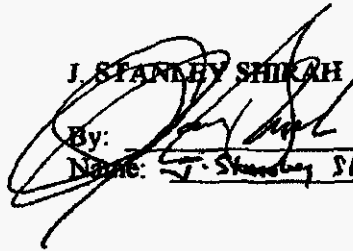
7. **LIABILITY INSURANCE.** Lessee shall maintain its own insurance, according to its own interests as they may appear, in conformity with generally accepted commercial practices; ~~provided, however,~~ that the limit on general liability insurance maintained by Lessee shall be for an amount of not less than **TWO MILLION DOLLARS (\$2,000,000)**.
8. **OBSERVANCE OF LAWS.** Lessee shall duly obey and comply with all public laws, ordinances, rules or regulations relating to the use of the leased premises. This Lease shall be governed by Florida Law.
9. **TERMINATION BY REASON OF DEFAULT.** In the event that either of the parties hereto shall fail to perform any covenant required to be performed by such party under the terms and provisions of the Lease, and such failure shall continue unremedied for a period of fifteen (15) days after the service of written notice upon such party by the other party serving such notice, at the expiration of such period of fifteen (15) days; provided, however, that such termination shall not relieve the party so failing from liability to the other party for such damages as may be suffered by reason of such failure. Non-payment of any amount due for a period of more than 15 days by Lessee shall constitute default and termination of this lease agreement.
10. **NOTICES.** All notices and demands to the parties shall be in writing and mailed by certified or registered mail, postage prepaid, to Lessee and Lessor at the address first set forth above, or to such other addresses as Lessee or Lessor may hereafter specify in writing.
11. **COST AND ATTORNEY'S FEES.** In the event of any legal or equitable proceeding arising hereunder, the prevailing party shall be entitled to an award of its litigation expenses, including reasonable attorney's fees and costs, against the losing party. Lessee shall pay any attorney fees regarding collection if any funds are due.
12. **ASSIGNMENT AND MODIFICATION.** None of the rights or obligations hereunder shall be assignable except by the Lessor or with the Lessor approval. Any modifications of this lease agreement will be at the discretion of the Lessor, upon written notice of forty five (45) days prior to modification.

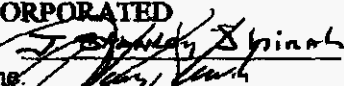
(This is the end of the rental agreement, signature sheet to follow)

IN WITNESS WHEREOF, the parties hereto have executed this Land Lease as of the date first above written.

LESSOR:

LESSEE:

J. STANLEY SHIRAH
By: 
Name: J. Stanley Shirah

TYMBER CREEK UTILITES,
INCORPORATED
By: 
Name: J. Stanley Shirah
Title: Sign. Press