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Attorney for Defendant and
Cross Complainant, City of Willits

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MENDOCINO

BROOKTRAILS TOWNSHIP COMMUNITY SERVICES DISTRICT, a Public Agency,

Plaintiff,

vs.

CITY OF WILLITS, a General Law City; and DOES 1 through 100, inclusive,

Defendants.

UNLIMITED

CASE NO. SCUK-CVG-10-56037

CITY OF WILLITS' CROSS-COMPLAINT FOR BREACH OF CONTRACT AND FOR MONEY HAD AND RECEIVED

CITY OF WILLITS, a General Law City,

Cross-Complainant and Defendant,

vs.

BROOKTRAILS TOWNSHIP COMMUNITY SERVICES DISTRICT, a Public Agency; and ROES 1 through 100, inclusive,

Cross-Defendants and Plaintiff.

Come now, cross-complainant CITY OF WILLITS, a General Law City (the "City") for cause of action states as follows:

1. Cross-complainant is now, and at all times mentioned in this Cross-Complaint has been, a General Law City located in the County of Mendocino.

2. Cross-defendant is now, and at all times mentioned in this Cross-Complaint has been, a duly organized community services district, created under the Community Services District law.

3. The true names and capacities, whether individual, corporate, associate or otherwise, of cross-defendants sued herein under the names of ROES 1 through 100, inclusive, are unknown to cross-complainant at this time. Cross-complainant sues such cross-defendants by such fictitious names pursuant to Code of Civil Procedure § 474, and will amend this Cross-Complaint to allege such cross-defendants' true names and capacities when ascertained. Cross-complainant is informed and believes, and on such basis alleges, that cross-defendants ROES 1 through 100, inclusive, and each of them, are in some manner liable to cross-complainant, or claim some right, title or interest in the subject property that is junior and inferior to that of cross-complainant, or both.

4. At all times mentioned in this Cross-Complaint, cross-defendants, and each of them, were the agents, servants, and employees of the other cross-defendants, and in doing the things alleged in this Cross-Complaint, cross-defendants were each acting within the scope and authority of such agency and/or employment, with the knowledge and consent or ratification of each of the other cross-defendants in doing the things alleged herein.

5. Cross Complainant and Cross Defendant entered into a written agreement on September 11, 1967 pursuant to which Cross Complainant receives and treats Cross Defendant's sewage at the sewage treatment plant owned and operated by Cross Complainant and Cross Defendant pays a portion of the plant expenses. The Agreement was subsequently amended by written agreement on April 17, 1970 (the First Amendment); November 21, 1975 (the Second Amendment); September 8, 1982 (the Third Amendment); and on July 24, 2007 (the Fourth Amendment). A copy of the Agreement as amended is attached hereto as Exhibit A.

FIRST CAUSE OF ACTION FOR BREACH OF CONTRACT

6. Cross complainant realleges and incorporates by reference paragraphs 1 through 5 of this cross complaint.

7. The parties within Section 8A of the Second Amendment of their Agreement acknowledged that Cross Complainant may be required during the course of the Agreement to make improvements to the treatment plant to meet more stringent effluent quality requirements by state and/or federal agencies. The parties specifically agreed that the costs of such quality related improvements would be shared and apportioned pursuant to the ratio of their respective dry weather flow treatment capacities in the plant. Cross Complainant alleges that, as relevant to the issues and demands for payment asserted herein, the Cross Defendant's dry weather flow treatment capacity is 37.69% and Cross Complaint's capacity is 62.31%.

8. Pursuant to orders issues by the Regional Water Quality Control Board (RWQCB) from and following June, 2001, Cross Complainant has been required to make substantial plant improvements for the primary purpose of meeting effluent quality requirements within the meaning of Section 8A of the Second Amendment. Such improvements consist of a RWQCB approved design and the Cross Complainant's

construction of a new wastewater treatment facility presently under construction (the "Project").

9. The design of the Project, as approved by the RWQCB, includes the development and use of an adjacent 125 acre parcel of real property (the "Subject Real Property") for essential treatment plant purposes. Those purposes include the construction of designated wetland and enhancement areas and construction of storage lagoons, use of the property for spray irrigation of effluent, and for mitigation of environmental impacts. Cross Complainant alleges that utilization of the Subject Real Property is essential to the approved design and construction of the Project.

10. The Subject Real Property became available for purchase and was acquired by Cross Complainant in October, 2003 for $750,000. The price paid for the subject real property was lawful, necessary, appropriate and reasonable under the circumstances and made in furtherance of a legitimate public purpose. The cost to acquire the Subject Real Property is a necessary capital expense of the Project.

11. Cross Complainant made application for financing of the Project through the United States Department of Agriculture (USDA) and included the purchase cost of the Subject Real Property within the Project funding budget.

12. At all times relevant to these events Cross Defendant acknowledged and agreed that the Project was required to meet effluent quality requirements within the meaning of Section 8A of the Second Amendment to the Agreement and that Cross Defendant would be required to pay its share of all necessary capital expenses related to the Project. On July 24, 2007 the parties executed the Fourth Amendment to their Agreement wherein they specifically agreed that the total cost of the Project would be apportioned 37.69% to Cross Defendant and 62.31% to Cross Complainant.

13. Cross Defendant was advised that Cross Complainant had acquired the Subject Real Property, including the expense thereof, and that Cross Complainant intended that the expense be cost shared with Cross Defendant via a USDA loan repayment plan. Cross Defendant made no objection to the inclusion of the real property acquisition expense within the USDA loan repayment.

14. The property acquisition expense was ultimately removed from the Project budget financed through USDA due to increased Project expenses. Because this expense would no longer be cost shared through the parties' repayment of the USDA loan, Cross Complainant made demand upon Cross Defendant in August, 2007 of the sum of $285,386, an amount equal to 37.69% of the purchase price for the Subject Real Property. Cross complainant proposed that Cross Defendant could make payment on a long term, low interest basis consistent with the USDA Project financing. Cross Defendant rejected the proposal.

15. Cross Defendant is in material breach of its agreed payment obligations for its failure to pay 37.69%, or any sum whatsoever, of the cost incurred by Cross Complainant to purchase the subject real property. Cross Defendant's payment is delinquent within the meaning of paragraph 4 of the Third Amendment to the Agreement dated September 8, 1982, and interest at the rate of twelve percent (12%) is owed thereon and shall continue to accrue until fully paid from and following Cross Complainant's demand for payment.

SECOND CAUSE OF ACTION FOR MONEY HAD AND RECEIVED

16. Cross complainant realleges and incorporates by reference paragraphs 1 through 13 of this cross complaint.

17. Within the past four years Cross Defendant became indebted to Cross Complainant for money in the amount of $285,386 paid by Cross Complainant for the benefit of Cross Defendant.

18. The sum of $285.386 is the reasonable value due and unpaid despite Cross Complainant's demand, plus prejudgment interest according to proof.

WHEREFORE, Cross Complainant prays for judgment as follows:

1. For damages for breach of contract in the amount of $285,386 plus interest thereon pursuant to the terms of the parties' contract;

2. For money had and received in the amount of $285,386 plus interest thereon according to proof.

3. For attorney fees and costs of suit incurred herein; and

4. For such other and further relief as the Court deems appropriate.

DATED: January 10, 2011

H. JAMES LANCE
Attorney for Cross Complainant,
CITY OF WILLITS

AGREEMENT BY CITY OF WILLITS
FOR DISPOSAL OF SEWAGE FROM
BROOKTRAILS RESORT IMPROVEMENT DISTRICT

THIS AGREEMENT made this 11th day of September, 1967, between CITY OF WILLITS, a Municipal Corporation of California, herein called "CITY", and BROOKTRAILS RESORT IMPROVEMENT DISTRICT, herein called "DISTRICT", both in Mendocino County, California,

W I T N E S S E T H:

This Agreement is predicated upon the facts that:

(a) City has constructed and owns a sanitary sewage treatment plant which provides primary and secondary treatment to its sewage;

(b) Said plant has a design capacity of 800,000 gallons average daily dry weather flow, for an estimated ultimate population of 8,000 people, and City's present population is less than 4,000 persons;

(c) The estimated present replacement value of said plant is $356,000 and the value of a disposal right to 1/4th of its capacity or 200,000 gallons average daily dry weather flow is $89,000;

(d) Said plant and other sewer facilities of the City are in need of certain improvements and the public interest and economy of the City will be served by the City selling said disposal right and using the funds derived from said sale to make such improvements, or to retire a portion of the City's bonded indebtedness incurred in the construction of said plant and sewer facilities;

(e) District lies northwesterly of, but not contiguous to, said City and is proposed to be subdivided into upwards of 6,000 lots with public improvements provided in accordance with standards of Mendocino County, including a sanitary sewerage system for the greater part thereof; and

(f) The public interest and economy of the District will be served by its acquiring a right of disposal in the City plant rather than constructing and operating its own plant.

NOW, THEREFORE, IT IS AGREED, as follows:

1. Sale of Disposal Right. City hereby sells to District a right of disposal of District's sanitary sewage (but not storm waters), in the amount of 1/4th the estimated capacity in City's plant, said 1/4th being an estimated 200,000 gallons average daily dry weather flow, and City will receive, treat and dispose of said sewage.

2. Purchase Price and Payment. District will pay the City for said right of disposal the sum of $89,000, of which $33,600 will be paid on December 31, 1967, and $27,700 on each of December 31, 1968 and 1969. District guarantees to City that no sewage would be delivered to City for treatment until said entire $89,000 shall have been paid to City.

3. Burden of Costs: Inspection of Work. City shall bear the cost of inspection by City of sewer installations in District. Should City plan to inspect proposed sewer installations in District City shall in advance notify District of such intent, and District agrees to notify City in advance as to construction or extension of sewer facilities in District, to permit inspection thereof by agents of City.

4. District Collection System. District will construct, own, maintain and operate in good repair, a sanitary sewerage system to serve its tracts as they shall have been required by subdivision agreements requested by the County of Mendocino.

5. District Outfall. District shall also construct, own and maintain and operate in good condition and repair an outfall trunk sewer main from its sewerage collection system to a point of connection to the City sewerage system estimated at 10,000 feet.

6. Construction Standards. All facilities to be constructed by District shall be of the sizes, dimensions and material and at the locations, elevations and grades established therefor by said County, shall be of good sanitary sewerage engineering design, and shall be installed under good engineering supervision and inspection by competent engineers appointed therefor by District, and to such supervision and inspection as is customarily provided by the County Engineer or other official performing his duties and to the satisfaction and acceptance thereof by him, all to the end that said system shall be tight and free from infiltration of flood, storm and other waters from the outside. All facilities constructed by District shall also comply with the provisions of District's "Ordinance Regulating The Use of ... Sewers and Drains ... Installation of Sewers," which Ordinance was heretofore adopted by the Board of Directors of District on the 21st day of April, 1965.

7. Monthly Service Charges. District will pay City, on the first day of each calendar month, commencing with the first day of the month following the receipt of District sewage in the City system a sum equal to $1.50 per single family residence, and 10¢ (ten cents) per fixture unit, according to Table 10-1 (Section 1009) of the Uniform Plumbing Code, 1964 Edition, in resorts, motels and commercial structures and other structures in District other than single family residences, and connected to said sewerage system. District, by its Board of Directors, agrees that in the event District shall fail to remit to City the sums hereinabove specified, at the times and in the manner hereinabove provided, said City may collect said sums direct from property owners in said District, and all said property owners are hereby given notice of the City's right to collect said sewer charges from individual property owners in the event District shall default in payment to City of the sewer charges provided herein.

8. Excess Flows, Charges Therefor. District shall install at District's expense and City shall maintain in operative condition a recording stream flow measuring device in the outfall sewer, immediately upstream from its connection with City's system. Provision by District will also be made for the convenient and accurate taking of samples for testing of the quality of the sewage being delivered into City's sewer system. City is hereby granted the right of charging District for flows, coming from whatever source which exceed the normal daily dry weather flows by more than twenty-five percent (25%). The amount of such charges shall be based upon the City's cost and liability for treating and handling such excess flows, and for the extraordinary measures that City may be required to provide in order to handle such flows. City is also granted the right to charge District for handling and treating sewage of strength in excess of that measured during normal dry weather flows. Such charges shall become operative when the peak BOD loading exceeds three hundred (300) parts per million (five (5) day Standard Methods test). The amount of such extra charges for such excess flows and for such sewage of strength in excess of normal as above stated, shall be determined by negotiation between City and District and will be based upon the additional cost required of City to provide the facilities to handle and treat such sewage.

9. District Records. District shall establish and maintain to good accounting standards, books and records of the number and type of connections to said system at each payment period, which shall be open to inspection by City at all reasonable hours.

10. Written Statements. District shall accompany each payment with a written statement which shall be in sufficient detail that City may ascertain the amounts from the numbers of the several different types of use represented therein.

11. Understatement. In the event that it shall be ascertained that any payment shall be less than the true amount due therefor, District shall pay and City may collect the difference with interest at six (6) percent per annum, plus costs and a reasonable attorney's fee to be fixed by the court in the event of suit.

12. Basis of Service Charges. It is the intent of the City that any future cost of construction of sewerage facilities of the City arising out of the necessity of (1) expanding the treatment plant and facilities to handle in excess of 200,000 gallons average daily flow from the District, or (2) installing additional treatment facilities to bring the quality of the effluent arising out of the flow from the District up to standards required by the State Water Quality Control Board or successor agency, be paid for by the District. The service charges provided have been estimated to be sufficient to pay the District's share of the City's cost of administration, maintenance, operation and repair of the treatment plant and facilities used by the District, and for such future construction. City shall have the power to revise the schedule of service charges from time to time to defray City's cost of administration, maintenance, operation and repair of the treatment plant, works, and for future construction. Any revision of the said service charges shall be governed by standard and accepted engineering and accounting practices normally utilized for apportioning costs in like joint uses and considering necessary future expansions, and shall take into account moneys already paid by the District for such expansions.

13. City Records. City shall budget and keep and maintain books of record and accounts which shall reflect, separately from its sewerage collection system, records and accounts of its costs of administration, maintenance, operation and repair of its sewerage treatment and disposal work and system, and of new construction,

in sufficient detail and categories that the different categories and proofs of costs may be reasonably ascertained.

14. Competent Supporting Data. A request for renegotiation of service charges shall be supported by competent reports and analyses in sufficient detail that District may understand the need for such renegotiation, and District shall have the right to inspect City's books, records and accounts in order that it may competently understand and affirm the need for such renegotiation.

15. Storm Waters. District shall not suffer or permit storm water drains, or waters collected on roofs, patios or other improved portions of premises to be connected to its sewerage system, and shall establish and enforce rules and regulations therefor.

16. Police Powers. The parties shall be subject to all statutes, ordinances, rules and regulations adopted in the exercise of State and Local police powers, that are reasonable and customary in the operation of sanitary sewerage works and systems.

17. Indeterminate Term. The term of this agreement shall be continuing and indeterminate and is intended to provide the rights of future populations to the extent of its provisions.

18. Breaches. Sixty days after mailing written notice by one is established as a reasonable period within which the other party shall correct any breach of the provisions hereof. No lateness in giving such notice or greater time alloted or taken in correcting a breach shall constitute a waiver or termination of this provision.

19. Transfer. The rights of either party under this agreement shall transfer by operation of law in the case of merger, but shall not be otherwise transferable without the consent of the other party expressed by resolution of its legislative body.

20. Amendments. This agreement may be altered, amended, modified or supplemented from time to time, in writing and executed as herein provided, upon written authorization by resolutions of the respective legislative bodies of the parties hereto. It is the intention of the parties that this agreement be amended from time to time in accordance with experience, to reflect then existing and anticipated circumstances.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their respective officers, thereunto authorized by resolutions of their respective legislative bodies, the day and year first above written.

CITY OF WILLITS

By Leo S. Hulett
Leo S. Hulett, Mayor

ATTEST:

Eunice S. Southwick
Eunice S. Southwick,
City Clerk

(Seal)

BROOKTRAILS RESORT IMPROVEMENT DISTRICT

By Harvey Sawyer
President

COUNTERSIGNED:

Lorene K. Lewis
Secretary and Clerk

(Seal)

FIRST AMENDMENT

TO

AGREEMENT BY CITY OF WILLITS

FOR DISPOSAL OF SEWAGE FROM

BROOKTRAILS RESORT IMPROVEMENT DISTRICT

THIS AMENDMENT TO AGREEMENT, made this 17th day of April, 1970, between CITY OF WILLITS, a municipal corporation of California, herein called "City" and BROOKTRAILS RESORT IMPROVEMENT DISTRICT, herein called "District" both in Mendocino County, California,

W I T N E S S E T H:

WHEREAS, the parties hereto, on September 11, 1967, made and entered into an agreement entitled "Agreement by City of Willits for Disposal of Sewage from Brooktrails Resort Improvement District", herein called the "agreement";

NOW THEREFORE, the parties agree that the agreement is amended and supplemented as follows:

1. The facts upon which the agreement is predicated include the following additional facts:

(a) A portion of the District's sewer system, including collector lines and outfall line connecting the collection system into the City sewer system at Commercial Street and Mill Creek Drive, has been completed and accepted by District;

(b) District has a few residents servable by the completed and accepted portions of the District's sewer system and who are in immediate need of sewer service, and has a substantial portion of its system still under construction;

(c) City and District have previously informally agreed that the location of the stream flow measuring device in the outfall line be moved upstream, from the point of connection with the City's system to the District's boundary, in order to permit the City to connect to said outfall line below such measuring device.

agreement as to the pro-rata share of maintenance and repair is reached with the District.

2. The following is added to Section 4, "District Collection System":

District shall block off from flow into City's plant of any water, waste or matter accumulating in those portions of the collection system which shall not have been accepted by District as complete, and in those portions which shall have been completed and accepted but which are not then required for service of residents and within which the infiltration is known by the District to be excessive. District shall take prompt action to remedy excessive infiltration in those portions which shall have been completed and accepted and which are required to serve residents desiring service.

3. The following is added to Section 5, "District Outfall":

The portion of said outfall main from the measuring device at the District's boundary to the connection into the City's system shall be re-tested for excessive infiltration within two weeks of the date of this amendment. Said re-test shall be a water test, shall include manholes, and shall be conducted by District using standard testing procedures for measuring infiltration. City shall be given notice of and an opportunity to observe the conduct of the test. Any excessive infiltration shall be promptly remedied by District.

4. The edition of the Uniform Plumbing Code which shall be used in determining the fixture units forming the basis for charges, as [illegible] specified in Section 7, [illegible] edition.

5. The following additional section is added:

7.A. Minimum Monthly Charge

District will pay City, on the first day of each calendar month, commencing with the first day of the month following the receipt of District sewage in the City system, a minimum monthly amount of $100.00, which amount shall be in lieu of the service charge payable pursuant to Section 7, "Monthly Service Charge", for those months in which the service charge payable pursuant to such section would be less than $100.00

6. The first sentence of Section 8, "Excess Flows, Charges Therefor," is amended to read as follows:

District shall install at District's expense and shall maintain and operate a recording stream flow measuring device in the outfall sewer, at or near the District's boundary.

7. The following section is added to the Agreement:

21. Beginning of Service

The date upon which service pursuant to this agreement shall commence and upon which City shall accept and receive the flow shall be April 17, 1970, or as soon thereafter as District can effect physical connection of its outfall to City's system.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their respective officers, thereunto authorized by resolutions of their respective bodies, the day and year first above written.

CITY OF WILLITS

BY: Ottis E. Smith
Ottis E. Smith, Mayor

ATTEST:

Eunice S. Southwick
Eunice S. Southwick, City Clerk

BROOKTRAILS RESORT IMPROVEMENT DISTRIC

BY: Harvey Sawyers
Harvey Sawyers, President

COUNTERSIGNED:

Lorraine B. Loser
Lorraine B. Loser, Secretary and Clerk

CITY OF WILLITS

MENDOCINO COUNTY

Willits, California 95490

RESOLUTION NO. 70-492

RESOLUTION AUTHORIZING CITY TO ENTER INTO FIRST AMENDMENT TO AGREEMENT BY CITY OF WILLITS FOR DISPOSAL OF SEWAGE FROM BROOKTRAILS RESORT IMPROVEMENT DISTRICT.

BE IT RESOLVED by the City Council of the City of Willits, California, at a special meeting of said Council held the 17th day of April, 1970, that the Mayor and the City Clerk be authorized to sign the First Amendment to Agreement By City of Willits for Disposal of Sewage From Brooktrails Resort Improvement District dated September 11, 1967, as per amendment read by Council members and approved by said Council.

Mayor

ATTEST:

City Clerk

I hereby certify the above to be a true and correct copy of Resolution No. 70-492 duly and regularly passed by the Willits City Council at a special meeting held on the 17th day of April, 1970.

City Clerk

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wJML:JEB:sc:Rev:11/19/75

SECOND AMENDMENT
TO
AGREEMENT BY CITY OF WILLITS
FOR DISPOSAL OF SEWAGE FROM
BROOKTRAILS RESORT IMPROVEMENT DISTRICT

THIS AMENDMENT TO AGREEMENT made this 21 day of Nov., 1975, between the CITY OF WILLITS, a municipal corporation, herein called "City" and BROOKTRAILS RESORT IMPROVEMENT DISTRICT, a public corporation, herein called "District", both in Mendocino County, California,

W I T N E S S E T H:

That this agreement is predicated on the following facts:

a. On September 11, 1967, the parties hereto entered into a written agreement entitled Agreement by City of Willits for Disposal of Sewage From Brooktrails Resort Improvement District, herein called Agreement;

b. On April 17, 1970, the parties hereto entered into a further written agreement entitled First Amendment to Agreement by City of Willits for Disposal of Sewage From Brooktrails Resort Improvement District, herein called Amendment;

c. The Division of Water Quality of the State Water Resources Control Board has ordered the City to undertake the construction of improvements to its sewage treatment plant which will improve the quality of the effluent emanating therefrom;

d. The total estimated cost of said improvements to provide 640,000 gallons per day dry weather flow capacity, as determined by Brown & Caldwell, engineers for the City, is $2,487,656, of which $2,165,816 will be provided by the Environmental Protection Agency and the State of California, and the balance of $321,840 is for improvements to the City sewage treatment plant and land disposal facilities;

e. The District wishes to purchase capacity in said sewage treatment plant, of 160,000 gallons per day average daily dry weather flow which is one quarter of the dry weather flow capacity;

f. Average daily dry weather flow shall be the average daily dry weather flow for the period commencing May 1 and ending September 30 of each year;

g. The public interest and general welfare will be served by clarifying the manner of apportioning and payment of costs between the City and the District.

NOW, THEREFORE, IT IS DETERMINED and AGREED, as follows:

1. The Agreement be, and is hereby, amended by deleting sections 5, 7, 8, 10, 11 and 12 therefrom.

2. The Amendment be, and is hereby, repealed as of the effective date of this second amendment.

3. City Ownership. The present sanitary sewage treatment and disposal facilities, and all future improvements thereto, shall be, become and remain the exclusive property of the City, and the City shall have sole jurisdiction over its operation and possession. Any liability for malpractice in the treatment and disposal of wastewater shall not pass to District in the event that the quality and quantity of wastewater received from District is within the specifications as hereinbefore stated or hereafter agreed to.

4. District Capacity. The District shall have the exclusive right to dispose of sanitary sewage in said plant up to 160,000 gallons per day, dry weather average daily flow, which is estimated to constitute 25% of the capacity therein.

5. Additional District Capacity. The District may purchase additional capacity in said plant at a replacement cost which shall be the portion of $2,814,876 times an inflation factor that the amount of dry weather average daily flow so acquired bears to 750,000 gallons average daily dry weather flow, provided that the City, by resolution adopted by its City Council prior to the date have

determined there is reason to believe that the capacity to be sold is surplus City capacity. The inflation factor shall be the ratio of the 1913 ENR Construction Cost Index for San Francisco prevailing at the time of purchase of additional capacity to 2800.

6. Capacity Improvements. The cost of improvements to the City sewage treatment plant which will result in increasing its capacity beyond 750,000 gallons per day average dry weather flow shall be charged to and paid for by the party who will become entitled thereto. Costs of increase in capacity for both parties shall be prorated according to capacity needed and assigned to each. Capacity assigned shall be in gallons average daily dry weather flow, as peak and winter conditions will be anticipated in design. No additional capacity shall be assigned by the City to the District without the approval of the District, expressed by supplement or amendment to this agreement.

7. Overuse by District. In the event that sewage flow from District shall so increase as to exceed its capacity allotment, the City Council may elect to require that it either purchase additional capacity in the existing plant, or the City may undertake to construct additional improvements which will provide such capacity. During the interim, the City shall have the right to collect an additional capacity charge per year from the District which shall be determined by multiplying that part of the then cost of the treatment plant that the overage capacity used bears to its then total capacity (multiplicant) by .07264891 (being the annual factor for 30 years amortized at 6% per annum) (multipler). The then value of the treatment plant shall be $2,814,876 times an inflation factor as defined in Section 5 plus costs of any improvements thereto, hereafter made, whether to capacity over 750,000 gallons per day average dry weather flow or to quality of treatment.

8. Quality Improvements. The parties acknowledge that the City is currently obligated to make improvements to the City sewage treatment plant which will result in improving

effluent or meet other requirements of State and Federal agencies, commissions and departments having jurisdiction thereover. The local share costs of such improvements to the District for 160,000 gallons per day average dry weather flow capacity is $111,333.00

The District agrees to pay $100,000 within 90 days of acceptance by both City and District of this second amendment to the agreement and the remaining $11,333 within 60 days of the time the City accepts a construction bid to increase average dry weather flow capacity beyond 640,000 gallons per day to replace all or a portion of the 110,000 gallons per day of the City's future capacity assigned to the District.

8A. Future Quality Improvements. The parties acknowledge that the City may be required to make improvements to the City sewage treatment plant in the future to meet more stringent effluent quality requirements by State and/or Federal agencies than are currently in effect. The costs of such improvements shall be apportioned between the parties in the ratio of their then respective dry weather flow treatment capacities in the plant.

9. City Control as to Improvements. The City shall have the right to employ engineers of their selection to design and provide improvements to the City sewage treatment plant, both as to capacity and quality, provided, however, that such engineers shall be experienced and recognized engineers as to such work. All such work shall be designed so as to produce an efficient and economical cost, both as to construction and as to maintenance and operation, and not constitute overdesign.

10. Plan Review by District. 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.

11. District Inspection. The Board of Directors of the District, through its engineering representatives, shall have the right at all reasonable business hours, to inspect the City sewage treatment plant, and also any improvements during their construction.

12. Capital Costs. The City shall establish and maintain accurate accounts of all capital costs as to its sewage treatment plant, separate and distinct from all other accounts of the City, in conformance with good municipal accounting practices. The Board of Directors of the District, through its representatives, shall have the right to examine and make copies of said accounts at all reasonable business hours.

13. Operation Costs. The City shall establish and maintain books of account of all costs of administration, maintenance, operation and repair of the City sewage treatment plant, separate and distinct from all other accounts of the City, and distinct from capital improvements thereto, in conformity with good municipal accounting practices. The Board of Directors of the District, through its representatives, shall have the right to examine and make copies of said accounts at all reasonable business hours.

14. Annual Report. The City shall annually cause to be made an audit of its accounts for the previous fiscal year which shall separately treat therein the accounts relating to the City sewage treatment plant. On or before October 1 of each year, the City shall deliver to the District's Manager a copy of the parts thereof relating to its sewage treatment plant.

15. Measuring Facilities. The City shall provide a measuring weir and metering recording facilities, on the District outfall line at the City boundary, from which the District flow may be ascertained and recorded. The City shall be responsible for maintaining the records. The City shall also provide similar facilities to keep records as to its gross flow. The District may inspect flow records at all reasonable business hours. Title to sewer facilities from the

new metering station to discharge on East Commercial Street; consisting of 14" sewer trunk lines and manholes and running from station approximately 1.00 to 24.53 as shown on Water and Sewer Construction map dated August 1, 1966 and approved by the County Engineer, be and they are hereby dedicated by the District to the City of Willits and the City of Willits hereby accepts said facilities as part of the City's sewerage system.

16. Apportioning Operating Costs. All costs of administration, maintenance, operation and repair of the City sewage treatment plant shall be apportioned annually by the City according to the ratio of flow of the District to the total flow entering the treatment plant. Annually, the City shall file with the District's Manager a copy of the part of its budget which concerns the plant, and a statement of the amount of the District's share of the estimated costs of administration, maintenance, operation and repair for the forthcoming fiscal year, in sufficient time for District to budget and provide for payment of same. For the purpose of estimating such costs, the flow ratio established for the preceeding fiscal year shall be used. In each subsequent fiscal year, the City shall recompute the charge from the actual flow records established by the flow records for said year and debit or credit the District with any underage or overage of the estimate cost.

17. Replacement Costs. All costs of replacing plant equipment, machinery or facilities resulting from breakage or obsolescence shall be apportioned in the ratio of average dry weather flow capacity allocated to City and District. All replacement costs thereof for ordinary use and wear shall also be apportioned in the ratio of average dry weather flow capacity. Replacement costs may be paid from the Wastewater Capital Recovery Funds. Said apportionment of costs between City and District shall be District's proportionate share of average dry weather flow capacity, less any governmental subventions.

18. Auxiliary Revenues. All revenues derived by the City from the sale of water or other by-products of the City sewage treatment plant shall be credited to costs of maintenance before proration thereof between the parties hereto.

19. Method of Raising Funds. Each party shall have reserved to it the right to determine and utilize the method by which it raises its share of any funds under this second amendment to the agreement. Funds raised from taxes shall be paid by the District to the City semiannually on or before January 2 and on or before July 1 of each year. District's proportionate share of charges for operation and maintenance shall be paid by District to the City monthly.

19A. Wastewater Capital Recovery Fund. The District agrees to establish and maintain a Wastewater Capital Recovery Fund (WCRF) for its proportionate share of plant capacity in accordance with regulations and guidelines of the California State Water Resources Control Board and the Environmental Protection Agency. For purposes of computing WCRF requirements, the District's WCRF requirement is one quarter of the sum of construction cost of the treatment plant improvements plus the value of the currently existing plant incorporated in the improved plant. The total cost is $2,071,156 plus $280,000 which is $2,351,156. One quarter of this sum is $587,783. Subject to approval of the California State Water Resources Control Board, the District agrees to deposit each year one sixteenth (1/16) of $58,778, which is ten percent of the District allocated cost. The District is entitled to make bond principal payments for treatment plant construction from the WCRF and also to disburse amounts from the WCRF for replacement or preservation of treatment plant facilities or for expansion and improvement of treatment works except pipelines smaller than 12 inches in diameter and appurtenances thereto. After the minimum balance is reached, the District agrees to maintain its WCRF balance at or greater than the ten percent minimum requirement of $58,778 over the 30 year life of the treatment plant, or after disbursements

agrees to restore the minimum WCRF balance to $58,778 at the rate of at least one sixteenth (1/16) of $58,778 per year less disbursements allowed by regulations of the State Water Resources Control Board and the Environmental Protection Agency. The District WCRF shall not apply to any additions which the City of Willits may have to make in order to insure 160,000 gallons per day average dry weather flow to the District.

19B. Industrial Cost Recovery. Under EPA regulations, a grantee must recover from industrial users an amount equal to the portion of the Federal grant allocable to industrial users. The District agrees to make payments to Willits to meet these requirements in the event that any industrial user connects to the District sewer system. The minimum Federal grant cost allocated to an industrial user connected to the District system shall be 75 percent of the District's proportionate share of $2,487,656 times the ratio which dry weather flow capacity allocated to the industrial plant bears to the District's proportionate share of 640,000 gallons per day total capacity. Engineers of the City of Willits may also compute and include in the allocated Federal grant cost additional industrial strength surcharges based on BOD, suspended solids or other waste characteristics in accordance with regulations and guidelines of the State Water Resources Control Board and the Environmental Protection Agency. One thirtieth (1/30) of the allocated Federal grant cost for each industry connected to the District sewer system shall be paid by the District to the City beginning with the year of that industrial connection and extending for a 30 year period or until the City's responsibility for industrial cost recovery payments to the Federal government ends, whichever period is less.

20. Abandonment by District. In the event that the District shall have abandoned its use of the City sewage treatment plant it shall forfeit its interest therein and the plant shall remain available for use by the City.

21. Replacement by City. The City may relocate its sewage treatment plant and abandon the use of its present plant by reason of orders of State or Federal agencies, commissions and departments having jurisdiction thereover, or by reason of predominating factors of economy or ecology. In such event the former plant and property shall be sold for its highest and best use and price and the moneys realized shall be apportioned between the parties and applied on account of the costs of the new plant according to their capacity interests. The District may elect to have a capacity in the new plant determined by it. In such event the moneys so realized shall be prorated as a credit per its former proportion of capacity, and the balance of costs shall be prorated in proportion to the ratio of capacity in the new plant.

22. City Regulations. The District shall abide by all rules and regulations of the City concerning the type and condition of the sewage permitted to be discharged to the sewers of the City and the District shall regulate and prohibit the residents of the District from depositing in said sewerage system any sewage or matter which, by the rules and regulations of the City, the people of said City are denied the right to deposit in its sewerage system.

23. Breach of Covenants. In case of a breach or alleged breach on the part of either party in the performance of any of its obligations hereunder, not less than thirty (30) days notice of said breach shall be given to it in writing by the other party, delivered to the office of Manager thereof, or mailed to said office registered mail, postage prepaid, and said party shall have thirty (30) days from the date of said delivery or registration of said mail to cure said breach. However, none of the rights or privileges granted to either party shall, in any event, be forfeited unless it shall be so decreed by a court of competent jurisdiction.

24. Delinquent Payments. In the event that the District shall fail 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. In the event the District shall fail to conform its operation within said thirty (30) days or to pay the City any amount provided herein within six (6) months from the due date thereof, the City, at its election, may file and prosecute to judgment a suit to recover, or in mandate, or in mandatory or prohibitory injunction, or other legal or equitable remedy. Recoverable costs shall include court costs and a reasonable attorney's fee to be fixed by the court in the event of suit.

25. Entity Obligation. Each party shall maintain and operate its sanitary sewerage facilities in full conformity with all State and local sanitary laws, rules and regulations, and in an efficient and economical manner. In the event of breach by either party, and following notice by the other to it in the manner provided in section 23, such innocent party may enforce conformance by court action.

26. Remedies. For the breach of any duty hereunder by either party, the other or its successor, or any taxpayer thereon for himself or in a representative capacity on behalf of all other taxpayers of either party, or any bondholder of any of the sewer bonds of either party for himself or in a representative capacity on behalf of all such bondholders, shall have the following remedies against the other:

(i) Accounting. By action in law or suit in equity, to require such party to account as a trustee of an express trust;

(ii) Injunction. By such action or suit, to enjoin any acts or things which may be unlawful or in violation of any provision hereof; and

(iii) Mandamus. By such action, suit or proceeding, to enforce the rights of such party hereunder, and to require and compel such party to perform and carry out its duties and obligations under the law and its convenants agreements herein.

27. Nature of Remedies. As to the remedies of either party aggrieved hereunder:

(i) Cumulative. No remedy conferred hereby or by the law is intended to be exclusive of any other remedy, but each such remedy is cumulative and in addition to every other remedy and may be exercised without exhausting and without

(ii) Waiver. No waiver of any default or breach of duty or contract shall extend to or shall affect any subsequent default or breach of duty or contract or shall impair any rights or remedies herein.

(iii) Delays. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence thereof.

(iv) Enforcement. Every substantive right and every remedy conferred may be enforced and exercised from time to time and as often as may be deemed expedient.

(v) Status Quo. In case any suit, action or proceeding to enforce any right or exercise any remedy shall be brought or taken and then discontinued or abandoned, or shall be determined adversely, then, and in every such case, said Entity shall be restored to its former position and rights and remedies as if no such suit, action or proceedings had been brought or taken.

28. Arbitration. In case any dispute, difference or controversy should arise between the parties hereto regarding the construction, meaning or effect of this agreement or any of its provisions, or the rights, privileges, duties or obligations of the parties hereto or either of them, the parties hereto may agree that such dispute, difference or controversy shall be arbitrated and decided by two arbitrators, one of whom shall be selected by the Council of the City, and the other by the Board of the District; provided, however, that if the two arbitrators are not able to agree, they shall appoint a third arbitrator.

(i) Arbitrators - Qualifications. The persons appointed shall be trained and qualified in the matter to be passed upon by them. If the matters principally involve engineering, the arbitrators shall be Registered Civil Engineers. If they involve accounting, the persons appointed shall be Certified Public Accountants. If the matters involve law they shall be passed upon by duly Licensed Attorneys. Where problems in controversy are complex in nature, to the extent practicable they shall be divided and the separate matters assigned to persons qualified.

(ii) Id. - Appointment, Vacancies. The arbitrators appointed shall be notified in writing as well as the parties hereto, by the appointing party. If an arbitrator shall refuse to act or shall resign, another shall be appointed in his place by the party making the original appointment. If there is a failure or refusal to appoint an arbitrator for thirty (30) days after written demand, a party or arbitrator may apply to the Superior Court for Mendocino County and said Court shall designate and appoint such arbitrator or arbitrators.

(iii) Hearings. All arbitrators appointed shall sit at any hearing. The arbitrators may require any person to attend before them as a witness and in a proper case to bring with him any book or written instrument. The fees for such attendance shall be the same as the fees for witnesses in other actions at law. The arbitrator shall have power to approve the taking of depositions, to appoint a time and place for hearing, to adjourn from time to time, to administer oaths to witnesses, to hear the allegations and evidence of the parties and to make an award thereon.

(iv) Subpoenas. Subpoenas shall issue in the name of the arbitrators or a majority of them, and shall be signed by the arbitrators or a majority thereof and shall be directed to said person and shall be served in the same manner as subpoenas to testify before a court of record in this State. If any person or persons so summoned to testify shall refuse or neglect to obey said subpoenas, upon petitions, said Superior Court may compel the attendance of such person or persons before said arbitrators, or punish said person or persons for contempt in the same manner now provided for the attendance of witnesses or the punishment of them in the courts of this State.

(v) Depositions. Upon petition approved by the arbitrators or a majority of them, said Superior Court may direct the taking of depositions to be used as evidence before the arbitrators, in the same manner and for the same reasons as provided by law for the taking of depositions in suits or proceedings pending in said Superior Court.

(vi) Award. The award shall be in writing, signed by at least two arbitrators, and acknowledged or approved in like manner as a deed for the conveyance of real property, and delivered to the Manager of each of the parties.

(vii) Id. - Vacation. On application by either party, said Superior Court may make an order vacating the award for fraud, misconduct, acts in excess of power, or other grounds provided by law. A rehearing may be directed.

(viii) Modification. On application of either party, said Superior Court may make an order modifying or correcting the award, because there was an evident mistake, the award was for a material matter not submitted, is in imperfect form, or other grounds provided by law.

(ix) Order Confirming Award. At any time within three months after the award is made, unless the parties shall extend that time in writing, and if said award shall not be accepted in writing by the other party, the other party may apply to the Superior Court for an order confirming the award. Said Court shall grant said order unless the award is vacated, modified or corrected as herein provided by law.

(x) Id. - Form. Upon the granting of an order confirming, modifying or correcting an award, judgment may be entered in conformity therewith in said Court. The party applying for the order shall attach to such application copies of this agreement; the selection or appointment of the arbitrators and the umpire, if any; each written extension of time, if any, within which to make the award; and the award. The judgment when rendered by the Court shall be docketed as if it were rendered in an actio

(xi) Id. - Effect. The judgment so entered shall have the same force and effect, in all respects, as, and be subject to all of the provisions of law relating to, a judgment in an action; and it may be enforced, as if it had been rendered in an action in the Court in which it is entered.

(xii) Appeal. An appeal may be taken from an order confirming, modifying, correcting, or vacating an award, or from a judgment entered upon an award, as from an order or judgment in an action.

(xiii) Law Applicable. Title IX (commencing with Sec. 1280) of Part III of the Code of Civil Procedure, as now or hereafter provided, shall apply.

29. Incorporation. In case the District should become incorporated, or shall merge or consolidate or reorganize or annex into any other public or municipal corporation, then such corporation shall succeed to all the rights, privileges, duties and obligations devolving upon the District under the terms of this agreement, so far as the same may be done under law; provided, nothing herein contained shall be deemed to absolve the District from continuing payment of its share of the cost of maintaining and operating and other costs of the City hereunder, so long as the City sewer facilities shall be used by the District; provided, further, that in the event of such change in character, as aforementioned, nothing herein will be deemed to prevent the parties hereto from entering into a supplementary agreement.

30. Duplicate Agreement. This agreement shall be executed in duplicate.

31. Effective Date. The provisions of this agreement relating to the costs of administration, maintenance, operation, repair and replacements shall become effective upon recordation of Notice of Completion of said improvements by City and the installation of the measuring devices by City, and shall become effective in all other regards except as otherwise herein provided, as of its date.

32. Agreement Indeterminate. The term of this agreement shall be indeterminate. In the event the parties shall mutually agree on a termination of this agreement, their interests shall be compensated from liquidation or sale of the plant and property to the extent of

funds realized.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their respective officers, by resolution of the City Council of the City and the Board of Directors of the District, the day and year above written.

CITY OF WILLITS

By _____
Mayor

ATTESTED:

_____
City Clerk

APPROVED AS TO FORM:

MERLE P. ORCHARD
Suite 200 Mendo-Lake Building
Ukiah, California 95482

_____
Merle P. Orchard
City Attorney

BROOKTRAILS RESORT IMPROVEMENT DISTRICT

By _____
President

ATTESTED:

_____
Secretary

APPROVED AS TO FORM:

WILSON, JONES, MORTON & LYNCH
630 North San Mateo Drive
San Mateo, California 94401

_____
Joan E. Briody
Attorney for District

WJML:JLB:nd:11/14/75:12c

RESOLUTION NO. 145

A RESOLUTION APPROVING AND AUTHORIZING EXECUTION OF SECOND AMENDMENT TO AGREEMENT

BROOKTRAILS RESORT IMPROVEMENT DISTRICT

RESOLVED, by the Board of Directors of the Brooktrails Resort Improvement District, Mendocino County, California, that the Second Amendment to the Agreement between this District and the City of Willits, Mendocino County, California, for sewage disposal by said City for this District, a copy of which is attached to this Resolution, be entered into by the District, and the President is hereby directed to execute said Second Amendment and the Secretary to countersign same and affix thereto the corporate seal of this District

* * * * * * *

I hereby certify that the foregoing is a full, true and correct copy of a resolution duly passed and adopted at a regularly held meeting of the Board of Directors of the Brooktrails Resort Improvement District on the 18th day of November, 1975, by the following vote:

AYES, and in favor thereof, Directors: Mills, Ecke, Warner, Costa

NOES, Directors:

ABSENT, Directors: Geoghegan

Lorraine B. Laval
Secretary

(SEAL)

Signed Copy

THIRD AMENDMENT
TO
AGREEMENT BY CITY OF WILLITS FOR DISPOSAL
OF SEWAGE FROM BROOKTRAILS RESORT
IMPROVEMENT DISTRICT

This agreement, made on September 8, 1982, is between the City of Willits, a California general law city ("City") and Brooktrails Community Services District, successor in interest to Brooktrails Resort Improvement District ("District").

WHEREAS, the parties make this agreement with reference to the following facts and understandings:

A. On September 11, 1967, City and District entered into a written agreement entitled, Agreement by City of Willits for Disposal of Sewage from Brooktrails Resort Improvement District ("Original Agreement").

B. City and District now have amended the Original Agreement on two separate occasions, by written agreements entered into on April 17, 1970 ("First Amendment") and on November 21, 1975 ("Second Amendment"). By the terms of the Second Amendment, the First Amendment was repealed and rescinded and no longer has any force or effect. The Second Amendment also made substantial revisions to the Original Agreement, and these revisions remain in effect and continue to bind City and District.

C. After City and District entered into the Second Amendment, a new wastewater treatment plant was constructed and now serves both entities. This plant presently is

approaching its design capacity, and the parties to this agreement find it in their mutual interest to provide for certain limited improvements to the plant which are designed to increase its capacity and improve its reliability of operation.

D. City's engineering consultant, Barrett, Harris & Associates ("consultant") has prepared an engineering predesign report entitled, Wastewater Treatment Plant Expansion for the City of Willits (July, 1981), and therein has recommended certain interim improvements which will increase plant capacity.

E. City is in the process of putting out to competitive bid a project designed to carry out the consultant's recommendations for interim plant improvements. These are referred to in this agreement as the "Phase I Improvements" or as "the project", and generally consist of aeration basin dike extensions and related work, an aluminum box extension to the distribution structure, and the addition of a plug valve to the existing waste activated sludge piping. Reference is made to the Phase I Contract Documents, including specifications and drawings, for full particulars as to the scope of the work.

F. City and District wish to share in the cost of the Phase I Improvements and apportion between them the incremental plant capacity resulting from these improvements.

NOW THEREFORE, City and District agree as follows:

1. Effect of Agreement. Except as modified by the express terms of this agreement, the Original Agreement (as

amended by the Second Amendment of November 21, 1975) shall remain in full force and effect.

2. Apportionment of Costs. The parties shall share equally the full cost of all Phase I Improvements. To that end, District shall pay to City $43,244.50 plus an amount equal to Fifty Percent (50%) of any Change Orders as mutually agreed upon by City and District for Phase I Improvements, including but not limited to all costs of engineering, designing and constructing that project.

3. Time and Manner of Payments. The parties understand that City has or will enter into one or more contracts with others for the purpose of engineering, constructing and completing the Phase I Improvements, and that it will become obligated to make payments under such contracts from time to time. When City is required to make any installment or payment of any kind in connection with the Phase I Improvements, it shall invoice District for District's Fifty Percent (50%) share thereof, and District shall pay City the invoiced amount within thirty (30) days after receipt of each invoice.

4. Delinquent Payments. Notwithstanding Section 24 of the Second Amendment dated November 21, 1975, if District shall fail to make any payment required of it under this agreement within thirty (30) days from the due date thereof, interest at the rate of twelve percent (12%) per annum shall accrue thereon from the due date until paid.

5. Additional Capacity. The parties anticipate that completion of the Phase I Improvements will result in an

increase in the capacity of the existing wastewater treatment plant. City and District each shall be entitled to, and shall have the exclusive right to use, Fifty Percent (50%) of the incremental capacity of the plant resulting from completion of the Phase I Improvements. As used herein, "incremental capacity" means that portion of the plant's total capacity, upon completion of the Phase I Improvements, which is in excess of the plant's present capacity measured as of the effective date of this agreement.

5. No Warranties. City has made no representations or warranties regarding the amount of additional plant capacity that may result from completion of the Phase I Improvements. However, City shall certify to District in writing after Phase I improvements are complete the total amount of incremental capacity available and that portion of incremental capacity to which the District shall be entitled.

6. Effective date. This agreement shall take effect when it has been duly executed by authorized representatives of both City and District.

IN WITNESS WHEREOF, the undersigned, being officers of City and District duly authorized to execute this agreement, subscribe their names on the date(s) shown below.

CITY OF WILLITS

By: _____
Mayor

BROOKTRAILS COMMUNITY SERVICES DISTRICT

By: _____
President, Brd. of Directors

B.C.S.D. REVISION NO. 1
08/31/82

ATTEST:

Frances Williams
City Clerk

ATTEST:

William G. Kennedy
Secretary to the Brd. of Directors

B.C.S.D. REVISION NO. 1
08/31/82

FOURTH AMENDMENT TO AGREEMENT BY CITY OF WILLITS FOR DISPOSAL OF SEWAGE FROM BROOKTRAILS TOWNSHIP COMMUNITY SERVICES DISTRICT

This Agreement is made this 24th day of July, 2007, by and between the CITY OF WILLITS, a California general law city (the "City"); and Brooktrails Township Community Services District, successor in interest both to Brooktrails Community Services District and Brooktrails Resort Improvement District (the "District").

WHEREAS, the parties make this agreement with reference to the following facts and understandings:

RECITALS

A. On September 11, 1967, City and District entered into a written agreement entitled Agreement by City of Willits for Disposal of Sewage from Brooktrails Resort Improvement District (the "Original Agreement").

B. City and District have now amended the Original Agreement on three separate occasions, by written agreements entered into on April 17, 1970 ("First Amendment"); November 21, 1975 ("Second Amendment"), and September 8, 1982 ("Third Amendment"). By the terms of the Second Amendment, the First Amendment was repealed and rescinded and no longer has any force or effect. The Second Amendment also made substantial revisions to the Original Agreement, and those revisions remain in effect and continue to bind the City and District, except to the extent modified by the Third Agreement.

C. After City and District entered into the Second Amendment, a new wastewater treatment plant was constructed which now serves the City and District. The plant has design flows of 1.3 million gallons per day ("mgd") average dry weather and 3.0 mgd peak flows for the plant results in discharge in violation of the Water Quality Control Plan for the North Coast Basin as adopted by the North Coast Regional Water Quality Control Board ("NCRWQCB") under Order No. R1-2001-71. Consequently, NCRWQCB has subsequently issued Cease and Desist Order No. R1-2001-77 requiring City to cease and desist from discharge and threatening to discharge in violation of WDR Order No. R1-2001-71. The NCRWQCB has subsequently issued additional Cease and Desist orders to City, including its Order No. R1-2006-0108 dated November 29, 2006 amending and supplementing Cease and Desist Order No. R1-2004-0095. Order No. R1-2006-0108, among other things, implements a revised schedule which requires City's completion of designated tasks commencing in January 2007 and concluding on October 1, 2009 concerning City's design and construction of an approved sewer treatment project. A copy of Order No. R1-2006-0108 is attached hereto.

D. In response to the Cease and Desist Order, City has prepared an engineering design report entitled "Preliminary Engineering Report, Wastewater Facilities Upgrade, May 2004" ("PER") and therein has recommended two alternatives to bring the wastewater treatment facility substantially into compliance with the discharge requirements enforced by NCRWQCB. The preferred alternative identified in the PER, adopted by City after extensive environmental review, cannot be permitted by NCRWQCB because of policy conflicts. City is now compelled to construct an alternative which is comprised of three stages:

Stage One: headworks, pretreatment, influent pumping and new electrical system, etc.; Stage Two: new aeration treatment systems, ultraviolet disinfection and control building renovation, etc.; Stage Three: storage lagoon/enhancement wetland, outfall structure and off site mitigation. The estimate of probable cost to construct the three stages is $17,255,538.00 as calculated in March, 2007.

E. City has obtained a commitment from Rural Utilities Services, U.S. Department of Agriculture (the "USDA"), for a grant in the sum of One Million Dollars ($1,000,000.00) and a loan amount of Ten Million, Two Hundred Eighty-Five Thousand Dollars ($10,285,000.00) payable over forty (40) years to construct the new plant (the "USDA loan").

F. City and District wish to share in the cost of the new plant and apportion between them the loan payment responsibility and incremental plant capacity resulting from these improvements. This amendment is intended to address the limited issues of apportionment and payment of costs between the District and the City with respect to the USDA loan described herein. The parties acknowledge that the anticipated total cost of the new plant, as described within Recital D, substantially exceeds the subject loan amount. In accordance with the terms of the Original Agreement and amendments thereto, the parties acknowledge that 37.69% of the total cost of the new plant shall be apportioned to the District and 62.31% shall be apportioned to the City, notwithstanding the fact that this amendment only addresses payment of the subject USDA loan amount.

NOW, THEREFORE, City and District agree as follows:

1. **Effective Agreement.** Except as modified by the express terms of this Agreement, the Original Agreement, as amended by the Second Amendment and the Third Amendment, shall remain in full force and effect.

2. **Apportionment of Costs.** The District shall pay 37.69% of the USDA Loan, being the sum of Three Million, Eight Hundred Seventy-Six Thousand, Four Hundred Sixteen and 50/100ths Dollars ($3,876,461.50) as such loan costs are incurred by the City.

3. **Time and Manner of Payments.** The District's contribution toward the repayment obligation to the USDA shall be paid semi-annually in equal installments on the first day of July and the first day of January each year, commencing on January 1, 2008. The District will have in effect at all times that the loan obligation to the USDA is outstanding an ordinance of the District establishing fees, tolls, rates and other charges for and rules and regulations relating to sewer service, which shall raise gross income and revenues earned thereon (except all refundable deposits made to establish credit), which shall hereinafter be referred to as "Revenues," that, beyond all reasonable doubt, yield a sufficient amount equal to the amounts necessary to make the semi-annual payments required of the District herein.

4. **Separate Sewer Revenue Account.** The Treasurer of the District shall establish a Revenue Fund as a separate fund, into which the Treasurer shall deposit all Revenues as they are collected and received by the District (the "Fund").

5. **Right to Audit.** The City shall have the right to audit, at its expense, District's books, records and accounts to insure that the District is raising sufficient funds and segregating such funds for payment to the City sufficient to pay the District's cost share of the USDA Loan repayment.

6. **Security Interest.** The District shall grant a security interest in the Fund to the City.

7. **Default.** In the event the District is delinquent in any payment to the City as required hereunder, District shall pay a late charge of five percent (5%) of the amount of the delinquent payment.

8. **No Warranties.** City has made no representations or warranties regarding the amount of additional plant capacity that may result from the completion of the improvements contemplated hereunder. However, City shall certify to District in writing within thirty (30) days after improvements are complete the total amount of incremental capacity available and the portion of incremental capacity to which the District shall be entitled, consistent with the District's financial contribution hereunder.

CITY OF WILLITS

By: _____
Ross Walker, City Manager

Attest:

_____
Marilyn Harden
City Clerk

Approved as to form:

_____
H. James Lance
General Counsel

BROOKTRAILS TOWNSHIP
COMMUNITY SERVICES DISTRICT

By: _____
George Skezas, President

Attest:

_____
Michael Chapman
Secretary of the Board of Directors

Approved as to form:

_____
Christopher J. Neary
General Counsel

Proof of Service
(CCP Sections 1013, 1013a)

I, the undersigned, declare:

I am a resident of the State of California, over the age of 18 years, and not a party to this action. My business address is: 3000 Robinson Creek Road, Ukiah, California, 95482.

On the date set forth below, I served the following document(s) described as:

CITY OF WILLITS' CROSS-COMPLAINT FOR BREACH OF CONTRACT AND FOR MONEY HAD AND RECEIVED

on all interested parties to this action set forth below:

X BY MAIL: By placing a true copy thereof in a sealed envelope addressed as below, and placing it for collection and deposit in the United States mail. I am familiar with my employer's practice for the collection and processing of correspondence for mailing with the United States Postal Service. I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States mail at Ukiah, California, on that same day. I am aware that on motion of party served, service is presumed invalid if postage cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

___ BY FAX: I caused the above-referenced document to be transmitted via facsimile directed to the telephone number(s) of the receiving facsimile(s) as set forth below the name/address of the parties set forth hereinbelow. Pursuant to Rule 2005(1), a transmission report was properly issued by the sending facsimile machine and the transmission was reported as complete and without error. The facsimile machine I used complies with Rule 2003(3).

CHRISTOPHER J. NEARY, ESQ. **Attorney for Plaintiff**
110 S. MAIN STREET, SUITE C
WILLITS, CA 95490

Facsimile: (707) 459-3018

I declare under penalty of perjury, under the laws of the state of California, that the foregoing is true and correct.

Executed on January 10, 2011, at Ukiah, California.

Donna Stoner
DONNA STONER