SETTLEMENT AGREEMENT RELATING TO LITIGATION CONCERNING AN AGREEMENT BY AND BETWEEN THE CITY OF WILLITS AND THE BROOKTRAILS TOWNSHIP COMMUNITY SERVICES DISTRICT FOR DISPOSAL OF WASTEWATER FROM BROOKTRAILS INTO THE CITY'S WASTEWATER TREATMENT AND DISPOSAL FACILITIES

UPON EXECUTION OF THIS SETTLEMENT AGREEMENT the City of Willits and the Brooktrails Township Community Services District agree as follows:

Section 1. The Agreement. This agreement is a settlement agreement relating to litigation controversies relating to the 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"), hereinafter, "the Agreement." The terms of this settlement agreement shall govern to the extent that they are either supplementary or inconsistent to either the Agreement, or the recitation of the settlement to the court on March 25, 2015.

Section 2. Purpose. The purpose of this amendment is to implement the terms of settlement of a lawsuit entitled *Brooktrails Township Community Services District vs. the City of Willits*, Mendocino County Superior Court, Case No. SCUKCVG-10-56037 which was transferred to Sonoma County Superior Court, Case No. SCV-253175, which terms of settlement were recited on the record on March 25, 2015, before Judge Elliot Daum, Department 16, Sonoma County Superior Court.

Section 3. Flow Measurement. Section 15 of the November 14, 1975 Second Amendment is hereby amended as follows:

15. Measuring Facilities.

(A) The City shall provide and maintain flow measuring and recording facilities to measure the flow of sewage entering the City's sewage collection system from the District and the total flow entering the sewage treatment plant.

(B). The City agrees to install new metering facilities to accurately measure the flow entering the sewage treatment plant no later than December 31, 2015. Said new metering facilities shall be installed in compliance with any applicable North Coast Regional Water Quality Control Board regulations and shall provide for Brooktrails to receive SCADA data in real time indicating the volume of flow entering the sewage treatment plant.

Section 4. Determination of Annual Operating Costs to Allocate to the District. Effective July 1, 2015, Section 16 of the November 14, 1975 Second Amendment is hereby amended as follows:

16. Apportioning Operating Costs.

(A) On or before the last day of each month, the District shall pay to the City Twenty-Two Thousand Dollars ($22,000) per month as the District's share of the cost of sewage treatment plant operations during the period beginning July 1, 2015, and ending June 30, 2019, with no adjustments for increases or decreases in said costs.

(B) Prior to July 1, 2018, the City and the District shall jointly enter into an engagement agreement with a Certified Public Accountant (Auditor) to perform and complete prior to December 31, 2018 a contract compliance audit of the City's accounting and flow records for the three fiscal years of 2015-16, 2016-17, and 2017-18 consistent with the contract compliance auditing standards of the AICPA, and shall share equally in the costs thereof. Prior to July 1, 2019, the City and the District agree through good faith negotiations to modify the terms of paragraph (A) above based upon the information provided in the contract compliance audit reports prepared pursuant to this paragraph and upon available flow data information including data from the new influent meter to be installed by the City.

(C) The parties hereto hereby release each other for any past claims for overpayment or underpayment of sewage treatment plant operations or capital replacement costs which may have occurred prior to July 1, 2015.

Section 5. Loan Obligations.

(A) Notwithstanding Sections 2 and 3 of the July 24, 2007 Fourth Amendment, the District's obligations for reimbursing the City for USDA loan payments are as set forth in paragraph (B) of this Section.

(B) To finance Stages 1, 2 and 3 of recent improvements to the wastewater treatment and disposal facilities, the City received from the Rural Utilities Service, U.S. Department of Agriculture (USDA) two loans in 2007 and one loan in 2011 together totaling Eighteen Million Five Hundred Eighty Five Thousand Dollars ($18,585,000.00). The District hereby agrees:

(a) to pay in full on or before May 25, 2015, the sum of Two Hundred Thirteen Thousand Five Hundred Dollars ($213,500.00) as the District's share for all past payments made by the City on the 2011 loan; and

(b) on the first day of July of each year, commencing July 1, 2015, and the first day of January of each year, commencing January 1, 2016, to reimburse the City for thirty-six percent (36%) of semi-annual payments paid by the City after the effective date of this Amendment on all three loans. This reimbursement shall be based upon a notice from the City to the District Manager that a payment has been made indicating the date and amount of said payment.

Section 6. Capacity.

(A) Section 1 of the September 11, 1967 Agreement for Disposal of Sewage, Sections 4, 5, and 8 of the November 14, 1975 Second Amendment, and the September 8, 1982 Third Amendment are hereby repealed and replaced by paragraph (B) of this Section.

(B) The District shall have the exclusive right to dispose of up to 0.49 million gallons per day average daily dry weather flow of sanitary sewage into the sewage treatment plant.

Section 7. Capital Costs.

(A) Section 8A of the November 14, 1975 Second Amendment is hereby amended as follows:

> **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. Thirty-six percent (36%) of the costs paid by the City for such improvements, less any grants therefore, shall be apportioned to the District.

(B) Section 17 of the November 14, 1975 Second Amendment is hereby amended as follows:

> **17. Replacement Costs.** Thirty-six percent (36%) of the costs paid by the City for replacing plant equipment, machinery or facilities because of breakage, ordinary use and wear, or obsolescence, less any grants or revenues therefore, shall be apportioned to the District.

Section 8. Land. The District hereby releases any right, title, and interest, legal or equitable, in certain parcels of real property currently utilized for the sewage treatment plant or for which the District has participated in the capital cost of acquisition, said parcels including Assessor's Parcel Numbers 108-040-14, 108-040-03, 108-030-06, 108-020-05, and 070-020-02. If, in the future, the City determines to purchase additional real property to be utilized for the plant, the District may choose to not share in the cost of such purchase. If requested by the City prior to the proposed land purchase to participate in such purchase, the District will negotiate with the City in good faith regarding the possible terms of the District's participation in such proposed purchase.

Section 9. Arbitration. The first paragraph of Section 28 of the November 14, 1975 Second Amendment is hereby amended as follows:

> **28. Arbitration.** In Case any dispute, difference or controversy should arise between the parties herein 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, 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, and the decision shall then be made by a majority of the three. However, the parties by mutual agreement may proceed with a single arbitrator to save complexity.

Section 10. Joint Powers Agency Feasibility Committee. The Parties shall establish a committee of two members of the respective governing bodies to investigate the feasibility of a joint powers agency to own and operate the wastewater treatment plant with the goal of having the decision of whether or not to form such an agency made by June 30, 2019. The Parties agree to share equally in the costs of the investigation.

Section 11. Dismissal of Litigation.

(A) In consideration of this Agreement and the promises set forth herein, within ten (10) days after this Agreement is fully executed, the parties will take all actions necessary to dismiss, with prejudice, a lawsuit entitled *Brooktrails Township Community Services District vs. the City of Willits*, Mendocino County Superior Court, Case No. SCUKCVG-10-56037, which was transferred to Sonoma County Superior Court, Case No. SCV-253175, including all cross-complaints, pleadings and amended pleadings and causes of action raised by the Parties throughout the pendency of the Action.

(B) In consideration of this Agreement and the promises set forth herein, within ten (10) days after this Agreement is fully executed, the parties will take all actions necessary to dismiss, with prejudice, a lawsuit entitled *Brooktrails Township Community Services District vs. the City of Willits*, Mendocino County Superior Court, Case No. SCUKCVG-14-64859, including all cross-complaints, pleadings and amended pleadings and causes of action raised by the Parties throughout the pendency of the Action.

Section 12. Attorney's Fees and Costs. Each Party shall bear its own attorney's fees and other costs (including costs of expert witnesses or other consultants) and attorney's fees and costs incurred in the preparation for filing, prosecution of and defense of the litigation described in Section 11 above and in the preparation, negotiation, and drafting of this Agreement.

Section 13. General Release.

(A) Mutual Release. In further consideration of this Agreement and in recognition of the benefits to be derived therefrom, the Parties hereby release, and fully and finally and forever discharge each other of and from any and all manner of actions or causes of action, in law or in equity, suits, debts, liens, liabilities, claims, demands, and damages of any nature whatsoever, known or unknown, fixed or contingent (hereinafter called "Claims"), existing or coming into existence as the law may change, based on events which occurred up until the execution of this Agreement, including, but not limited to, Claims which either Party may now have against each other, as alleged in or arising out of, or which could have been raised in, based upon, or related to the litigation specifically described in Section 11.

(B) Waiver of Civil Code Section 1542. Except for the affirmative obligations set forth in this Agreement, it is the intention of the Parties that the release entered into as part of this Agreement shall be effective as a bar to any and all past, present or future actions, causes of action, liens, rights, obligations, costs, interest, expenses, attorney's fees, damages, losses, claims, liabilities, demands and compensation of any character, nature and kind, known or unknown, disclosed or undisclosed, whether or not anticipated, or in any way related to the litigation specifically described in Section 11, to be so barred; in furtherance of which intention the Parties expressly waive any and all right and benefit conferred upon the Parties by the provisions of Section 1542 of the California Civil Code, which reads as follows:

> **"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."**

(C) Extent of Waivers and Releases. The mutual waivers and releases set forth in this Section above, relate solely to the events and conduct which were, or could have been, set forth in the litigation specifically described in Section 11, and to events and conduct occurring up to the date of the execution of the Agreement, and shall not apply to the rights, duties and obligations set forth in the Agreement and to ongoing rights, duties and obligations which exist between the parties, including but not limited to those arising out of the Agreement.

Section 14. Time. Time is declared to be of the essence for this Agreement.

Section 15. Effective Date. This Agreement becomes effective on the date that it is fully signed by each of the below-named representatives who are authorized to sign by the governing bodies of both parties.

Section 16. Duplicate Agreement. This agreement shall be executed in duplicate.

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.

CITY OF WILLITS

BY: _____
Bruce Burton, Mayor

ATTEST:

BY: _____
Adrienne Moore
City Manager/City Clerk

APPROVED AS TO FORM:

BY: _____
H. James Lance, City Attorney

BROOKTRAILSTOWNSHIP
COMMUNITY SERVICES DISTRICT

BY: _____
Roy R. Williams, Board President

ATTEST:

BY: _____
Denise Rose, Board Secretary

APPROVED AS TO FORM:

BY: _____
Christopher J. Neary, District Counsel