

FINNEGAN, CONRAD & PETERSON, L.C.

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JEREMIAH FINNEGAN, P.C.
STUART W. CONRAD
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*ALSO ADMITTED IN
KANSAS AND MASSACHUSETTS

June 2, 2005

FILED³

JUN 6 2005

Missouri Public
Service Commission

Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

**RE: Timber Creek Sewer Company
Application for Additional Service Area**

Dear Sir/Madam:

Enclosed find an original and 8 copies of the Application of Timber Creek Sewer Company for additional service area. Please file and call the application to the attention of the Commission.

Please return the extra copy of the first page of the Application with the file stamp affixed in the self-addressed stamped envelope I have also enclosed.

Very truly yours,

FINNEGAN, CONRAD & PETERSON, L.C.

By:


Jeremiah D. Finnegan

JDF:crb
Enclosures
cc: Willis Sherry
Office of the Public Counsel

FADOCVJDF64133.1

FILED³

JUN 6 2005

Missouri Public
Service Commission

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the matter of the application of Timber)
Creek Sewer Company, for permission,)
approval, and a certificate of convenience)
and necessity authorizing it to construct,)
install, own, operate, control, manage and)
maintain a sewer system for the public,)
located in an unincorporated area in Clay)
County, Missouri.)

CASE NO. SA-2005-_____

APPLICATION

Comes now Timber Creek Sewer Company ("Applicant" or "Timber Creek"), pursuant to Section 393.170, RSMo and 4 CSR 240-2.060 and 240-3.300, and states as follows:

1. Applicant is Timber Creek Sewer Company, a Missouri corporation, duly organized and existing under the laws of the State of Missouri with its principal office and place of business located at 18305 Cable Bridge Road, P.O. Box 511, Platte City, Missouri 64079. Applicant's telephone number is (816) 858-3989, its fax number is (816) 858-4876 and its e-mail address is tcscoco@yahoo.com.

2. A copy of Applicant's Certificate of Incorporation and Articles of Incorporation were previously filed with the Commission in Case No. SA-95-110 and are hereby incorporated by reference herein. A copy of a Certificate of Good Standing from the Secretary of State is attached hereto as **Appendix 1** and incorporated by reference herein.

3. Applicant is a public utility and sewer corporation rendering sewer service under certificates of convenience and necessity to serve certain unincorporated areas in

Platte County, Missouri, issued by the Commission in Case Nos. SA-95-110, SA-96-238, SA-99-202, SA-2002-404 and SA-2002-1061. Applicant's existing sewer system in its presently certificated areas meets all requirements of the Department of Natural Resources (DNR).

4. Communications in regard to this application should be addressed to Applicant's attorney and to its President, whose address is as follows:

Willis C. Sherry, President
TIMBER CREEK SEWER COMPANY
18305 Cable Bridge Road
P.O. Box 511
Platte City, Missouri 64079
Telephone (816) 858-3989
Fax Line (816) 858-4876
E-Mail tcscoco@yahoo.com

5. Applicant has no pending actions or final unsatisfied judgments or decisions against it from any state or federal agency or court which involve customer service or rates and has had no such actions, judgments or decisions within three (3) years of the date of this application.

6. Applicant states that no annual reports or assessment fees are overdue.

7. Applicant requests permission, approval, and a certificate of public convenience and necessity to install, own, acquire, construct, operate, control, manage, maintain and extend a sewer system for the public in an unincorporated area in Clay County, Missouri. The area proposed to be served pursuant to this application shall sometimes hereinafter be referred to as "the Proposed Service Area." All extensions or

other plant required to serve the Proposed Service Area shall be designed and built to meet all requirements of the Department of Natural Resources ("DNR") and the Commission as well as the Company's own requirements.

8. There is no sewer service, regulated or nonregulated, available in the Proposed Service Area.

9. There are no residents living in the Proposed Service Area. The owner and developer of the Johnson Ridge Subdivision, which will constitute the majority of the land (205 acres) in the Proposed Service Area, is Michael Johnson Development, LLC, whose Manager and President is Michael Johnson, at 12601 N. Agnes, Kansas City, MO 64166. Other landowners in the Proposed Service Area, who own 156.41 acres of property adjacent to the proposed Johnson Ridge Subdivision are: Michael Johnson Construction, 12601 N. Agnes, Kansas City, MO 64166; Mark & Kathy Bertholf, 10248 Shawna Street N.W., Albuquerque, NM 87114; Michael & Sandra Kromeich, 411 Monterey Avenue, Liberty, MO 64068; 132nd Street Properties, 607 Harborview Drive, Smithville, MO 64089; and Gregory & Cathy Griffin, 307 Lakeview Drive, Smithville, MO 64089.

10. The legal description of Applicant's Proposed Service Area is attached hereto as **Appendix 2** and incorporated by reference herein.

11. Applicant's Proposed Service Area is depicted on the map attached hereto as **Appendix 3** and incorporated by reference herein.

12. A feasibility study is attached to this application as **Appendix 4** and incorporated by reference herein.

13. Inasmuch as the Proposed Service Area is for an unincorporated area in Clay County, there is no approval required from any municipality.

14. Applicant has also ascertained that no approval of the Clay County Board of County Commissioners is required. A copy of a letter from the Director of the Clay County Planning and Zoning Commission dated May 2, 2005 advising that it is the County's policy to allow private sewer companies to provide sanitary sewer services for subdivisions provided they have a Missouri Public Service Commission Certificate and are permitted by the Missouri Department of Natural Resources is attached as **Appendix 5** and incorporated by reference herein.

15. The Proposed Service Area is in need of sewer service so that it can be developed. A developer, Michael Johnson Development, LLC, has sought and obtained the approval of the Clay County Planning and Zoning Commission for rezoning and preliminary plat approval for 104 residential lots on 205 acres in the Proposed Service Area and is requesting that the Applicant serve the proposed residential development. A copy of the letter from the developer requesting Timber Creek to serve the area is attached as **Appendix 6** and incorporated by reference herein. In addition, the above-named owners of 156.41 acres in the Proposed Service Area adjacent to the proposed development desire sewer service from Applicant.

16. The facilities to be constructed to serve the Proposed Service Area are all the sewer mains, service lines and necessary infrastructure, including a state-of-the-art 40,000 gallon per day sewer treatment facility, all of which are to be constructed under

Applicant's supervision and control and will be financed solely by the developer, Michael Johnson Development, LLC, and contributed to Applicant pursuant to a contract, a copy of which is attached as **Appendix 7** and incorporated by reference herein.

17. Due to the economies of scale of serving additional customers and due to the fact that the developer is contributing the entire sewer system, the expansion of Applicant's service area with the subsequent increase in the number of ratepayers will benefit both the public in the Proposed Service Area, which is currently without sewers, as well as the public in Applicant's existing service areas. The future residents of the Proposed Service Area will also benefit from the fact that the rates charged and the service provided will be from a company regulated by the Commission. Without the granting of a certificate of public convenience and necessity by the Commission, this property would not be able to be developed under existing Clay County public policy. Therefore, a public need exists for adequate sewer service within the Proposed Service Area to be provided by a certificated sewer corporation and the public convenience and necessity will be promoted by the granting of the authority herein requested.

WHEREFORE, Applicant requests the Commission to grant it permission, approval, and a certificate of convenience and necessity authorizing it to install, acquire, build, construct, own, operate, control, manage, maintain and extend a sewer system for the public within the Proposed Service Area and for such further orders as the Commission may deem meet and proper.

Respectfully Submitted,

TIMBER CREEK SEWER COMPANY



Jeremiah D. Finnegan #18416

FINNEGAN, CONRAD & PETERSON, L.C.

1209 Penntower Office Center

3100 Broadway

Kansas City, Missouri 64111

Telephone (816) 753-1122

Fax Line (816) 756-0373

E-Mail: jfinnegan@fcplaw.com

ATTORNEYS FOR APPLICANT

CERTIFICATE OF SERVICE

I hereby certify that a copy hereof was mailed postage prepaid to the Office of Public Counsel this 2nd day of June, 2005.



Jeremiah D. Finnegan

VERIFICATION

County of Platte)
) ss.
State of Missouri)

I, Willis C. Sherry, having been duly sworn, state that I am President of Timber Creek Sewer Company, the Applicant herein, and attest that the statements contained in this Application are true and accurate to the best of my information and belief.

Willis C. Sherry
Willis C. Sherry

Subscribed and sworn to before me, Beverly Bolinger, a notary public in and for such county this 18 day of May, 2005.

Beverly Bolinger
Notary Public

My Commission Expires: 11-1-08

BEVERLY BOLINGER
Notary Public-Notary Seal
STATE OF MISSOURI
Platte County
My Commission Expires: 11-1-08



Robin Carnahan
Secretary of State

**CORPORATION DIVISION
CERTIFICATE OF GOOD STANDING**

ROBIN CARNAHAN, Secretary of the State of Missouri, do hereby certify that the records in my office and in my care and custody reveal that

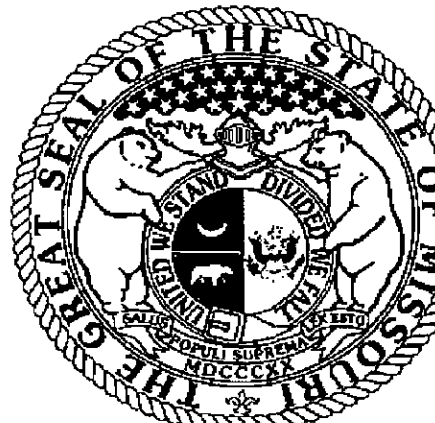
**TIMBER CREEK SEWER COMPANY
00400859**

was created under the laws of this State on the 14th day of September, 1994, and is in good standing, having fully complied with all requirements of this office.

IN TESTIMONY WHEREOF, I have set my hand and imprinted the GREAT SEAL of the State of Missouri, on this, the 9th day of February, 2005

Robin Carnahan

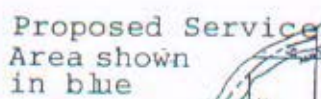
Secretary of State



TIMBER CREEK SEWER COMPANY **PROPOSED SERVICE AREA**

The Proposed Service Area is described as follows:

All of a tract of land in Township 52, Range 32, Clay County, Missouri, described as follows: The East $\frac{1}{2}$ of the Southwest $\frac{1}{4}$ of Section 4; the South $\frac{1}{2}$ of the Northwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 4; the South $\frac{1}{2}$ of the Southeast $\frac{1}{4}$ of Section 4; the East $\frac{1}{2}$ of the Northwest $\frac{1}{4}$ of Section 9; and all of the Northeast $\frac{1}{4}$ of Section 9, except Lots 6, 7, 8, and 9 of Burton Estates, a subdivision in Clay County, Missouri.



TIMBER CREEK SEWER COMPANY FEASIBILITY STUDY

Timber Creek Sewer Company (Timber Creek) was incorporated on September 14, 1994 for the purpose of owning, operating, managing and/or maintaining a private Sewer system. On May 18, 1995, in Case No. SA-95-110, it was granted a Certificate of Convenience and Necessity by the Commission to serve certain unincorporated areas in Platte County effective June 1, 1995. On June 11, 1996, in Case No. SA-96-238, Timber Creek was granted a Certificate of Convenience and Necessity by the Commission to serve an additional unincorporated area in Platte County effective June 21, 1996. On September 11, 1999, in Case No. SA-99-202, Timber Creek was granted a Certificate of Convenience and Necessity by the Commission to serve an additional unincorporated area in Platte County effective September 14, 1999. On August 8, 2002, in Case No. SA-2002-404, Timber Creek was granted a Certificate of Convenience and Necessity by the Commission to serve an additional unincorporated area in Platte County effective August 18, 2002. On August 27, 2002, in Case No. SA-2002-1061, Timber Creek was granted a Certificate of Convenience and Necessity by the Commission to serve an additional unincorporated area in Platte County effective August 27, 2002.

Timber Creek is now proposing to serve an unincorporated area in Clay County, Missouri, the "Proposed Service Area" as set forth on **Appendix 2** attached to the Application and incorporated by reference herein, is as follows:

PROPOSED SERVICE AREA:

All of a tract of land in Township 52, Range 32, Clay County, Missouri, described as follows: The East $\frac{1}{2}$ of the Southwest $\frac{1}{4}$ of Section 4; the South $\frac{1}{2}$ of the Northwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 4; the South $\frac{1}{2}$ of the Southeast $\frac{1}{4}$ of Section 4; the East $\frac{1}{2}$ of the Northwest $\frac{1}{4}$ of Section 9; and all of the Northeast $\frac{1}{4}$ of Section 9, except Lots 6, 7, 8, and 9 of Burton Estates, a subdivision in Clay County, Missouri.

The Proposed Service Area is shown on the map attached to the Application as **Appendix 3** thereto and incorporated herein by reference.

There are no sanitary sewer facilities in the Proposed Service Area. Timber Creek proposes to provide sanitary sewer service to a new subdivision, to be known as the Johnson Ridge Subdivision, consisting of 104 lots within a Conservation District of 205 acres, more or less, and an additional 156.42 acres, more or less, located adjacent to the Johnson Ridge Subdivision. The Proposed Service Area is located in Sections 4 and 9 of Township 52, Range 32. The Proposed Service Area generally lies North of 132nd Street, West of North Eastern Avenue and South of NE 138th, NE 139th and NE 140th Streets in Clay County, Missouri. Such Proposed Service Area currently has no existing homes and no residents. The lots to be developed in the Proposed Service

Area are currently vacant and are awaiting sanitary sewers in order to be developed with new single-family residences.

Timber Creek has received a request for sewer service from the developer, Michael Johnson Development, LLC, to provide sanitary sewer service for the entire Johnson Ridge Subdivision and certain adjacent properties. A copy of the letter from the developer is attached as **Appendix 6** to the Application and incorporated herein by reference.

This development is currently in the planning stage and projected starting date is as soon as sewer service from Timber Creek is authorized.

The facilities to be constructed to serve the Johnson Ridge Subdivision are a 40,000 gallon per day treatment plant, sewer mains and service lines. Such will be constructed by Timber Creek or the developer under the supervision and control of Timber Creek and will be paid for by the developer and contributed to Timber Creek as set forth in the Sewer Agreement between Timber Creek and the developer. A copy of the Sewer Agreement between the developer and Applicant is attached as **Appendix 7** to the Application and incorporated herein by reference.

The estimated cost of the construction of the sewer system during the first three (3) years of construction is \$400,000, more or less, depending upon which treatment plant is selected. The construction costs are to be contributed to Timber Creek by the developer.

The existing rates, rules, connection fees and other charges of the Company would remain unchanged at this time and would apply to the Proposed Service Area. The current rate for residential customers is \$26.97 per month plus taxes.

An estimate of the number of customers, revenues and expenses during the first three (3) years of operation are contained in **Attachment 1** hereto.

There will be no change in Timber Creek's professional operator responsible for the operation and maintenance of all of Timber Creek's facilities, nor will there be any change in the person responsible for the day-to-day business activities of the Company.

Timber Creek Sewer Company believes that the granting of a certificate of convenience and necessity for this additional area will not only provide a public benefit for the Proposed Service Area to be served by the provision of regulated sewer service in an area heretofore without such service, but also will benefit its customers in its existing service area by making the Company's future operations more profitable and provide economies of scale, thereby alleviating or easing the need for rate increases in the future.

The granting of the additional service area to Timber Creek Sewer Company will allow it to expand its services to meet the expanding need for sewer service in this area. It will expand the Company's customer base and improve the future profitability of the company. The granting of the Proposed Service Area would allow the

Company the capability of providing service to all of the customers who will be located in the Proposed Service Area in the near future.

In addition, property adjacent to the Proposed Service Area is also being considered for development and will need sewer service from Timber Creek before it may be developed.

**ESTIMATE OF NUMBER OF CUSTOMERS,
REVENUES AND EXPENSES
(Johnson Ridge Subdivision)**

YEAR 1

Revenues from customers (25 @ \$26.97 x 12) = \$ 8091.00

Expenses

<u>Electricity</u>	\$ 2,400.00	
<u>Water</u>	240.00	
<u>Operator</u>	7,200.00	
<u>Sludge Removal</u>	2,400.00	
<u>Miscellaneous</u>	<u>1,200.00</u>	
<u>Total Expenses</u>		<u>\$13,440.00</u>
<u>Net Profit (Loss)</u>		<u>(\$ 5349.00)</u>

YEAR 2

Revenues from customers (50 @ \$26.97 x 12) = \$16,182.00

Expenses

<u>Electricity</u>	\$ 2,400.00	
<u>Water</u>	240.00	
<u>Operator</u>	8,400.00	
<u>Sludge Removal</u>	3,600.00	
<u>Miscellaneous</u>	<u>1,200.00</u>	
<u>Total Expenses</u>		<u>\$15,840.00</u>
<u>Net Profit (Loss)</u>		<u>\$ 342.00</u>

ESTIMATE OF NUMBER OF CUSTOMERS,
REVENUES AND EXPENSES

YEAR 3

Revenues from customers (75 @ \$26.97 x 12) = \$24,273.00

Expenses

<u>Electricity</u>	\$ 2,400.00	
<u>Water</u>	240.00	
<u>Operator</u>	9,600.00	
<u>Sludge Removal</u>	4,800.00	
<u>Miscellaneous</u>	<u>1,200.00</u>	
<u>Total Expenses</u>		<u>\$18,240.00</u>
<u>Net Profit (Loss)</u>		<u>\$ 6,033.00</u>



Clay County, Missouri

Planning and Zoning

234 West Shrader, Suite C
Liberty, Missouri 64068-2448

Carole R. Bloom
Director

May 2, 2005

Willis C. Sherry, President
Timber Creek Sewer Co., Inc.
PO Box 511
Platte City, MO 64079

Dear Mr. Sherry,

This letter is to confirm your intention to provide wastewater treatment services for the subdivision known as, "*Johnson Ridge*," currently being proposed in Clay County, Missouri by Mr. Michael Johnson of *Michael Johnson Development*. The application for rezoning and a preliminary plan received a favorable recommendation from the Planning and Zoning Commission at their March 7, 2005 meeting and was approved by the Clay County Board of County Commissioners at their April 18, 2005 public hearing. I understand the design of the facility will be determined by the number of units it is expected to serve, site design and recent technologies available in sanitary sewer facilities.

In the unincorporated areas of Clay County it our policy to allow private companies to provide sanitary sewer facilities for subdivisions, as long as they are authorized by the Missouri Public Service Commission to operate as a Continuing Authority and permitted by the Missouri Department of Natural Resources. According to your letter of March 22, 2005, Timber Creek Sewer Company meets these criteria.

Sincerely,

A handwritten signature in cursive script, reading "Carole R. Bloom".

Carole R. Bloom, Director

Cc: David Pavlich, Aylett Flowers Survey and Engineering
Case File: Jan 05-104RZ/P

Michael Johnson Development, LLC

**12601 N. Agnes
Kansas City, MO 64116**

May 13, 2005

Willis Sherry
Timber Creek Sewer Company
P.O. 511
Platte City, MO 64079

RE: Johnson Ridge – Request for Provision of Sanitary Sewer Service by Timber Creek Sewer Company

Dear Mr. Sherry:

The Johnson Ridge conservation district concept plan has been reviewed and approved by the Clay County Planning & Zoning Commission and the Clay County Commission. Attached, please find a letter from Carole Bloom, Director of the Clay County Planning & Zoning Department, regarding their approval, and a copy of the approved preliminary plan.

Please accept this letter as our formal request for the Timber Creek Sewer Company to provide sanitary sewer service to the Johnson Ridge development and a few surrounding properties. Attached, please find a description and exhibit drawing of the proposed services area. If you have questions or need additional information, please give me a call.

Sincerely,


Michael Johnson
Michael Johnson Development, LLC

SEWER AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into this 31 day of May, 2005, by and between Timber Creek Sewer Company ("Timber Creek"), a Missouri Corporation, and Michael Johnson Development, LLC ("Michael Johnson Development"), a Missouri Limited Liability Company.

RECITALS:

WHEREAS, Timber Creek is a sewer corporation as defined in Section 386.020(48), RSMo, presently certificated by the Missouri Public Service Commission ("PSC") to provide sewer service to certain unincorporated areas in Platte County, Missouri; and

WHEREAS, Michael Johnson Development is proposing to develop a tract of land as a 104 lot residential subdivision located in Sections 4 and 9 of Township 52, Range 32 in Clay County, Missouri, to be known as the Johnson Ridge Subdivision; and

WHEREAS, Michael Johnson Development has been informed by the Clay County Planning and Zoning Commission that it will be necessary for the subdivision to be approved to have sanitary sewer service and if such is to be provided by a private company, that such private company is to be authorized by the PSC to operate as a continuing authority and permitted by the Missouri Department of Natural Resources; and

WHEREAS, Michael Johnson Development has requested that Timber Creek seek such authorization from the PSC to serve the Johnson Ridge Subdivision and that if so authorized, Michael Johnson Development will construct, at its own expense, a sewer system to Timber Creek's specifications and satisfaction within the boundaries of the Johnson Ridge Subdivision and the adjacent areas shown on the attached Exhibit for Sewer Services, which upon completion would be dedicated to Timber Creek and become the property of Timber Creek at no expense to Timber Creek; and

WHEREAS, Timber Creek is desirous of serving the Johnson Ridge Subdivision and such adjacent areas under such terms and conditions and will make application at the PSC for a Certificate of Public Convenience and Necessity to serve such area;

NOW WHEREFORE, for and in consideration of the mutual promises and other good and valuable consideration, it is heroby agreed between the parties as follows:

1. In the event that Timber Creek receives the necessary authorization from the PSC to provide sewer service to such Johnson Ridge Subdivision and adjacent areas, Michael Johnson Development shall construct a complete sewer system to the specifications of and under the supervision of Timber Creek. Such sewer system shall, *inter alia*, include a 40,000 gallon per day sewer treatment facility of a design as specified by Timber Creek and a

collection system with all necessary appurtenances designed to serve the 104 lots proposed in the subdivision and the adjacent areas shown on the Exhibit For Sewer Services.

2. That upon completion of the sewer system to the satisfaction of Timber Creek, Michael Johnson Development shall transfer, at no cost to Timber Creek, all right, title and interest in such sewer system, including but not limited to the collector lines, the treatment plant, all appurtenances thereto and the necessary easements and deeds for Timber Creek to own, operate and maintain such sewer system.


3. It is agreed between the parties that the transfer of the sewer system to Timber Creek shall be in lieu of any other contributions in aid of construction from Michael Johnson Development or the owners of the 104 lots to be developed in the Johnson Ridge Subdivision or the lot owners in the adjacent area shown on the Exhibit for Sewer Services.

4. It is further agreed that Timber Creek may provide treatment service from the treatment plant to other customers residing outside of the Johnson Ridge Subdivision boundaries and the adjacent area shown on the Exhibit for Sewer Services, and that in so doing Timber Creek may utilize portions of the Johnson Ridge Subdivision collection mains, as necessary, to provide such service. Further, if necessary, Timber Creek may expand its treatment plant within the boundaries of the subdivision and the adjacent area to provide such service to others outside such subdivision and adjacent area without further cost to Michael Johnson Development, the owners of the 104 lots to be developed in the Johnson Ridge Subdivision or the lot owners in the adjacent area shown on the Exhibit for Sewer Services.

5. It is also agreed that in the event Timber Creek provides treatment service to others located outside of such Johnson Ridge Subdivision and the adjacent area shown on the Exhibit for Sewer Services, it may charge such others a contribution in aid of construction charge, no portion of which shall be refundable to Michael Johnson Development, the owners of the 104 lots to be developed in the Johnson Ridge Subdivision or the lot owners in the adjacent area shown on the Exhibit for Sewer Services.

IN WITNESS WHEREOF, each of the undersigned attest that he is authorized to enter into this Agreement on behalf of his respective company and that the parties have duly executed this Agreement on the day and year first above written.

TIMBER CREEK SEWER COMPANY MICHAEL JOHNSON DEVELOPMENT, LLC


Willis C. Sherry,

President
(Title)


Michael Johnson

MANAGING MEMBER
(Title)