

**A COMPILATION OF THE AGREEMENT
AS OF 1982 BETWEEN THE CITY OF WILLITS AND
BROOKTRAILS TOWNSHIP COMMUNITY SERVICES DISTRICT
FOR THE DISPOSAL OF BROOKTRAILS SEWAGE**

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A COMPILATION OF THE 1975 SECOND AMENDMENT WITH THE SURVIVING SECTIONS OF 1967 AGREEMENT AND SURVIVING SECTIONS OF THE 1982 THIRD AMENDMENT, ALL OF WHICH TOGETHER CONSTITUTE THE AGREEMENT WITH THE CITY OF WILLITS FOR DISPOSAL OF SEWAGE FROM BROOKTRAILS TOWNSHIP COMMUNITY SERVICES DISTRICT

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

I. Deletion of Portions of 1967 Agreement and All of First Amendment

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

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 The [First] Amendment be, and is hereby, repealed as of the effective date of this second amendment.

II. City's Ownership of Plant and Effect of District Abandonment of Use

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.

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.

III. City Control of Improvements and District Pre-Approval Requirement

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.

IV. District's Capacity and Future Capacity Improvements

(1967 Agreement) 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.

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. [Paragraph (f) of the recitals of the Second Amendment provides as follows: "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."]

(1982 Third Amendment) 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.

[*Summary Explanation Note*: The Third Amendment project resulted in a total average dry weather flow capacity of 1,300,000 gpd. That was an increase from the 640,000 gpd Second Amendment total capacity by 660,000 gpd. Therefore per the Third Amendment the District's 50% share of the 660,000 gpd increase was 330,000 gpd which, when added to the 160,000 gpd Second Amendment District capacity, resulted in a total District capacity of 490,000 gpd average dry weather flow.]

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 thereto, shall 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 increases 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.

V. Plant Improvements Due to Effluent Quality Requirements

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 the quality of its 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 \$111,222.00.

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.

VI. Plant Replacement Because of Other Regulatory Orders or Other Reasons

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 to the 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.

VII. Metering of Flow

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.

VIII. City Financial Records

(1967 Agreement) 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.

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.

IX. Apportionment and Payment of Costs

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 for 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. [Paragraph (f) of the recitals of the Second Amendment provides as follows: "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."]

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 taxpayers 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.

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 [from 1975] or until the City's responsibility for industrial post recovery payments to the Federal government ends, whichever period is less.

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 th 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, on 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.

(1967 Agreement) 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.

X. Additional District Rights and Obligations

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.

(1967 Agreement) 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.

(1967 Agreement) 6. Construction Standards. All facilities to be constructed by District shall be of the area, 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.

(1967 Agreement) 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.

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) Multiplier). 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, hereinafter made, whether to capacity over 750,000 gallons per day average dry weather flow or to quality of treatment.

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 water which, by the rules and regulations of the City, the people of said City are denied the right to deposit in its sewerage system.

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.

(1967 Agreement) 9. District Records. District shall establish and maintain to good accounting standards, books and records of the number and type or connections to said system at each payment period, which shall be open to inspection by City at all reasonable hours.

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 approved 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 costs. 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 for treatment plant facilities replacement or expansion, the District agrees to restore the minimum WCRF balance to \$56,778 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.

XI. Breach and Remedies

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.

25. Entity Obligation. Each party shall maintain and operate its sanitary sewerage facilities in full conformity with all State and local sanitary laws, rule 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 part 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 provisions hereof;

(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 und the law and its covenants 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 regard to any other remedy conferred hereby or by the law.

(ii) Waiver. No waiver of any default or breach or 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 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, 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 the 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. - Appointments, 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 actions

at law. The Arbitrator shall have power to order 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 petition, 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) 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 ground 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 action.

(xi) 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 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.

XII. General Provisions

(1967 Agreement) 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.

(1967 Agreement) 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.

(1967 Agreement) 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.

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 improvement 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.

(1967 Agreement) 17. Indeterminate Term. The term of this agreement shall be continuing and indeterminate and is tended to provide the rights of future populations to the extent of its provisions.

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.