



BROOKTRAILS TOWNSHIP

COMMUNITY SERVICES DISTRICT
24860 BIRCH STREET
WILLITS, CA 95490
Phone: 707-459-2494
Fax: 707-459-0358
btcsd@btcsd.org

March 26, 2013

Holly Madrigal, Mayor
City of Willits
111 East Commercial Street
Willits, CA 95490

Dear Mayor Madrigal:

Your letter of March 14, 2013, is perplexing.

First, Brooktrails officials do not share your belief "it is likely that litigation...will cost Brooktrails well over \$1 million." In fact, the more information we gather the more we believe Brooktrails will prevail in court on most of the issues. Brooktrails is pursuing a settlement only because we believe it would be better for the citizens of the region than the current litigation.

Next, Brooktrails considers the Mediation Agreement expired because there is no mediation in progress. Further there are no active negotiations beyond exchanges of letters between you and me. Perhaps we will need new ground rules should future negotiations occur as the Brooktrails Board prefers full transparency for the process of resolving differences.

Finally, we are most perplexed by the use of 37.69% eleven times without delineation of its contextual meaning. In the February 21, 2013, Technical Memorandum from your engineer, it was noted that in 1981 a sewer plant upgrade was completed. If you divide the 1981 plant capacity of 1.30 MGD into the capacity that Brooktrails purchased of 0.490 MGD, the result is 0.3769 or 37.69%. As defined in the Second Amendment of the Sewer Agreement, that capacity of 0.490 MGD is average dry weather flow capacity of sewage for which the District has "the exclusive right to dispose of sanitary sewage in said plant."

Apparently many City officials believe the City can sell us 37.69% of the various flow design capacities of the new plant as delineated in the Technical Memorandum. That is not true. The City does not have 37.69 % of the new plant capacity available to sell to Brooktrails. This fact has perplexed Brooktrails officials. You should consult with your engineer to determine why the costly new plant is of insufficient size for the City's flows based on the City's apparent expectation that the Brooktrails Board would elect to maintain 37.69% of the flow capacity of the new plant.

As indicated in the table on the next page, the reduction in the 1981 plant Average Dry Weather Flow (ADWF) of 1.30 MGD to the 2010 plant of 1.18 MGD has resulted in the City using more than its historical share of the plant flow capacity. That would continue to be a problem even if Brooktrails agreed to reduce its exclusive share to 37.69% of the 2010 plant ADWF. The City

"A California General Law Local Government"

would also be using more than its share of the flow if Brooktrails were to agree to buy 37.69% of the 2010 plant's Average Wet Weather Flow (AWWF) (and the new plant was supposed to deal with wet weather flow issues). In fact even selling to Brooktrails the 29% of the AWWF we propose may be problematic for the City.

We believe that the City should have a registered engineer peer review the table below in conjunction with the attached material; perhaps you should use your prior peer review engineering firm Kennedy/Jenks Consultants. (It should be noted that we have no hourly peak flow data though the average daily flow data for December 1, 2012, seems problematic.)

WASTEWATER TREATMENT PLANT CAPACITY AND FLOW DATA												
CAPACITY DESIGN CRITERIA	METER READINGS			SEWER PLANT USE OF CAPACITY			BROOKTRAILS USE OF CAPACITY			WILLITS CITY USE OF CAPACITY		
	START DATE	END DATE	DAYS	100% OF CAPACITY	ACTUAL FLOW	% USED OF CAPACITY	CONTRACT CAPACITY % PLANT	MGD	ACTUAL FLOW	% USED OF CAPACITY	CONTRACT CAPACITY	ACTUAL FLOW
1981 PLANT ADWF	5/1/2010 - 10/1/2010	153	1.30	0.98	75.3%	1981	0.49	0.26	53.3%	0.81	0.72	88.6%
1981 PLANT ADWF	5/1/2012 - 10/1/2012	153	1.30	0.91	69.9%	Capacity	0.49	0.20	41.4%	0.81	0.71	87.1%
2010 PLANT ADWF	5/1/2010 - 10/1/2010	153	1.18	0.98	83.0%	1981	0.49	0.26	53.3%	0.69	0.72	104.1%
2010 PLANT ADWF	5/1/2012 - 10/1/2012	153	1.18	0.91	77.0%	Capacity	0.49	0.20	41.4%	0.69	0.71	102.2%
2010 PLANT ADWF	5/1/2010 - 10/1/2010	153	1.18	0.98	83.0%	37.69%	0.44	0.26	58.7%	0.74	0.72	97.7%
2010 PLANT ADWF	5/1/2012 - 10/1/2012	153	1.18	0.91	77.0%		0.44	0.20	45.6%	0.74	0.71	96.0%
2010 PLANT ADWF	5/1/2010 - 10/1/2010	153	1.18	0.98	83.0%	29.00%	0.34	0.26	76.3%	0.84	0.72	85.7%
2010 PLANT ADWF	5/1/2012 - 10/1/2012	153	1.18	0.91	77.0%		0.34	0.20	59.3%	0.84	0.71	84.2%
2010 PLANT AWWF	10/1/2010 - 5/1/2011	272	2.44	2.14	87.8%	37.69%	0.92	0.56	61.4%	1.52	1.58	103.8%
2010 PLANT AWWF	10/1/2011 - 5/1/2012	273	2.44	2.08	85.3%		0.92	0.37	39.8%	1.52	1.72	112.9%
2010 PLANT AWWF	10/1/2010 - 5/1/2011	272	2.44	2.14	87.8%	29.00%	0.71	0.56	79.5%	1.73	1.58	91.2%
2010 PLANT AWWF	10/1/2011 - 5/1/2012	273	2.44	2.08	85.3%		0.71	0.37	51.6%	1.73	1.72	99.2%
2010 PLANT MMDWF	5/1/2010 - 6/1/2010	37	2.24	1.54	68.6%	37.69%	0.84	0.41	48.3%	1.40	1.13	80.8%
2010 PLANT MMDWF	5/1/2012 - 6/1/2012	37	2.24	1.13	50.5%		0.84	0.26	30.6%	1.40	0.87	62.4%
2010 PLANT MMWWF	3/1/2011 - 4/1/2011	37	4.62	3.47	75.1%	37.69%	1.74	0.80	45.7%	2.88	2.67	92.8%
2010 PLANT MMWWF	12/1/2012 - 1/1/2013	37	4.62	3.28	71.0%		1.74	0.69	39.5%	2.88	2.59	90.0%
2010 PLANT MMWWF	5/1/2011 - 6/1/2011	37	4.62	3.47	75.1%	29.00%	1.34	0.80	59.4%	3.28	2.67	81.5%
2010 PLANT MMWWF	12/1/2012 - 1/1/2013	37	4.62	3.28	71.0%		1.34	0.69	51.3%	3.28	2.59	79.0%
2010 PLANT PWWF			7.00									
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Attached is a proposed Fifth Amendment to the Sewer Agreement in which Brooktrails would agree (1) to buy 29% of the various flow capacities of the 2010 treatment plant, (2) assume a total of 29% of the USDA loans, and (3) pay 29% of the purchase of the Niesen property. While every word in the proposed Fifth Amendment is not set in stone, it represents a resolution of all elements of our dispute in contract language.

This offer is not easily made by the Brooktrails Board of Directors. The repeated insistence on 37.69% in your letter in conjunction with accurate flow data given to us by the City confirms our belief that beginning in 2001 the design of the new plant was undertaken without consideration for the flow capacity exclusive to Brooktrails under the existing Agreement. In our opinion that is clearly the result of City officials choosing to disregard the serious intent of Section 10 of the Second Amendment which clearly states:

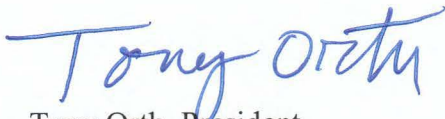
The Board of Directors of District, with the advice of its engineers, shall have the right to review, make suggestions and approve for their adequacy, plans, specifications and cost estimates prior to their approval by the City Council of the City, provided, however, that its approval shall not be unreasonably withheld.

Nonetheless, this offer is being made in an attempt to resolve the dispute in order to permit our respective agencies to move on to other matters of concern to our citizens.

I have also attached a detailed explanation of the proposed Fifth Amendment in an attempt to make clear its intent. The Brooktrails Board would prefer to avoid further negotiations over the substance of the proposal.

Should issues over wording exist we would suggest that the six officials whose signatures would appear on the final agreement (as indicated in the proposed Amendment) meet to review the proposed Amendment, resolve any differences over its provisions, and finalize contract language that can be recommended to both governing bodies. We would suggest that each entity designate one person familiar with the ongoing accounting and financial issues be included in the meetings to provide advice.

Sincerely,



Tony Orth, President
Brooktrails Township Board of Directors

cc: Denise Rose, Brooktrails General Manager
Adrienne Moore, Willits Interim City Manager
Christopher J. Neary, Brooktrails General Counsel
H. James Lance, Willits City Attorney

Enclosures: February 21, 2013 SHN Technical Memorandum
Emails from City Finance Director providing flow meter readings
December treatment plant daily flow data
Large version of table
Proposed Fifth Amendment
Explanation of Proposed Fifth Amendment



Technical Memorandum

Reference: **412072**
Date: **February 21, 2013**
To: **Tom Herman, Project Manager**
From: **Susan Foreman, P.E.**

Subject: Willits Wastewater Treatment Plant Average Dry Weather Flow Capacity

Background

Secondary treatment at the Willits Wastewater Treatment Plant (WWTP) is based on an extended aeration activated sludge process. Improvements to this process were required to improve the reliability of this process and the ability to meet the higher effluent quality required by the permit approved in 2010. These improvements included:

- Replacing the mechanical aerators with diffused aeration
- Decreased loading –improved reliability of Biological Oxygen Demand (BOD) removal
- Increasing aeration capacity to provide nitrification of ammonia and total nitrogen removal
- Increased clarification capacity – needed to reduce suspended solids and turbidity required for disinfection with UV

Design Capacity

To comply with funding agency guidelines the recently completed plant upgrades were designed based on a twenty year planning period ending in 2025. The design Average Dry Weather Flow (ADWF) is 1.18 Million Gallons per Day (MGD), BOD loading 2,037 lbs/day and Total Suspended Solids (TSS) loading 2683 lbs/day. ¹

SHN has been asked to compare the capacity of the 2010-02 upgrade with estimated capacity before the upgrade. Following modifications to the aeration basins made in 1981, the ADWF capacity was cited as 1.3 MGD in the 1990 National Pollution Discharge Elimination System (NPDES) Permit and in the Wastewater Treatment Plant Evaluation prepared by Harris Consultants Inc. Oct. 1991. The basis for this estimate of capacity was not given.

We have no official documentation of how the ADWF capacity of the 1981 upgrade was arrived at. We can provide a comparison of capacity for the 1981 and 2010 upgrades based on similar design criteria but only in the context of the effluent water quality that each could provide.

¹ These design flows were published in Pre-Design Report Tech Memorandum 01 August 16,2007

Permit Requirements

The NPDES permits in 1990 and 2010 are very different. Differences in effluent requirements for BOD, TSS, and Total Nitrogen (TN), are summarized in Table 1.

Table 1 NPDES Permit CA0023060 Effluent Requirements 1990 and 2010		
	30-Day Average	
	1990 Order# 90-92	2010 Order # R1-2010-0017
BOD	30 mg/l ¹	10 mg/l
	325 ppd ²	334 ppd
TSS	30 mg/l	10 mg/l
	325 lb/day	334 lb/day
TN	No limit	10 mg/l (DP ³ -002)
		6 mg/l (DP-003)
1. mg/l: milligrams per liter 2. ppd: pounds per day (ppd) 3. DP: /discharge Point		

Note: the mass discharge limit of 334 ppd in the 2010 permit is based on flows up to a maximum monthly flow of 4.0 MGD. The 1990 permit limit is based on the ADWF of 1.3 MGD. In other words, the 1990 mass discharge limit of 325 ppd is based on higher concentrations and lower total volume.

Design Criteria

Relevant design criteria for estimating the ADWF capacity of the plant before and after the recent upgrades are summarized in Table 2. To a large extent ADWF capacity is based on the ability to treat the loadings, BOD, TSS, and TN, associated with the design flows. For design element where hydraulic capacities were the main consideration, those flows and design criteria have been noted.

Table 2 Design Comparison 1981 and 2009 Upgrades		
	1981 Upgrade	2010 Upgrade
ADWF Flows	1.3 MGD	1.18 MGD
Wet Weather Flow	PWWF ¹ Capacity 3.0 MGD	AWWF ² 2.44 MGD MMDWF ³ 2.24 MGD MMWWF ⁴ 4.62 MGD PWWF Capacity: 7.0 MGD
BOD Loading	2,244 ppd ⁵	2,037 ppd
Aeration Volume	1.38 MG ⁶ (185,000 CF ⁷)	2.44 MG (326,000 CF)
Detention Time		
	24 hours at ADWF	50 hours
	11 Hours at PWWF	24 hours at AWWF

Table 2 (cont'd) Design Comparison 1981 and 2009 Upgrades		
Loading Rates		
	12.0 lbs BOD / 1,000 CF	6.2 lbs BOD / 1,000 CF
Aeration		
	Mixer	Diffused Air
	(4) 20 Horse Power (HP)	(2) 75 HP Blowers (1) 50 HP
BOD removed	1,919 ppd	1,938 ppd
NH4 removed	108 ppd	305 ppd
Oxygen Required		
Actual Oxygen Required (AOR) ⁸	3,375 ppd	4,310 ppd
Standard Oxygen Required (SOR) ⁹	216 lbs/hr DO 2.0 mg/l	382 lbs/ hr 2.0 mg/l (Nitrification)
	181 lbs/hr DO 0.5 mg/l	250 lbs /hr 2.0 mg/l (Wave-Ox)
Standard Oxygen Supplied ¹²	154 lbs/hour (2.0 mg/l)	468 lbs. /hr (2,500 scfm ¹⁰)
	183 lbs/hour (0.5 mg/l)	1 blower off line
Mixing requirements	104 HP	50 HP (800- 1200 scfm)
Clarification		
Overflow rate	@1.3 MGD, 662 gpd/SF ¹¹	@1.18 MGD, 307 gpd/SF 1 Clarifier O/L
	@3.0 MGD, 1,500 gpd/SF	@7 MGD, 1,000 gpd/SF
1. PWWF: Peak Wet Weather Flow 2. AWWF: Average Wet Weather Flow 3. MMDWF: Maximum Month Dry Weather Flow 4. MMWWF: Maximum Month Wet Weather Flow 5. ppd: pounds per day. The influent loading assumes that average influent concentration is 207 mg/l same as that used to estimate current loadings. 6. MG:Million Gallons. 7. CF: cubic feet 8. Actual Oxygen Required (AOR) based on 2.5 lbs. O ₂ per lb. Of BOD removed and 4.6 lbs. O ₂ per lb. of nitrogen removed. 9. Standard Oxygen Required (SOR) AOR is converted to SOR taking into account factors such as temperature oxygen transfer efficiency and dissolved oxygen (DO) level in the basin 10. scfm: standard cubic feet per minute 11. SF: square feet 12. Oxygen supplied: 1981 Upgrade; "Aerator Oxygen Transfer", <u>Engineering Predesign Report</u> , Barret Harris Assoc July. 1981, 2007/2009 Upgrade; " Biolac Aeration Design Parkson 2008.		

The following conclusions can be drawn regarding the ADWF capacity before and after the recent upgrades:

- The aeration basins in the 2010 upgrade were designed with longer detention times and lower BOD loading rates to provide BOD removal to the low levels required by the 2010 NPDES Permit.

- Oxygen requirements for the 2010 upgrade increased because of the need to remove nitrogen.
- Before the 2010 upgrade there was insufficient aeration to maintain dissolved oxygen (DO) levels of 2.0 mg/l, or to provide adequate mixing even without nutrient removal.
- The 2010 upgrades provided needed redundancy for aeration, and clarification

Note: Biosolids treatment was not included in the previous table but has consistently been listed as a plant deficiency since 1981. The 2010 upgrade increased the capacity and reliability of biosolids treatment system.

Conclusion

The recently completed Willits WWTP plant upgrade was required to bring the facility into compliance with a Cease and Desist Order (CDO) under which it had been operating. The CDO was instituted originally to address disposal concerns regarding the inability of the facility to meet required dilution rates during the spring and fall while discharging to Outlet Creek. Approval of the variance request allowing a reduction in required dilution rates was predicated on improved effluent quality as defined in the 2010 NPDES Permit.

The 2010 upgrades improved treatment and reliability, and provide an ADWF capacity of 1.18 MGD based on design flows and loadings determined by permit requirements. The capacity of the current plant must be evaluated in terms of ability to comply with current NPDES requirements and appropriate redundancy and reliability criteria.

The 2010 upgrades have significantly improved treatment, reliability and hydraulic capacity but, when evaluated in terms of current requirements, they cannot be said to provide an increase in absolute ADWF capacity. Neither is it correct to say that there has been a reduction in ADWF capacity. In 1981 the facility was operating under a very different regulatory regime than currently, and the ADWF capacity of 1.3 MGD was based on a 30/30 permit and no nutrient removal. Without the 2010 upgrades the facility would not be able to treat current or projected flows to the levels as defined in the 2010 NPDE permit.

The 2010 upgrades include the capacity for future growth in the City and Brooktrails. The design flows and loadings are based on data analyzed as part of the 2002 Preliminary Engineering Report projected to 2025 at an assumed annual rate of growth of 1.7% for each entity.

The ADWF capacity of 1.18 MGD is based on the capacity of the secondary treatment system to remove the BOD, TSS and TN associated with that flow. The ADWF capacity can be increased by increasing the aeration system capacity. The aeration system installed as part of the 2010 upgrades has excess aeration capacity built into the system. Each suspended diffuser assembly has three diffuser tubes with space for two more. If future loadings exceed the design capacity on a regular basis, additional diffuser tubes can be added to increase airflow and the smaller 50 HP Blower would be upsized to 75 HP.

From: Joanne Cavallari <Joanne@WillitsCity.com>
Sent: Wednesday, July 25, 2012 3:01 PM
To: Mike Chapman
Cc: 'Jim Lance'; 'Steven C. Mitchell'; 'Paul Cayler'
Subject: Meter Readings
Attachments: Meter Readings May 2010 to July 2012.pdf

Hello Mike

JC asked me to send you the meter readings for today:

Influent Meter	4723193
Brooktrails internal	1018986
Brooktrails external	643875

Also, meter readings for May 1, 2010 to July 1, 2012 are attached.
We will read the meters again on August 1st.

Joanne Cavallari

Finance Director/City Treasurer
City of Willits
111 E. Commercial St.
Willits, CA 95490
(707) 459-7123
Joanne@WillitsCity.com

All readings taken on the first day of the month

	Influent	Brooktrails Internal	Brooktrails External
May 2010	536,484	736,471	361,360
June 2010	584,117	749,054	373,943
July 2010	617,451	758,400	383,289
August 2010	642,504	764,509	389,398
September 2010	664,905	770,502	395,391
October 2010	686,269	776,402	401,291
November 2010	721,119	786,239	411,128
December 2010	779,908	800,618	425,507
January 2011	877,214	823,547	448,436
February 2011	932,412	838,123	463,012
March 2011	989,384	851,641	476,530
April 2011	1,096,912	876,316	501,205
May 2011	1,140,539	896,086	520,975
June 2011	meter out	900,240	525,129
July 2011	meter out	904,393	529,282
August 2011	4,156,708	910,805	535,694
September 2011	4,177,731	916,674	541,563
October 2011	4,197,037	922,270	547,159
November 2011	4,221,939	929,486	554,375
December 2011	4,259,480	936,825	561,714
January 2012	4,332,153	944,350	569,239
February 2012	4,416,272	955,869	580,758
March 2012	4,491,976	966,663	591,553
April 2012	4,575,648	985,865	610,754
May 2012	4,640,610	1,000,329	625,218
June 2012	4,675,671	1,008,303	633,192
July 2012	4,704,341	1,014,667	639,556

Subject: RE: Sewage system meter readings
From: "Joanne Cavallari" <Joanne@WillitsCity.com>
Date: 10/1/2012 9:05 AM
To: ""Mike Phelan", ""Lori Mayo"
CC: ""Paul Cayler"

Good Morning Mike & Lori:

The readings for August 1, September 1, and October 1 are:

	<u>Influent</u>	<u>Brooktrails (External)</u>
August 1	4,728,892	645,153
September 1	4,754,995	650,754
October 1	4,779,590	656,258

Let me know if you need any other information.

Joanne

From: Joanne Cavallari [mailto:Joanne@WillitsCity.com]
Sent: Tuesday, March 05, 2013 4:30 PM
To: Lori Mayo
Subject: RE: Sewage system meter readings

Hi Lori
Sorry for the delayed response.

The readings you requested (plus) are as follows:

	<u>Influent</u>	<u>Brooktrails</u>
November 1	4,800,561	662,527
December 1	4,835,734	672,290
January 1	4,937,373	693,580
February 1	4,980,577	705,709
March 1	5,018,969	713,858

I am looking forward to meeting Philip, but I'll miss you.

Joanne

Willits Water Quality Control Plant - Daily Meter Readings

Month and Year Dec-12

Day	Influent Totalizer	Influent Flow, MGD	RAS Totalizer	RAS Flow, MGD	WAS Totalizer	WAS Flow, MGD	Effluent Totalizer	Effluent Flow, MGD
1	4835734	7.163	252480	1.066	4389	0	84303	4.376
2	4842897	5.643	253546	0.389	4389	0	88679	4.389
3	4848540	2.948	253935	0.924	4389	117	93068	2.866
4	4851488	4.786	254859	0.399	4506	63	95934	4.729
5	4856274	3.705	255258	1.172	4569	0	100663	3.624
6	4859979	2.772	256430	1.131	4569	0	104287	3.514
7	4862751	2.273	257561	1.073	4569	0	107801	3.334
8	4865024	1.991	258634	1.162	4569	0	111135	3.581
9	4867015	1.861	259796	1.058	4569	0	114716	3.313
10	4868876	1.670	260854	0.821	4569	0	118029	2.562
11	4870546	1.608	261675	0.682	4569	0	120591	2.112
12	4872154	2.844	262357	0.499	4569	0	122703	1.594
13	4874998	2.120	262856	0.485	4569	0	124297	1.46
14	4877118	2.208	263341	0.434	4569	0	125757	1.29
15	4879326	3.175	263775	0.558	4569	0	127047	1.498
16	4882501	2.878	264333	0.935	4569	0	128545	2.799
17	4885379	2.778	265268	0.914	4569	0	131344	2.777
18	4888157	2.175	266182	0.702	4569	0	134121	2.142
19	4890332	1.893	266884	0.146	4569	0	136263	1.819
20	4892225	4.463	267030	1.043	4569	0	138082	3.917
21	4896688	5.231	268073	1.413	4569	0	141999	4.539
22	4901919	4.538	269486	1.274	4569	0	146538	4.193
23	4906457	5.780	270760	1.333	4569	0	150731	4.601
24	4912237	3.085	272093	0.878	4569	0	155332	3.003
25	4915322	4.566	272971	1.406	4569	0	158335	4.412
26	4919888	3.940	274377	1.354	4569	0	162747	3.329
27	4923828	2.996	275731	1.369	4569	0	166076	2.709
28	4926824	2.685	277100	1.391	4569	0	168785	2.887
29	4929509	2.319	278491	1.318	4569	0	171672	4.138
30	4931828	2.231	279809	0.215	4569	0	175810	3.395
31	4934059	3.314	280024	0	4569	0	179205	2.771
1	4937373		280024		4569		181976	
Average		3.279		0.889	Total=	180.00	Average	3.151
Maximum		7.163		1.413		117.000		4.729
Minimum		2.231		0.146		0.000		4.376

Exceeds 7.0 PWWF and permit stated hydraulic capacity of the plant.

WASTEWATER TREATMENT PLANT CAPACITY AND FLOW DATA

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							% PLANT	MGD					
1981 PLANT ADWF	5/1/2010 - 10/1/2010	153		1.30	0.98	75.3%	1981	0.49	0.26	53.3%	0.81	0.72	88.6%
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2010 PLANT AWWF	10/1/2011 - 5/1/2012	213		2.44	2.08	85.3%		0.92	0.37	39.8%	1.52	1.72	112.9%
2010 PLANT AWWF	10/1/2010 - 5/1/2011	212		2.44	2.14	87.8%	29.00%	0.71	0.56	79.5%	1.73	1.58	91.2%
2010 PLANT AWWF	10/1/2011 - 5/1/2012	213		2.44	2.08	85.3%		0.71	0.37	51.6%	1.73	1.72	99.2%
2010 PLANT MMDWF	5/1/2010 - 6/1/2010	31		2.24	1.54	68.6%	37.69%	0.84	0.41	48.3%	1.40	1.13	80.8%
2010 PLANT MMDWF	5/1/2012 - 6/1/2012	31		2.24	1.13	50.5%		0.84	0.26	30.6%	1.40	0.87	62.4%
2010 PLANT MMWWF	3/1/2011 - 4/1/2011	31		4.62	3.47	75.1%	37.69%	1.74	0.80	45.7%	2.88	2.67	92.8%
2010 PLANT MMWWF	12/1/2012 - 1/1/2013	31		4.62	3.28	71.0%		1.74	0.69	39.5%	2.88	2.59	90.0%
2010 PLANT MMWWF	5/1/2011 - 6/1/2011	31		4.62	3.47	75.1%	29.00%	1.34	0.80	59.4%	3.28	2.67	81.5%
2010 PLANT MMWWF	12/1/2012 - 1/1/2013	31		4.62	3.28	71.0%		1.34	0.69	51.3%	3.28	2.59	79.0%
2010 PLANT PWWF				7.00									
2010 PLANT PWWF				7.00									

**FIFTH AMENDMENT TO AGREEMENT BY AND BETWEEN THE
CITY OF WILLITS AND BROOKTRAILS TOWNSHIP
COMMUNITY SERVICES DISTRICT FOR DISPOSAL OF
WASTEWATER FROM BROOKTRAILS INTO THE CITY'S
WASTEWATER TREATMENT AND DISPOSAL FACILITIES**

UPON EXECUTION OF THIS AGREEMENT pursuant to a resolution of the the City Council of the City of Willits and a resolution of the Board of Directors of the Brooktrails Township Community Services District, the City of Willits and the Brooktrails Township Community Services District agree as follows:

1. The Agreement. This instrument amends that certain Agreement for Disposal of Sewage dated September 11, 1967, as amended by an April 17, 1970 First Amendment, a November 14, 1975 Second Amendment, a September 8, 1982 Third Amendment, and a July 24, 2007 Fourth Amendment, all entered into by and between the City of Willits, a Municipal Corporation of California, herein referred to as "City", and Brooktrails Township Community Services District, as the successor agency to the Brooktrails Resort Improvement District, herein referred to as "District", said Agreement and amendments herein collectively referred to as the "Agreement," and which this amendment thereof is hereinafter referred to as the "Fifth Amendment".

2. Definitions; Meaning of Certain Words and Terms. As used in the Agreement and this Fifth Amendment, the following terms are defined as indicated below:

(a) As used herein, "sanitary sewer system" means a wastewater collection system designed to carry sanitary sewage, consisting solely of domestic, commercial, and industrial wastewater, and to which storm water, surface water and groundwater are not intentionally admitted.

(b) As used herein, "inflow and infiltration" (I&I) shall mean water other than wastewater that enters a wastewater system and building sewer from sources such as roof leaders, cellar drains, yard drains, area drains, foundation drains, drains from springs and swampy areas, manhole covers, cross connections between storm drains and sanitary sewers, catch basins, cooling towers, stormwaters, surface runoff, street wash waters, or drainage plus groundwater that infiltrates pipeline and manhole defects located below the ground surface.

(c) As used herein, "dry weather flow" is flow in a sanitary sewer system during periods when the groundwater table is low and little or no precipitation occurs and during which the sanitary sewer system is under little or no influence of inflow and infiltration; the dry weather flow period is normally from May to October.

(d) As used herein, "wet weather flow" is flow in a sanitary sewer system during periods when the groundwater table is high and the highest precipitation occurs and during which the sanitary sewer system is under significant influence of inflow and infiltration; the wet weather flow period is normally from October to May.

(e) As used herein, "Average Dry Weather Flow" (ADWF) shall be defined as the average daily flow in million gallons per day (MGD) during the dry season, between May 1 and October 1 of any calendar year.

(f) As used herein, “Average Wet Weather Flow” (AWWF) shall be defined as the average daily flow occurring during the wet season, between November 1 of one calendar year and May 1 of the following calendar year.

(g) As used herein, “Maximum Month Dry Weather Flow” (MMDWF) shall be defined as the calendar month between May 1 and October 1 in each year during which the average daily flow in million gallons per day (MGD) is the largest.

(h) As used herein, “Maximum Month Wet Weather Flow” (MMWWF) shall be defined as the calendar month between October 1 of one year and May 1 of the following calendar year during which the average daily flow in million gallons per day (MGD) is the largest.

(i) As used herein, “Peak Wet Weather Flow” (PWWF) shall be defined as is the highest measured flow that occurs in the period between October 1 of one year and May 1 of the following calendar year, the permit limit of which has been determined for the wastewater treatment and disposal facilities as the design peak hydraulic total capacity of 7.0 MGD.

(j) As used herein, “fiscal year” shall mean the twelve months beginning on July 1 of one calendar year and ending on June 30 of the following calendar year.

(k) As used herein, “wastewater treatment and disposal facilities” shall mean all those facilities and related equipment and appurtenances into which the flow from the City’s and District’s sanitary sewer systems is finally transmitted for treatment and disposal; said facilities may be alternately referred to as “sewage treatment plant” or “sewer treatment plant.”

3. Prior Agreement and Amendments. (a) Sections 1, 6, 13 and 14 of the Original 1967 Agreement are hereby repealed and deleted. Sections 4, 5, 6, 7, 8, 8A, 12, 13, 14, 16, 17, 18, 19A, 19B, 21, and 24 of the 1975 Second Amendment are hereby repealed and deleted. The 1982 Third Amendment, including all sections, is hereby repealed and deleted. The 1970 First Amendment was repealed and deleted by the 1975 Second Amendment.

(b) All sections of the Agreement and amendments thereof not previously repealed and deleted or repealed and deleted in paragraph 3 (a) above are incorporated herein by reference.

4. District Use of City Wastewater Treatment and Disposal Facilities Capacity. In return for the valuable consideration described hereinbelow and other good and valuable consideration, the City hereby grants to the District the exclusive right to use the following treatment and disposal capacities of the City’s wastewater treatment and disposal facilities:

(i) The District is granted the exclusive right to dispose of 0.34 million gallons per day (MGD) Average Dry Weather flow from its sanitary sewer system into the City’s wastewater treatment and disposal facilities.

(ii) The District is granted the exclusive right to dispose of 0.71 MGD Average Wet Weather Flow from its sanitary sewer system into the City’s wastewater treatment and disposal facilities.

(iii) The District is granted the exclusive right to dispose of 0.84 MGD Maximum Month Dry Weather Flow from its sanitary sewer system into the City’s wastewater treatment and disposal facilities.

(iv) The District is granted the exclusive right to dispose of 1.34 MGD of Maximum Month Wet Weather Flow from its sanitary sewer system into the City’s wastewater treatment and disposal facilities.

(v) The District is granted the exclusive right to dispose of 2.03 MGD of Peak Wet Weather Flow from its sanitary sewer system into the City’s wastewater treatment and disposal facilities.

5. Flow Metering Facilities. (a) The City shall provide flow measuring and recording facilities that provide a constant and accurate record of flow:

- (i) from all sources entering the City's wastewater treatment and disposal facilities and
- (ii) the total flow from the District entering the City's sanitary sewer system.

(b) Twice each year, during January or February and again during August or September, the City shall have said flow measuring and recording facilities inspected, tested, adjusted and certified by person(s) acceptable to both the City and District Managers as having the proper qualifications to provide said certification. Further the City shall contract with said person(s) to remove any debris that may have accumulated immediately upstream and downstream from said flow measuring and recording facilities prior to performing any tests. Upon completion of these semi-annual inspections, the person performing the service shall take measures to assure that said facilities cannot be tampered with or vandalized. All charges incurred for these services shall be shared equally by the City and the District.

(c) No later than the fifth day of each month, the City shall provide to the District flow meter readings taken on the first day of each month.

(d) Within six months of execution of this Fifth Amendment, (a) the City shall provide to the District continuous remote direct access to the data generated by said flow measuring and recording facilities through electronic SCADA systems and (b) the District shall provide the City with similar continuous remote direct access to the data generated by similar flow measuring and recording facilities the District maintains upstream from the City's facilities measuring the District's flow. All costs incurred to implement access to the data at all facilities shall be shared equally by the City and the District.

6. City Financial Records and Monthly Reports. (a) The City shall accurately keep and maintain books of record and accounts which separately from records and accounts pertaining to its sanitary sewer system (including collection, main, trunk, and interceptor sewage lines, and related sewage pumps and lift stations, and all appurtenances thereto) shall reflect the actual

- (i) costs of maintenance, operation and repair of its wastewater treatment and disposal facilities,
- (ii) costs of equipment replacement, purchase of capital equipment, and new construction related to its wastewater treatment and disposal facilities, and
- (iii) all revenues, grants, subventions, or other sources of funds related to its wastewater treatment and disposal facilities,

all in sufficient detail and categories that the different categories and proofs of costs may be reasonably ascertained as being consistent with this Agreement.

(b) The City shall provide to the District monthly reports derived from such records in a format mutually agreed upon by the City's and District's designated Independent Certified Public Accountant Auditors and Managers. Such books of record and accounts, and reports derived therefrom, shall generally conform to the standards established and modified from time-to-time by the Governmental Accounting Standards Board or its successor body.

(c) The Board of Directors of the District, through its representatives, shall have the right to examine and make copies of said accounts and supporting documentation at all reasonable business hours.

(d) Should the parties hereto dispute any implementation of this Section 6, the dispute shall be arbitrated pursuant to Section 28 of the November 14, 1975 Second Amendment to resolve the matter.

7. Annual Audit. (a) The City shall annually cause to be made an audit of its accounts for the previous fiscal year which shall separately treat therein accounts relating to the City wastewater treatment and disposal facilities as described in Section 5 hereinabove. The audit shall be prepared by an Independent Certified Public Accountant.

(b) The audit shall generally conform to the standards established and modified from time-to-time by the Governmental Accounting Standards Board or its successor body and, more specifically, shall provide supplementary schedules and financial information consistent with the Statement on Auditing Standards 119 (as said Standards from time-to-time may be modified or supplanted). Supplementary schedules and information shall be presented in formats mutually agreed upon by the City's and District's designated Independent Certified Public Accountant Auditors and Managers.

(c) Upon completion of the annual audit, the City shall deliver to the District's Manager a copy of said audit and Supplementary schedules and information. The District's Auditor shall have the right to conduct a further audit of transactions and accounts reported in the audit and supplementary schedules. The City shall facilitate the completion of said further audit.

(d) Should the parties hereto dispute any implementation of this Section 7, the dispute shall be arbitrated pursuant to Section 28 of the November 14, 1975 Second Amendment to resolve the matter.

8. Allocation of Costs to District. (a) All costs directly incurred in a fiscal year in the maintenance, operation and repair of the City wastewater treatment and disposal facilities, plus fifteen percent (15%) thereof for administration and engineering, less any grants therefore, shall be apportioned to the District according to the ratio of flow from the District's sanitary sewer system into the City's sanitary sewer system to the total flow from the City's sanitary sewer system entering the wastewater treatment and disposal facilities during said fiscal year.

(b) All costs directly incurred in a fiscal year in the routine replacement of wastewater treatment and disposal facilities equipment or machinery resulting from breakage, obsolescence, or ordinary use and wear, less any grants therefore, shall be apportioned to the District according to the ratio of flow from the District's sanitary sewer system into the City's sanitary sewer system to the total flow from the City's sanitary sewer system entering the wastewater treatment and disposal facilities during said fiscal year.

(c) All costs up to twenty-five thousand dollars (\$25,000.00) directly incurred in one fiscal year to acquire new capital equipment, less any grants therefore, shall be apportioned to the District according to the ratio of flow from the District's sanitary sewer system into the City's sewer collection system to the total flow from the City's sanitary sewer system entering the wastewater treatment and disposal facilities during said fiscal year.

(d) All costs in excess of twenty-five thousand dollars (\$25,000.00) for acquiring new capital equipment in one fiscal year and any costs of new construction to improve or replace the existing wastewater treatment and disposal facilities shall be apportioned to the District as subsequently and separately agreed in writing upon by City Council of the City and the Board of Directors of the District.

(e) Should the parties hereto dispute any implementation of this Section 8, the dispute shall be arbitrated pursuant to Section 28 of the November 14, 1975 Second Amendment to resolve the matter.

9. Payment by District. (a) On or prior to the last day of each month after the execution of this Fifth Amendment the District shall pay to the City Fifteen Thousand Dollar (\$15,000) to

be applied toward the District's share of costs described in Section 8 paragraphs (a), (b) and (c) incurred by the City in the fiscal year in which payment is made.

(b) Within ninety (90) days following the execution of this Fifth Amendment and thereafter following receipt of an annual audit described in Section 7 hereinabove, the actual costs to be properly apportioned to the District for a prior fiscal year pursuant to Section 8 paragraphs (a), (b), and (c) hereinabove shall be determined using the audit information and the ratio based upon actual flows for that fiscal year and the District shall pay to the City any additional amount owed or the City shall reimburse the District for any refund due for said fiscal year. Should the parties hereto dispute the determination of actual costs or actual flow for a fiscal year, the arbitration provisions of Section 28 of the November 14, 1975 Second Amendment shall be used to resolve the determination of actual costs or actual flow. Should the City obtain a loan or other financing for replacement or new equipment or machinery as described in Section 8 paragraphs (b) and (c), the District may at its discretion make payments reimbursing City principal and interest payments on said loan or other financing based upon the District's share of said costs. Should the parties hereto dispute the amount due to the City pursuant to this paragraph, the dispute shall be arbitrated pursuant to Section 28 of the November 14, 1975 Second Amendment to resolve the matter.

(c) The District shall pay for its share of costs as defined in paragraph 8 (d) hereinabove in such manner and amounts as subsequently and separately agreed upon by the parties hereto.

10. Wastewater Treatment and Disposal Facilities Upgrade Project and USDA Loans. (a) To finance certain Stages 1, 2 and 3 of an upgrade to the wastewater treatment and disposal facilities described in the Fourth Amendment entered into by the City and the District on the 24th day of July, 2007, the District assumed an obligation to pay over 40 years the principal and interest on Three Million, Eight Hundred Seventy-Six Thousand, Four Hundred Sixteen and 50/100ths Dollars (\$3,876,416.50) of loans totaling Ten Million, Two Hundred Eighty-Five Thousand Dollars (\$10,285,000.00) made to the City by the Rural Utilities services, U.S. Department of Agriculture (USDA).

(b) Subsequently, the City obtained an additional loan from the USDA to fund aforementioned upgrade in the amount of Eight Million Three Hundred Thousand Dollars (\$8,300,000.00). Upon execution of this Fifth Amendment, the District will assume an obligation to pay the principal and interest over 40 years on One Million, Five Hundred Thirteen Thousand, Two Hundred Thirty Three and 50/100ths Dollars (\$1,513,233.50) of said additional loan with District's contribution toward the repayment obligation to the USDA to be paid semi-annually in equal installments on the first day of July and the first day of January each year. Upon execution of this Agreement, District must pay to the City Seventy One Thousand Nine Hundred Three Dollars (\$71,903.00) as full payment for the principal and interest amounts due to date on the loan described in this paragraph.

(c) Upon execution of this Fifth Amendment District must pay to the City Two Hundred Twenty Thousand Dollars (\$220,000.00) in final payment for land purchases and other expenses incurred to complete the upgrade project including expenses that preceded all the aforementioned loans

(d) Upon execution of this Fifth Amendment City and District agree that except as provided in this Section 10 District has no further financial obligations to fund, or otherwise provide or share in financing for, aforementioned upgrade project including all costs related thereto incurred prior to or subsequent to receipt of any USDA loans or grants.

11. Delinquent Payments. In the event that following the execution of this Fifth Amendment the District or the City fails to make any payments herein provided within thirty (30) days from the due date thereof, interest at the rate of six percent (6%) per annum shall accrue thereon from the due date thereof until paid.

12. Existing Litigation. Upon the approval of this Amendment by the governing boards of both parties, the parties shall cause the existing litigation entitled Brooktrails Township Community Services District vs. City of Willits, Mendocino Superior Court Case # SCUK-CVG-10-56037 and related cross action to be dismissed, with prejudice, with each party to bear its own costs.

13. Effective Date: This Amendment to the Fifth Amendment becomes effective on the date the governing bodies of both parties have approved this Amendment by duly enacted resolution.

CITY OF WILLITS

BROOKTRAILS TOWNSHIP
COMMUNITY SERVICES DISTRICT

By: _____
Holly Madrigal, Mayor

By _____
Tony Orth, President

ATTEST:

ATTEST:

By _____
Adrienne Moore
City Clerk

By _____
Denise M. Rose
Secretary to Board of Directors

Approved as to Form:

Approved as to Form:

By _____
H. James Lance
City Attorney

By _____
C. J. Neary
General Counsel

Explanation of Contract Provisions of Proposed Fifth Amendment

Contract Provision:

Explanation:

1. The Agreement. This instrument amends that certain Agreement for Disposal of Sewage dated September 11, 1967, as amended by an April 17, 1970 First Amendment, a November 14, 1975 Second Amendment, a September 8, 1982 Third Amendment, and a July 24, 2007 Fourth Amendment, all entered into by and between the City of Willits, a Municipal Corporation of California, herein referred to as City, and Brooktrails Township Community Services District, as the successor agency to the Brooktrails Resort Improvement District, herein referred to as District, said Agreement and amendments herein collectively referred to as the Agreement, and which this amendment thereof is hereinafter referred to as the Fifth Amendment.

The intent is to provide historical and legal context for the Fifth Amendment. Also, the 1967 Agreement together with all four prior amendments is designated as "Agreement" while this Amendment is designated as "Fifth Amendment", and "City" and "District" are designated.

2. Definitions; Meaning of Certain Words and Terms. As used in the Agreement and this Fifth Amendment, the following terms are defined as indicated below:

The intent is to provide clear definitions for terms important to a clear understanding.

(a) As used herein, sanitary sewer system means a wastewater collection system designed to carry sanitary sewage, consisting solely of domestic, commercial, and industrial wastewater, and to which storm water, surface water and groundwater are not intentionally admitted.

(b) As used herein, inflow and infiltration (I&I) shall mean water other than wastewater that enters a wastewater system and building sewer from sources such as roof leaders, cellar drains, yard drains, area drains, foundation drains, drains from springs and swampy areas, manhole covers, cross connections between storm drains and sanitary sewers, catch basins, cooling towers, stormwaters, surface runoff, street wash waters, or drainage plus groundwater that infiltrates pipeline and manhole defects located below the ground surface.

(c) As used herein, dry weather flow is flow in a sanitary sewer system during periods when the groundwater table is low and little or no precipitation occurs and during which the sanitary sewer system is under little or no influence of inflow and infiltration; the dry weather flow period is normally from May to October.

(d) As used herein, wet weather flow is flow in a sanitary sewer system during periods when the groundwater table is high and the highest precipitation occurs and during which the sanitary sewer system is under significant influence of inflow and infiltration; the wet weather flow period is normally from October to May.

(e) As used herein, Average Dry Weather Flow (ADWF) shall be defined as the average daily flow in million gallons per day (MGD) during the dry season, between May 1 and October 1 of any calendar year.

(f) As used herein, Average Wet Weather Flow (AWWF) shall be defined as the average daily flow occurring during the wet season, between November 1 of one calendar year and May 1 of the following calendar year.

(g) As used herein, Maximum Month Dry Weather Flow (MMDWF) shall be defined as the calendar month between May 1 and October 1 in each year during which the average daily flow in million gallons per day (MGD) is the largest.

(h) As used herein, Maximum Month Wet Weather Flow (MMWWF) shall be defined as the calendar month between October 1 of one year and May 1 of the following calendar year during which the average daily flow in million gallons per day (MGD) is the largest.

(i) As used herein, Peak Wet Weather Flow (PWWF) shall be defined as is the highest measured flow that occurs in the period between October 1 of one year and May 1 of the following calendar year, the permit limit of which has been determined for the wastewater treatment and disposal facilities as the design peak hydraulic total capacity of 7.0 MGD.

(j) As used herein, fiscal year shall mean the twelve months beginning on July 1 of one calendar year and ending on June 30 of the following calendar year.

(k) As used herein, wastewater treatment and disposal facilities shall mean all those facilities and related equipment and appurtenances into which the flow from the City and Districts sanitary sewer systems is finally transmitted for treatment and disposal; said facilities may be alternately referred to as sewage treatment plant or sewer treatment plant.

Explanation of Contract Provisions of Proposed Fifth Amendment

Contract Provision:

3. Prior Agreement and Amendments. (a) Sections 1, 6, 13 and 14 of the Original 1967 Agreement are hereby repealed and deleted. Sections 4, 5, 6, 7, 8, 8A, 12, 13, 14, 16, 17, 18, 19A, 19B, 21, and 24 of the 1975 Second Amendment are hereby repealed and deleted. The 1982 Third Amendment, including all sections, is hereby repealed and deleted. The 1970 First Amendment was repealed and deleted by the 1975 Second Amendment.

(b) All sections of the Agreement and amendments thereof not previously repealed and deleted or repealed and deleted in paragraph 3 (a) above are incorporated herein by reference.

4. District Use of City Wastewater Treatment and Disposal Facilities Capacity. In return for the valuable consideration described hereinbelow and other good and valuable consideration, the City hereby grants to the District the exclusive right to use the following treatment and disposal capacities of the City's wastewater treatment and disposal facilities:

- (i) The District is granted the exclusive right to dispose of 0.34 million gallons per day (MGD) Average Dry Weather flow from its sanitary sewer system into the City's wastewater treatment and disposal facilities.
- (ii) The District is granted the exclusive right to dispose of 0.71 MGD Average Wet Weather Flow from its sanitary sewer system into the City's wastewater treatment and disposal facilities.
- (iii) The District is granted the exclusive right to dispose of 0.84 MGD Maximum Month Dry Weather Flow from its sanitary sewer system into the City's wastewater treatment and disposal facilities.
- (iv) The District is granted the exclusive right to dispose of 1.34 MGD of Maximum Month Wet Weather Flow from its sanitary sewer system into the City's wastewater treatment and disposal facilities.
- (v) The District is granted the exclusive right to dispose of 2.03 MGD of Peak Wet Weather Flow from its sanitary sewer system into the City's wastewater treatment and disposal facilities.

5. Flow Metering Facilities. (a) The City shall provide flow measuring and recording facilities that provide a constant and accurate record of flow:

- (i) from all sources entering the City's wastewater treatment and disposal facilities and
- (ii) the total flow from the District entering the City's sanitary sewer system.

(b) Twice each year, during January or February and again during August or September, the City shall have said flow measuring and recording facilities inspected, tested, adjusted and certified by person(s) acceptable to both the City and District Managers as having the proper qualifications to provide said certification. Further the City shall contract with said person(s) to remove any debris that may have accumulated immediately upstream and downstream from said flow measuring and recording facilities prior to performing any tests. Upon completion of these semi-annual inspections, the person performing the service shall take measures to assure that said facilities cannot be tampered with or vandalized. All charges incurred for these services shall be shared equally by the City and the District.

(c) No later than the fifth day of each month, the City shall provide to the District flow meter readings taken on the first day of each month.

(d) Within six months of execution of this Fifth Amendment, (a) the City shall provide to the District continuous remote direct access to the data generated by said flow measuring and recording facilities through electronic SCADA systems and (b) the District shall provide the City with similar continuous remote direct access to the data generated by similar flow measuring and recording facilities the District maintains upstream from the City's facilities measuring the District's flow. All costs incurred to implement access to the data at all facilities shall be shared equally by the City and the District.

6. City Financial Records and Monthly Reports. (a) The City shall accurately keep and

Explanation:

The intent is to repeal sections in the current Agreement and amendments which are replaced by or would conflict with the Fifth Amendment or which are not longer in effect. It also references the remaining elements of the current Agreement and amendments

The intent is that the District would have the exclusive right to 29% of the new treatment plant's various flow capacities as described in the February 21, 2013, SHN Technical Memorandum.

The intent is to incorporate the prior negotiated and agreed upon understanding regarding metering.

The intent is to provide for basic bookkeeping account records for the treatment plant separate from

Explanation of Contract Provisions of Proposed Fifth Amendment

Contract Provision:

maintain books of record and accounts which separately from records and accounts pertaining to its sanitary sewer system (including collection, main, trunk, and interceptor sewage lines, and related sewage pumps and lift stations, and all appurtenances thereto) shall reflect the actual

- (i) costs of maintenance, operation and repair of its wastewater treatment and disposal facilities,
- (ii) costs of equipment replacement, purchase of capital equipment, and new construction related to its wastewater treatment and disposal facilities, and
- (iii) all revenues, grants, subventions, or other sources of funds related to its wastewater treatment and disposal facilities,

all in sufficient detail and categories that the different categories and proofs of costs may be reasonably ascertained as being consistent with this Agreement.

(b) The City shall provide to the District monthly reports derived from such records in a format mutually agreed upon by the City and Districts designated Independent Certified Public Accountant Auditors and Managers. Such books of record and accounts, and reports derived therefrom, shall generally conform to the standards established and modified from time-to-time by the Governmental Accounting Standards Board or its successor body.

(c) The Board of Directors of the District, through its representatives, shall have the right to examine and make copies of said accounts and supporting documentation at all reasonable business hours.

(d) Should the parties hereto dispute any implementation of this Section 6, the dispute shall be arbitrated pursuant to Section 28 of the November 14, 1975 Second Amendment to resolve the matter.

7. Annual Audit. (a) The City shall annually cause to be made an audit of its accounts for the previous fiscal year which shall separately treat therein accounts relating to the City wastewater treatment and disposal facilities as described in Section 5 hereinabove. The audit shall be prepared by an Independent Certified Public Accountant.

(b) The audit shall generally conform to the standards established and modified from time-to-time by the Governmental Accounting Standards Board or its successor body and, more specifically, shall provide supplementary schedules and financial information consistent with the Statement on Auditing Standards 119 (as said Standards from time-to-time may be modified or supplanted). Supplementary schedules and information shall be presented in formats mutually agreed upon by the City and Districts designated Independent Certified Public Accountant Auditors and Managers.

(c) Upon completion of the annual audit, the City shall deliver to the District's Manager a copy of said audit and Supplementary schedules and information. The District's Auditor shall have the right to conduct a further audit of transactions and accounts reported in the audit and supplementary schedules. The City shall facilitate the completion of said further audit.

(d) Should the parties hereto dispute any implementation of this Section 7, the dispute shall be arbitrated pursuant to Section 28 of the November 14, 1975 Second Amendment to resolve the matter.

8. Allocation of Costs to District. (a) All costs directly incurred in a fiscal year in the maintenance, operation and repair of the City wastewater treatment and disposal facilities, plus fifteen percent (15%) thereof for administration and engineering, less any grants therefore, shall be apportioned to the District according to the ratio of flow from the District's sanitary sewer system into the City's sanitary sewer system to the total flow from the City's sanitary sewer system entering the wastewater treatment and disposal facilities during said fiscal year.

(b) All costs directly incurred in a fiscal year in the routine replacement of wastewater treatment and disposal facilities equipment or machinery resulting from breakage, obsolescence, or ordinary use and wear, less any grants therefore, shall be apportioned to the District according to the ratio of flow from the District's sanitary sewer system into the City's sanitary sewer system to the total flow from the City's sanitary sewer system entering the wastewater treatment and disposal facilities during said fiscal year.

(c) All costs up to twenty-five thousand dollars (\$25,000.00) directly incurred in one

Explanation:

the rest of the City's sewer system. This does not require the City to place the plant operation in a separate fund, but use a separate "department" with line item accounts which is already being done. It also requires that the District receive a monthly report so that there are no surprises at the end of the fiscal year. The report would conform to generally accepted accounting standards which the city and district auditors and managers would agree upon. It retains the current right of the District to look at the bookkeeping records for the plant only. And it provides for arbitration if there is disagreement over accounting and reporting format.

It is the intent that this would require an annual audit of the treatment plant books which the City already has performed by a CPA. It determines generally what standards are to be used and provides for supplementary schedules to be agreed upon by the City's and District's auditors and managers. The supplementary schedules are needed because the City's Audit does not break down the treatment plant direct costs into detailed categories. It also permits an audit of those transactions by the District's Auditor if needed. And it provides for arbitration if there is disagreement over audit accounting and reporting format.

It is the intent that operating costs directly incurred in the operation of the treatment plant plus 15% for administrative and engineering overhead plus routine equipment replacement and acquisition of new equipment up to \$25,000 total less any grants for a fiscal year would be paid by the District according to the ratio of the District's total flow for the fiscal year to the plant's total flow for the fiscal year. Costs of more expensive capital equipment or new construction would be allocated based upon a subsequent agreement. Using a flat percentage for overhead will avoid any future misunderstandings and avoid the possibility of the District becoming involved in any future reorganization of the City's administrative and engineering functions. And it provides for arbitration if there is disagreement.

Explanation of Contract Provisions of Proposed Fifth Amendment

Contract Provision:

Explanation:

fiscal year to acquire new capital equipment, less any grants therefore, shall be apportioned to the District according to the ratio of flow from the Districts sanitary sewer system into the Citys sewer collection system to the total flow from the Citys sanitary sewer system entering the wastewater treatment and disposal facilities during said fiscal year.

(d) All costs in excess of twenty-five thousand dollars (\$25,000.00) for acquiring new capital equipment in one fiscal year and any costs of new construction to improve or replace the existing wastewater treatment and disposal facilities shall be apportioned to the District as subsequently and separately agreed in writing upon by City Council of the City and the Board of Directors of the District.

(e) Should the parties hereto dispute any implementation of this Section 8, the dispute shall be arbitrated pursuant to Section 28 of the November 14, 1975 Second Amendment to resolve the matter.

9. Payment by District. (a) On or prior to the last day of each month after the execution of this Fifth Amendment the District shall pay to the City Fifteen Thousand Dollar (\$15,000) to be applied toward the Districts share of costs described in Section 8 paragraphs (a), (b) and (c) incurred by the City in the fiscal year in which payment is made.

(b) Within ninety (90) days following the execution of this Fifth Amendment and thereafter following receipt of an annual audit described in Section 7 hereinabove, the actual costs to be properly apportioned to the District for a prior fiscal year pursuant to Section 8 paragraphs (a), (b), and (c) hereinabove shall be determined using the audit information and the ratio based upon actual flows for that fiscal year and the District shall pay to the City any additional amount owed or the City shall reimburse the District for any refund due for said fiscal year. Should the parties hereto dispute the determination of actual costs or actual flow for a fiscal year, the arbitration provisions of Section 28 of the November 14, 1975 Second Amendment shall be used to resolve the determination of actual costs or actual flow. Should the City obtain a loan or other financing for replacement or new equipment or machinery as described in Section 8 paragraphs (b) and (c), the District may at its discretion make payments reimbursing City principal and interest payments on said loan or other financing based upon the Districts share of said costs. Should the parties hereto dispute the amount due to the City pursuant to this paragraph, the dispute shall be arbitrated pursuant to Section 28 of the November 14, 1975 Second Amendment to resolve the matter.

(c) The District shall pay for its share of costs as defined in paragraph 8 (d) hereinabove in such manner and amounts as subsequently and separately agreed upon by the parties hereto.

10. Wastewater Treatment and Disposal Facilities Upgrade Project and USDA Loans. (a) To finance certain Stages 1, 2 and 3 of an upgrade to the wastewater treatment and disposal facilities described in the Fourth Amendment entered into by the City and the District on the 24th day of July, 2007, the District assumed an obligation to pay over 40 years the principal and interest on Three Million, Eight Hundred Seventy-Six Thousand, Four Hundred Sixteen and 50/100ths Dollars (\$3,876,416.50) of loans totaling Ten Million, Two Hundred Eighty-Five Thousand Dollars (\$10,285,000.00) made to the City by the Rural Utilities services, U.S. Department of Agriculture (USDA).

(b) Subsequently, the City obtained an additional loan from the USDA to fund aforementioned upgrade in the amount of Eight Million Three Hundred Thousand Dollars (\$8,300,000.00). Upon execution of this Fifth Amendment, the District will assume an obligation to pay the principal and interest over 40 years on One Million, Five Hundred Thirteen Thousand, Two Hundred Thirty Three and 50/100ths Dollars (\$1,513,233.50) of said additional loan with Districts contribution toward the repayment obligation to the USDA to be paid semi-annually in equal installments on the first day of July and the first day of January each year. Upon execution of this Agreement, District must pay to the City Seventy One Thousand Nine Hundred Three Dollars (\$71,903.00) as full payment for the principal and interest amounts due to date on the loan described in this paragraph.

(c) Upon execution of this Fifth Amendment District must pay to the City Two Hundred

It is the intent that the District pay to the City \$15,000 a month towards plant operation. This would continue during any future period in which there may be a disagreement. After the end of a fiscal year, within 90 days after receipt of the audit, the City and District would "settle up" for that fiscal year. If there is a disagreement, the issues would be arbitrated.

It is the intent that the District would assume an obligation to pay 29% of the total of principal and interest on all the USDA loans including the last one. This provides for the District making an immediate payment in full for its 29% share of the payments already made to the USDA by the City. The District would make an immediate payment of \$220,000 for a 29% share of the Niesen land purchase and any remaining expenses of the project. The District would have to make no further payments on the project beyond the payments on the USDA loans.

For clarity purposes, here are the calculations:

Loan Amount	%	Brooktrails Share
\$10,285,000.00 x	37.69%	= \$3,876,416.50
<u>\$8,300,000.00 x</u>	<u>18.23%</u>	<u>= \$1,513,233.50</u>
<u>\$18,585,000.00 x</u>	<u>29.00%</u>	<u>= \$5,389,650.00</u>

Explanation of Contract Provisions of Proposed Fifth Amendment

Contract Provision:

Explanation:

Twenty Thousand Dollars (\$220,000.00) in final payment for land purchases and other expenses incurred to complete the upgrade project including expenses that preceded all the aforementioned loans

(d) Upon execution of this Fifth Amendment City and District agree that except as provided in this Section 10 District has no further financial obligations to fund, or otherwise provide or share in financing for, aforementioned upgrade project including all costs related thereto incurred prior to or subsequent to receipt of any USDA loans or grants.

11. Delinquent Payments. In the event that following the execution of this Fifth Amendment the District or the City fails to make any payments herein provided within thirty (30) days from the due date thereof, interest at the rate of six percent (6%) per annum shall accrue thereon from the due date thereof until paid.

12. Existing Litigation. Upon the approval of this Amendment by the governing boards of both parties, the parties shall cause the existing litigation entitled Brooktrails Township Community Services District vs. City of Willits, Mendocino Superior Court Case # SCUK-CVG-10-56037 and related cross action to be dismissed, with prejudice, with each party to bear its own costs.

13. Effective Date: This Amendment to the Fifth Amendment becomes effective on the date the governing bodies of both parties have approved this Amendment by duly enacted resolution.

This provides for a continuation of the 6% interest provision.

It is the intent that all of the current litigation over the sewer plant costs would be dismissed with prejudice.

This provides for the effective date of the Fifth Amendment.