

**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 By the terms of the Second Amendment, the First Amendment was repealed and rescinded and no longer has any force or effect.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

BROOKTRAILS TOWNSHIP
COMMUNITY SERVICES DISTRICT

By: Ross Walker
Ross Walker, City Manager

By: George Skezas
George Skezas, President

Attest:

Attest:

Marilyn Harden
Marilyn Harden
City Clerk

Michael Chapman
Michael Chapman
Secretary of the Board of Directors

Approved as to form:

Approved as to form:

H. James Lance
H. James Lance
General Counsel

Christopher J. Neary
Christopher J. Neary
General Counsel