

State of Florida



# 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-**

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**DATE:** December 22, 2011  
**TO:** Ann Cole, Commission Clerk, Office of Commission Clerk  
**FROM:** Lawrence D. Harris Jr., Senior Attorney, Office of the General Counsel *L.D.H.*  
**RE:** Docket No. 100359-WS, Tymber Creek SARC

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Please file the attached document in Docket No. 100359-WS, Application for staff-assisted rate case in Volusia County by Tymber Creek Utilities, Incorporated. The document consists of Tymber Creek's Response to Staff's December 12, 2011, letter (Document No. 08891-11). Thank you for your assistance.

RECEIVED - FPSC  
11 DEC 22 AM 11:30  
COMMISSION  
CLERK

DOCUMENT NUMBER DATE  
09107 DEC 22 =  
FPSC-COMMISSION CLE

TYMBER CREEK UTILITIES  
1951 W. GRANADA BLVD.  
ORMOND BEACH, FL 32174  
(386) 672-9815



12/19/2011

Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850  
Attn: Larry D. Harris

Re: Docket No. 100359-WS, Application for staff-assisted rate case in Volusia County by Tymber Creek Utilities, Incorporated.

Dear Mr. Harris:

Enclosed is a copy of our current lease. You also asked for an update on our Pro Forma Items. We are currently very close to finishing everything required for year 1 and also year 3. This all should be done by the middle of January.

- |  |                     |
|--|---------------------|
| 1. Install automatic dialer at main lift station.                              | Complete            |
| 2. Replace monitoring well covers and bollards.                                | Complete            |
| 3. Install backup surge pumps, blower and motor assembly.                      | Pump ordered        |
| 4. Replace two pumps at Inglewood lift station.<br>other one has been ordered. | Replaced 1 pump     |
| 5. Replace filter media.<br>Scheduled to be done                               | Media Change        |
| 6. Install two monitoring and alarm systems.                                   | Complete            |
| 7. Perform leakage tests of force main.  | Complete            |
| 8. Additional sludge hauling.  | Yes                 |
| 9. Repair of collection system.<br>years 1 and 3.                              | Almost complete for |
| 10. Engineering reports to summarize results<br>finished.                      | Will complete when  |
| 11. Maintenance cost on the monitoring systems.                                | Year 1 Paid         |

If you have any questions please contact us at 386-672-9815 or [tymbercreekutil@aol.com](mailto:tymbercreekutil@aol.com)

Sincerely,

J. Stanley Shirah

17 DEC 22 AM 8:33

DOCUMENT NUMBER-DATE  
09107 DEC 22 =  
FPSC-COMMISSION CLERK

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STATE OF FLORIDA



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

## Public Service Commission

December 12, 2011

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

**Re: Docket No. 100359-WS, Application for staff-assisted rate case in Volusia County by Tymber Creek Utilities, Incorporated.**

Dear Mr. Shirah:

By Order No. PSC-11-0345-PAA-WS (Order Approving Rates and Charges), issued August 16, 2011, the Commission required "that within 120 days of the issuance of the Consummating Order in this docket, the Utility shall provide written documentation of its compliance with Section 367.1213, Florida Statutes (F.S.), and Rule 25-20.433(10), Florida Administrative Code (F.A.C.)" These cited provisions establish the utility's obligation to own or provide for long term use of the land upon which the utility's facilities are located. The Order Approving Rates and Charges was consummated by Order No. PSC-11-0374-CO-WS, issued September 8, 2011. Accordingly, Tymber Creek's written documentation of compliance with the above cited statute and rule provisions must be submitted no later than January 6, 2011.

Failure to provide the required documentation by January 6, 2011, may result in staff recommending the initiation of show cause proceedings pursuant to Section 367.161, F.S. As specified in Section 367.161(2), F.S., if a utility "is found to have refused to comply with, or to have willfully violated, any lawful rule or order of the Commission... a penalty for each offense of not more than \$5,000" may be imposed by the Commission. The statute further states, "[e]ach day that such refusal or violation continues constitutes a separate offense." Therefore, the utility potentially faces fines of up to \$5,000 per day if it fails to comply with Order No. PSC-11-0345-PAA-WS on or before the January 6, 2011 deadline.

The Order Approving Rates and Charges also required Tymber Creek to complete the following pro forma items within 12 months of the issuance of the Consummating Order:

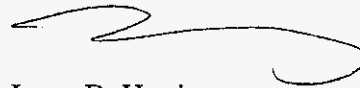
Pro Forma Items

Pro Forma Items	Treatment	
	Capitalize	Expense
1. Install automatic dialer at main lift station	\$3,300	
2. Replace monitoring well covers and bollards	3,603	
3. Install backup surge pumps, blower and motor assembly	5,675	
4. Replace two pumps at Inglewood lift station	14,400	
5. Replace filter media	5,865	
6. Install two monitoring and alarm systems	3,155	
7. Perform leakage tests of force main		\$400 <sup>1</sup>
8. Additional sludge hauling		25,200
9. Repair of collection system		15,014 <sup>2</sup>
10. Engineering reports to summarize results		2,000
11. Maintenance cost on the monitoring systems		695
Total	\$35,998	\$43,309

Please provide an update regarding the status of these additions and repairs, including whether any have been made and when all additions and repairs are expected to be completed. The above-mentioned pro forma items must be completed within 12 months of the issuance of the Consummating Order, and verification must be provided to the Commission in order to implement the Phase II rates authorized by the Commission. Documentation that all pro forma additions and repairs have been completed should be submitted no later than September 7, 2012.

Your attention to this matter is greatly appreciated. If you have any questions please contact Avy Smith at (850) 413-6425 [avy.smith@psc.state.fl.us](mailto:avy.smith@psc.state.fl.us) or Larry Harris at (850) 413-6856 [lharris@psc.state.fl.us](mailto:lharris@psc.state.fl.us).

Sincerely,



Larry D. Harris  
Senior Attorney

LH/as

cc: Division of Economic Regulation (Smith, Hudson, Simpson, Daniel, Fletcher, Maurey)  
Office of Commission Clerk, Docket File No. 100359-WS  
Mr. Robert Dodrill

<sup>1</sup> Perform leakage tests of force main is amortized over 5 years =  $\$2,000/5 = \$400$ .

<sup>2</sup> Reflects five-year average.

Modified 11/17/2010  
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.
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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

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.

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(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.

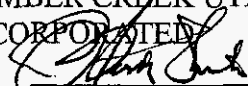
LESSOR:

LESSEE:

J. STANLEY SHIRAH

By:   
Name: \_\_\_\_\_

TYMBER CREEK UTILITES,  
INCORPORATED

By:   
Name: \_\_\_\_\_  
Title: Stacy Adams

## Lease Modification #2

November 17, 2010

The land lease between **J. Stanley Shirah** ( the Lessor ) and **Tymber Creek Utilities, Inc.** ( the Lessee ) is hereby modified on December 17, 2010 pursuant to paragraph twelve (12) regarding modifications of the original lease dated January 3, 2005.

The changes in the lease are as follows:

**Paragraph 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 effluent ponds.

**Paragraph 2. Term.** This lease shall be for a term of one year renewable 99 years from the date he 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.

**Paragraph 4. Rent, Utilities and Taxes.** The last paragraph shall be changed to reflect:

On the first day of each year the monthly rent shall be increased five percent (5%) above previous year's rent or sixteen percent (16%) of ad valorem assessed value or (10%) of appraised value.

**Paragraph 12. Assignment and modification.**



J. Stanley Shirah

Lessor/ Land Owner

Date: 11/17/2010

4 of 4 2010



1951 W. Granada Blvd.  
Ormond Beach, FL 32174

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