



BROOKTRAILS TOWNSHIP

COMMUNITY SERVICE DISTRICT
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August 26, 2005

Ross Walker — City Manager
City of Willits
111 E. Commercial St.
Willits, CA 95490

Re: Fourth Amendment – Sewer Operational Percentage 23.62%

Dear Ross,

The Board of Directors asked District Counsel, Chris Neary, to prepare the enclosed draft Fourth Amendment establishing the sewer operation percentage of 23.62% (enclosed).

As you know, after an engineer's assessment was completed last year by George Rau and Jeff Anderson, our FY 2003-04 operational percentage was agreed to be 23.62%. This spring we had further discussions regarding using this figure until the new plant is built.

As I understand it, the current timeline for the plant development is possibly 2007. However, with an environmental project this large, some Directors expressed concern over time delays beyond 2007. Therefore, this agreement includes a sunset provision of July 1, 2007 to reassess the construction scenario at that time. Also, the draft agreement contemplates payment adjustment provisions (overpayment / underpayment) between parties, once a more accurate percentage can be established.

Please let me know your thoughts, and call me if you have any questions.

Yours truly,

Mike Chapman
General Manager

ENCL: Fourth Amendment

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

This Agreement, is made this _____ day of _____, 2005, 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 to BROOKTRAILS RESORT IMPROVEMENT DISTRICT (the "District").

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

R E C I T A L S

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 By the terms of the Second Amendment, the First Amendment was repealed and rescinded and no longer has any force or effect.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

C. The City has notified the District that the Sewer Plant Effluent Meter is not accurately functioning to measure District Flow or Gross Flow within the meaning of Section 15 of the Second Amendment and the City is desirous to avoid the cost of immediate replacement of the Sewer Plant Effluent Meter. The City instead proposes to utilize a reference average of 23.62% for the District's apportioned operating costs upon a temporary basis.

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. **Temporary Allocation.** For the period commencing July 1, 2004 and terminating upon the earlier of either the installation of a compliant Sewer Plant Effluent Meter, or July 1, 2007, the District's apportionment of operating costs shall be established on a temporary basis at 23.62%.

3. **Certified Percentage.** Upon the annual anniversary of the installation of a compliant, accurate Sewer Plant Effluent Meter, the actual percentage of the District's share of the gross flow over the period of the preceding twelve (12) months shall be determined and certified by the City to the District (the "Certified Percentage"). The City shall make the certification within ten (10) days of such anniversary.

4. **Calculation.** The District's share of operating costs for each of the fiscal years commencing with FY 2004-05 preceding the certification shall be calculated and adjusted with reference to the amount of the Certified Percentage and the amount of the overpayment or underpayment, as the case may be, as quantified and certified by the City to the District.

5. **Adjustment.** The product of the recalculated share shall be paid by the District to the City if underpaid, or credited to the District by the City if it was overpaid, in thirty-six equal monthly installments commencing the month following the certification.

CITY OF WILLITS

BROOKTRAILS TOWNSHIP COMMUNITY SERVICES DISTRICT

By: _____
TAMMI JORGENSEN, Mayor

By: _____
CHARLES A. ORTH, President
Board of Directors

Attest:

Attest:

FRAN SCHATZ
City Clerk

MICHAEL CHAPMAN
Secretary to the Board of Directors

Approved as to form:

Approved as to form:

City Attorney

District General Counsel